

THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire

Petition for Approval of PPA with Laidlaw Berlin BioPower, LLC

Docket No. DE 10-195

Objection
of
Public Service Company of New Hampshire
to
Concord Steam Corporation's
Objection to Notice of Withdrawal by Laidlaw BioPower, LLC
and Motion to Strike

November 8, 2010

Pursuant to N.H. Code Admin. Rules Puc § 203.07(e), Public Service Company of New Hampshire ("PSNH" or the "Company") hereby objects to Concord Steam Corporation's ("CSC") "Objection to Notice of Withdrawal by Laidlaw BioPower, LLC and Motion to Strike" dated October 29, 2010.

In support of this Objection, PSNH states as follows:

1. On October 28, 2010, Laidlaw Berlin BioPower, LLC ("LBB") filed notice of its withdrawal from this proceeding. The only mandatory party in this proceeding is PSNH, the Petitioner. LBB, like all other intervenors in this proceeding, was a voluntary participant. There is no statutory or regulatory requirement that compelled its involvement.

2. CSC has filed an objection to LBB's withdrawal.¹ In so doing, CSC points to no statutory, regulatory or case law authority to support the extraordinary argument that a party who voluntarily participates in an administrative proceeding in New Hampshire can be compelled to continue that participation. In fact, no such authority exists.

3. PSNH believes the CSC's pleading is improper and cannot be granted as a matter of law. LBB's intervention was voluntary. LBB did not seek permission to withdraw, but withdrew as a matter of right. CSC has pointed to no authority confirming an ability to object in such a circumstance

4. In its pleading, CSC asserts, "Contrary to Laidlaw's assertion that Concord Steam has sought Laidlaw's confidential information in order to impede competition, Concord Steam does not compete with Laidlaw in the generation of electricity."² Such a statement that "Concord Steam does not compete with Laidlaw in the generation of electricity" appears to be preposterous. The bases for CSC's intervention in this proceeding³ include assertions that: "Concord Steam has been developing a wood-fired combined heat and power plant in Concord since 2007,"⁴ "...the Laidlaw project will have a substantial upward impact on the price of wood

¹ Although CSC has captioned its pleading as an "Objection to Notice of Withdrawal" by LBB, nowhere in CSC's pleading does it seek action by the Commission compelling LBB's continued participation. The only remedies sought by CSC are to "strike all data responses from Laidlaw...from the record," to restrict the use of any such information provided by Laidlaw to support PSNH's petition (but apparently such information may be used by others), and a general plea of "other and further relief as justice may require."

² CSC pleading at paragraph 3.

³ CSC's "Petition for Intervention" dated September 3, 2010.

⁴ Discussing CSC's plans for a new 17 MW biomass-fired generating station, the Commission order noted: "Currently, Concord Steam is a steam utility with some incidental electric cogeneration

that Concord Steam will consume at its wood-fired combined heat and power plant in Concord,” and “the renewable energy projects that get to deal with PSNH appear to be screened to make sure they fit PSNH’s “business model.”⁵

5. If, as CSC has alleged, it “does not compete with Laidlaw in the generation of electricity,” then the Commission should reexamine whether CSC is entitled to intervenor status in this proceeding. CSC is not the consumer advocate; it is not a citizens’ advocacy group; it is not a customer of PSNH. If it is also not a competitor in the generation of electricity, then it is difficult to fathom what “rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding” that would entitle CSC to intervenor status under RSA 541-A:32.

6. Recently, in another Commission proceeding seeking approval of a renewable portfolio standard PPA under RSA 362-F:9, a full-party intervenor similarly withdrew from the proceeding. In Docket No. DE 08-077 where the Commission reviewed the PPA between PSNH and Lempster Wind, LLC, Constellation NewEnergy, Inc. and Constellation Commodities Energy Group, Inc. (collectively “Constellation”) notified the Commission of the decision to withdraw from the proceeding. (*See* letter dated January 23, 2008.) In the withdrawal letter, Constellation stated, “To the extent that Constellation requires the Commission’s approval to

capabilities. When this project is complete, the operation will transform into a merchant electric generating plant with steam operations in a subsidiary role.” *Re Concord Steam Corporation*, Docket No. DG 08-107, Order No. 24,969 dated May 22, 2009, *slip op.* at 4.

⁵ The Commission is also referred to filings by CSC in Docket No. DE 09-067, *Complaint of Clean Power Development*. In that proceeding, CSC expressly states its desire to sell the output from its generating facility to PSNH (CSC letter dated July 14, 2009); it filed a “Petition for Intervention” referencing PSNH’s the Laidlaw deal (“a different (and excessively-large proposed biomass energy facility)"); it raised the prospect of seeking a PURPA rate order mandating the purchase by PSNH of the output from its generating facility (CSC letter dated October 1, 2009); and, it sought the Commission’s review of “PSNH’s obligations to purchase power from renewable generation facilities and/or projects under state law, federal law, or common law” (CSC letter dated November 6, 2009).

withdraw, it hereby requests such approval.” The Commission never deemed it necessary to provide such approval - - Constellation’s withdrawal was merely noted matter-of-factly in that docket’s “Order Granting Petition.” (Order No. 24,965 dated May 1, 2009, *slip op.* at 3).

7. If the Commission deems it necessary and proper to deviate from that recent past practice and involuntarily compel LBB to participate in this proceeding, such participation should be on the same basis and with the same requirements and responsibilities as other intervenors. That is, if LBB is ordered to participate, to respond to discovery requests and to disgorge its confidential information as part of that process, then, pursuant to Rule Puc 203.09(b), all other intervenors in this proceeding should be subject to the same rights and responsibilities, without the option to withdraw at a later date.

8. CSC’s “Objection to Notice of Withdrawal by Laidlaw BioPower, LLC and Motion to Strike” is yet another example of the conduct of the competitor-intervenors in this proceeding which is undoubtedly aimed toward impairing the interests of justice and the orderly and prompt conduct of the proceeding. As noted earlier, the Commission should sua sponte determine whether continued intervenor status is warranted for the competitor-intervenors, including CSC, or whether the imposition of conditions to such intervenor status are warranted pursuant to RSA 541-a:32,III.

9. CSC’s pleading also includes a motion “to strike all data responses from Laidlaw to Staff from the record in this docket” and “to order that none of the documents or information provided by Laidlaw may be used by PSNH or any party in support of PSNH’s Petition.” Under Commission practice, responses to data requests do not become part of the record unless and

until they are moved into the record by a party, and accepted as such by the Commission. Therefore, there are no data responses in the record at this time subject to CSC's motion to strike. CSC's motion to strike must therefore be denied at this time as premature. If at a later date any of the subject data responses are sought to be relied upon as part of the record, and if CSC is still a full party intervenor at that time, it would have the opportunity to object then.

10. CSC's alternative demand that information provided by Laidlaw may be used against PSNH, but not in support of PSNH's Petition, must be similarly denied. Either the materials provided by Laidlaw are credible, or they are not. CSC cannot have it both ways by using information that it deems favorable, but seeking a blanket prohibition on the use of such information that it deems unfavorable. Paraphrasing CSC's own pleading, use of such documents and information in the manner requested by CSC, "would be unfair and prejudicial, and constitute a denial of...due process."

WHEREFORE, PSNH objects to CSC's "Objection to Notice of Withdrawal by Laidlaw BioPower, LLC and Motion to Strike"

For the reasons expressed herein, PSNH respectfully requests that the Commission:

- A. deny CSC's "Objection to Notice of Withdrawal by Laidlaw BioPower, LLC and Motion to Strike"
- B. consider necessary and appropriate conditions upon the Wood-Fired IPPs participation in the proceedings as permitted by RSA 541-A:32,III; and
- C. grant such other and further relief as justice may require.

Respectfully submitted this 8th day of November, 2010.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By:  _____

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CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2010, I served an electronic copy of this filing with each person identified on the Commission's service list for this docket pursuant to Rule Puc 203.02(a).



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