

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
Motion to Continue

November 10, 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") "Motion to Continue" dated November 9, 2010.

In support of this Objection, PSNH states as follows:

1. On November 9, 2010, CSC filed a "Motion to Continue" the expedited procedural schedule established by the Commission in Order No. 25,158.

2. CSC alleges that "Expedited treatment was sought by Laidlaw to enable it to obtain the benefit of certain tax credits available to the project." (Motion, para. 2). CSC's allegation should receive only minimal partial credit as it is incomplete and therefore misleading. There were myriad other reasons why the public interest compelled an expedited schedule in this

proceeding, including: “northern New Hampshire needs jobs now, not next year;”¹ “the Project has agreed to support specific improvements that will benefit the operators of the existing Fraser Paper Mill. The Project will provide excess heat, hot water and steam that can use the existing pipeline infrastructure to deliver water and/or steam to Fraser (and/or other local users) at improved rates, thereby creating support for retaining, or expanding, what remains of the industrial base in the Berlin area.”² “As part of the planned NMTC financing, the Project will execute contractual agreements with the [community development entities] CDEs to establish a \$2.2 million cash fund that will capitalize a small and medium enterprise (“SME”) local revolving loan fund which will provide needed access to capital to a variety of local businesses.”³ the plea from the Mayor of the City of Berlin “that an expedited decision process takes place,”⁴ a similar plea from the City Manager of the City of Berlin, explaining:

The City of Berlin is by far the most economically distressed city in the state. It desperately needs the enterprise, jobs and tax base that the proposed Laidlaw energy development project will bring to the community. In order to take advantage of close to \$3,000,000 in local community benefits from New Market Tax Credits which have been allocated to the project, final financing must close by November 15, 2010. This financing cannot close without a Power Purchase Agreement.⁵

Thus, CSC’s implication that expedited treatment of this proceeding was sought solely to enable Laidlaw Berlin BioPower, LLC (“LBGB”) “to obtain...tax credits” is misleading.

¹ Laidlaw Berlin BioPower’s “Petition for Intervention and Motion for Expedited Consideration,” August 17, 2010, para. 12.

² *Id.*

³ *Id.* at para. 10.

⁴ Letter, City of Berlin Office of the Mayor, dated October 6, 2010

⁵ Letter, City of Berlin, Office of the City Manager, dated September 28, 2010.

3. The expedited procedural schedule adopted by the Commission for this proceeding is also consistent with the public policy desires demonstrated by the Legislature. RSA Chapter 162-H, “Energy Facility Evaluation, Siting, Construction and Operation,” was recently amended⁶ to provide expedited consideration of applications filed with the New Hampshire Site Evaluation Committee for a certificate for a renewable energy facility.⁷ The purpose of that recent legislation would be frustrated if the Site Evaluation Committee’s statutorily-mandated expeditious treatment of an application is ultimately subject to a drawn-out procedural process at this Commission hijacked by competitors whose interests are not allied with the public interest standard for this matter.⁸ Recall that the Wood-Fired IPPs’ in their “Objection to Notice of Withdrawal and Motion to Compel Participation” dated November 2, 2010, reminded the Commission that “the nominal 24 MW Lempster wind project [Docket No. DE 08-077] required twelve months of discovery, motion practice, and hearings from filing to determination.”⁹

4. CSC next alleges that, “Following the Commission's approval of the expedited procedural schedule as requested by it and following its discovery responses to Staff, Laidlaw filed notice of its withdrawal from further participation in the Docket in an attempt to avoid discovery from Concord Steam and other Intervenors.”¹⁰ This allegation is not even worthy of partial credit. Unlike every other party granted intervention in this proceeding, only LBB

⁶ 2009 N.H. Laws, Chapter 65.

⁷ RSA 162-H:6-a.

⁸ RSA 362-F:9.

⁹ It should be noted, that the referenced 12-month approval period in Docket No. DE 08-077 was actually thirteen months from the May, 2008, filing of PSNH’s Petition to the June, 2009 Order on Rehearing. And, that does not include the aborted appeal to the New Hampshire Supreme Court that was filed Freedom Partners LLC and was ultimately withdrawn in October, 2009.

¹⁰ Motion at paragraph 3.

indicated a readiness and willingness to participate in the discovery process at all. Despite the requirements of Rule Puc 203.09 which prescribes that, “Unless inconsistent with an applicable procedural order, *any person* covered by this rule *shall have the right to serve upon any party, data requests*, which may consist of a written interrogatory or request for production of documents,” (emphasis added), the Commission noted that “typically, the Commission's practice is, unless you file testimony, then there wouldn't be, you know, subject to discovery.”¹¹ LBB specifically noted that its reason for withdrawal from this proceeding was that its “presence in these proceedings, rather than providing assistance and furthering on orderly process, has instead become a significant distraction.”¹² LBB further noted, “The additional value that LBB may be able to provide through its assistance to the Commission is more than offset by the protracted, irrelevant discovery battle that looms ahead, and the inevitable disruption that such unnecessary litigiousness will cause to the schedule and the economic needs of the State.”¹³

5. CSC further alleges as a basis for its Motion that PSNH did not “immediately” seek rehearing of the Commission’s decision regarding confidentiality of the PPA. That decision was included in Order No. 25,158, which was sent to the parties in this proceeding at 4:22 p.m. on Friday, October 15, 2010. PSNH’s Motion for Rehearing of that Order’s confidentiality decision was in fact filed five business days later, on October 22¹⁴ - - despite having a statutory 30-day

¹¹ Transcript, September 29, 2010, p. 110.

¹² LBB “Notice of Withdrawal,” para. 9.

¹³ *Id.*, para. 10.

¹⁴ CSC admits to such a filing date. Motion, para. 7.

period to file such a Motion.¹⁵ CSC's implication that PSNH's behavior was dilatory is just not correct.

6. CSC complains that "Without the pricing terms of the PPA, Concord Steam has been unable to engage an expert to examine and analyze the impact that the PPA will have on the rates of PSNH customers, on the rates of Concord Steam customers, on biomass fuel markets, on REC markets, on job markets, tax revenues and the economy of those communities in which the wood fired IPP's are located and on the New Hampshire Economy in general."¹⁶ Virtually all of these "harms" go well beyond the matters set forth in CSC's Petition for Intervention. RSA 541-A:32, I requires petitions for intervention to state "facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding."

a. CSC is not the state's consumer advocate, nor is it a citizens' advocacy group. CSC is not a customer of PSNH. Hence, its claimed need to "examine and analyze the impact that the PPA will have on the rates of PSNH customers" is puzzling, and well beyond the substantial interests of CSC.

b. CSC's claim that it needs to examine and analyze "job markets, tax revenues and the economy of those communities in which the wood fired IPP's are located and on the New Hampshire Economy in general," while admirable, are well-beyond its substantial interests upon which any grant of intervenor status may be based. CSC is not an ombudsman with plenary jurisdiction to raise any manner of purported ills. Although CSC has alleged earlier in this proceeding that it "does not compete with

¹⁵ RSA 541:3.

¹⁶ Motion, para. 11.

Laidlaw in the generation of electricity,”¹⁷ its interest in this proceeding is solely based upon such private competitive interests, not the public welfare in general.

c. The only matter asserted in CSC’s intervention petition that might meet the RSA 541-A:31,I requirement is CSC’s statement that “the Laidlaw project will have a substantial upward impact on the price of wood that Concord Steam will consume at its wood-fired combined heat and power plant in Concord.”¹⁸ The matter of the impact of the Laidlaw facility on the state’s wood supply was dealt with by the Site Evaluation Committee, and therefore should be outside the scope of this proceeding.¹⁹ In fact, CSC appeared at the Site Evaluation Committee regarding this very issue.²⁰

7. Moreover, the Commission has very recently ruled that intervenors who are competitors (such as CSC and the other competitor-intervenors) are not necessarily entitled to receipt of confidential information, even under a confidentiality agreement.²¹ To delay this proceeding based upon the double contingencies that – i) the Commission might not find certain information to be confidential, and, ii) even if such information is deemed to be confidential, the Commission would require that information to be provided to competitor-intervenors – is unreasonable in light of the significant public interests which continue to warrant expedited consideration.

¹⁷ CSC “Objection to Notice of Withdrawal by Laidlaw BioPower, LLC and Motion to Strike,” para. 3.

¹⁸ CSC “Petition for Intervention,” para.5.

¹⁹ See “*Decision Granting Certificate of Site and Facility with Conditions*,” NHSEC Docket No. 2009-02, (November 8, 2010), pp. 62-65.

²⁰ *Id.* at 55 and at fn. 15.

²¹ *Kearsarge Telephone Company*, 92 NH PUC 441 (2007); *Public Service Co. of New Hampshire*, Docket No. DE 10-121, Order No. 25,167 (November 9, 2010).

8. CSC's citation to *Appeal of Morin* is neither controlling nor persuasive. In *Morin*, the facts involved an appeal of a workers' compensation claim. The Compensation Appeals Board had refused to grant a continuance when the petitioner's treating physician was out of the country on the hearing date. In its reversal of the Board's decision, the Court noted that workers' compensation matters are to be construed liberally in order to give the broadest reasonable effect to the remedial purpose of the workers' compensation law, and that the Court's liberal construction of the workers' compensation statute has resulted in a series of cases expressing expansive interpretations of the statutory criteria for coverage.²² No similar liberal or expansive interpretation biases exist for the state's public utility regulatory laws. Moreover, in *Morin*, the Court noted the general rule that, "the question whether a continuance should be granted lies within the board's sound discretion."²³ The Court also noted, "If there was a reasonable justification for denying the motion, such as material prejudice to other parties, then the board should have made a record of its reasons for denying the continuance to assist us in evaluating whether the agency abused its discretion."²⁴ In this proceeding, the very reasons why the expedited procedural schedule was first adopted evidence the material harm that would come to other parties if the Commission was to grant the requested continuance.

9. Regardless of the Commission's ultimate determination on the confidentiality claims that are outstanding, CSC's ability to present its case in a fair manner is not impacted. Its access to the materials deemed by PSNH to be confidential are not necessary for it to file testimony regarding its need for wood or its need to sell the output (energy, capacity, and RECs) from its

²² 140 N.H. at 519.

²³ *Id.* at 518.

²⁴ *Id.* at 520.

proposed 17 MW generating facility. Any other issue is beyond CSC's "substantial interest" and should not be considered as providing any basis for CSC's repeated requests to delay this proceeding. 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.

WHEREFORE, PSNH objects to CSC's "Motion to Continue."

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

- A. deny CSC's "Motion to Continue," and
- B. grant such other and further relief as justice may require.

Respectfully submitted this 10th day of November, 2010.

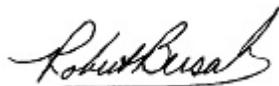
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By:  _____

Robert A. Bersak
Assistant Secretary and Assistant General Counsel
Public Service Company of New Hampshire
780 N. Commercial Street
Post Office Box 330
Manchester, New Hampshire 03105-0330
603-634-3355
bersara@PSNH.com

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 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).



Robert A. Bersak
Assistant Secretary and Assistant General Counsel
780 North Commercial Street
Post Office Box 330
Manchester, New Hampshire 03105-0330
(603) 634-3355
bersara@psnh.com