

STATE OF NEW HAMPSHIRE  
BEFORE THE  
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

In re: Petition for Approval of Power Purchase Agreement )      Docket No. DE 10-195  
with Laidlaw Berlin BioPower, LLC )

**REPLY TO PSNH OBJECTION TO  
WOOD-FIRED IPPS' MOTIONS TO COMPEL**

Bridgewater Power Company, L.P., Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Springfield Power LLC, DG Whitefield, LLC d/b/a Whitefield Power & Light Company, and Indeck Energy-Alexandria, LLC (collectively, the "Wood-Fired IPPs") hereby reply to the Objection of Public Service Company of New Hampshire ("PSNH") to their motions to compel discovery responses from PSNH filed on October 29, 2010 and November 3, 2010, and move the Commission to accept such reply in clarification of the record in this proceeding.

1. Although replies to objections to motions are not expressly contemplated by the Commission's Rules of Practice and Procedure, good cause exists in this instance for the Commission to accept and consider their reply in clarification of the record in this proceeding, for the four reasons set forth below. The Wood-Fired IPPs otherwise stand behind the positions taken and the arguments made in their two motions to compel.

2. First, as PSNH correctly points out (Objection at 5, fn. 17), the Wood Fired IPPs' Motion to Compel filed on October 29, 2010 did not include in Exhibit A a copy of their data request 2-16 to PSNH. The Wood Fired IPPs wish to correct this inadvertent oversight by filing with this reply a copy of PSNH's response to their data request 2-16 as Exhibit A hereto.

3. Second, PSNH defends its decision to withhold information, documents and materials from the Wood-Fired IPPs and other intervenors on the grounds that these intervenors

are competitors that have sought and may continue to seek to negotiate their own contracts to sell electric power and renewable energy certificates to PSNH. Objection at 7-8.<sup>1</sup> For the reasons stated in their Motion to Compel dated October 29, 2010, the Wood-Fired IPPs believe PSNH's objections are unavailing.

4. The Wood-Fired IPPs have proposed a reasonable accommodation to PSNH's expressed concerns by stating their willingness to execute an appropriate confidentiality agreement prior to receiving material claimed eligible for confidential treatment, consistent with the provisions of N.H. Code Admin. Rules PUC 203.08(j), coupled with the further assurance that "[s]uch a confidentiality agreement may include restrictions on disclosure of protected information to the Wood-Fired IPPs' competitive employees and limit distribution to their counsel and outside consultants." Motion to Compel (10/29/10) at 5. This latter condition is consistent with the approach endorsed by the Commission in similar circumstances. *Public Service Company of New Hampshire*, 89 NH PUC 226, 230 (2004) (given the competitively sensitive nature of the information sought to be disclosed, "PSNH may condition its provision of executed contract documents to counsel for the Existing Wood-Fired Plants subject to counsel's agreement not to disclose the documents to their clients"); *Re Kearsarge Telephone Company*, 92 NH PUC 441, 444 (2007) (competitor-intervenor's outside counsel "should continue to have review access to the documents . . . subject to appropriate protective agreement", even though confidential information could be withheld from intervenor's internal technical expert).

5. Third, in defense of its objection to the Wood-Fired IPPs' data request 2-11 and other specified data requests on the grounds that these questions seek "legal opinions," PSNH

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<sup>1</sup> PSNH specifically references recent negotiation meetings involving offers by two of the Wood-Fired IPPs, Pinetree Power, Inc and Pinetree Power-Tamworth, Inc., to enter into short-term power purchase agreements with PSNH. Objection at 4 and Attachment 1, Affidavit of Richard C. Labrecque. Of course, these offers and the related negotiations were not developed with any knowledge of PSNH's confidential information, as the Wood-Fired IPPs have not yet been provided access to any such confidential information in this docket. Furthermore, PSNH fails to inform the Commission that PSNH has rejected the Pinetree Power sales offers.

asserts that such questions “not only would require PSNH to provide a legal conclusion regarding what the Court deems to be “a question of law,” but also would require PSNH to delve into the restrictions of the federal PURPA law, the FERC’s implementing regulations, and judicial decisions.” Objection at 12-13 (footnotes and citations omitted).<sup>2</sup>

6. But the Power Purchase Agreement between PSNH and Laidlaw Berlin Biopower, LLC is not entered into under the “federal PURPA law” – it is based on negotiated prices and not avoided cost rates, it was voluntarily entered into by PSNH, and PSNH no longer has any mandatory obligation under PURPA to purchase the power output of qualifying facilities in its service territory with a capacity greater than 20 MW, pursuant to an order it recently obtained from the Federal Energy Regulatory Commission.<sup>3</sup> PSNH thus raises a strawman argument – and a particularly thin one at that – which should be disregarded by the Commission.

7. Fourth, at the end of its objection PSNH asserts that the Commission “should *sua sponte* determine whether continued intervenor status is warranted for the competitor intervenors, including the Wood-Fired IPPs, or whether the imposition of conditions to such intervenor status are [sic] warranted pursuant to RSA 541-A:32, III.” Objection at 21-22. PSNH asserts that such action may be justified based on the “conduct of the competitor intervenors evidence by their abusive behavior in the discovery process [which] is undoubtedly aimed toward impairing the interest of justice and the orderly and prompt conduct of the proceedings.” Objection at 21.

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<sup>2</sup> It is revealing that PSNH goes on to assert that “[t]he Commission is no doubt aware that these very same Wood-Fired IPPs have challenged the ability of the Commission to cast asunder any such PURPA-related enforceable obligation. It is unreasonable for them to now insist that PSNH provide what amounts to legal responses to such questions.” Objection at 13 (footnote and citation omitted). PSNH seems determined to fight the battles of the past rather than focusing on the relevant issues in this proceeding.

<sup>3</sup> *Public Service Company of New Hampshire*, Order Granting in Part and Denying in Part the Application to Terminate Mandatory Purchase Obligation, 131 FERC ¶61,027 (2010).

8. PSNH's accusations are baseless and fail to support the unwarranted restriction of the Wood-Fired IPPs ability to actively participate in this proceeding. If PSNH intends the Commission to consider its argument for limitations on the Wood-Fired IPPs' participation in this docket, it should file a motion setting for the factual and legal basis for such relief under PUC Rule 203.07, with respect to which it will have the burden of proof under PUC Rule 203.25, and in response to which the Wood-Fired IPPs will have the right to object under PUC Rule 203.07(e). PSNH should not be permitted to circumvent these procedural requirements to deprive intervenors of their participation rights through an unsupported suggestion included gratuitously in an objection to discovery motions.

9. The Commission granted the petition to intervene filed by the Wood-Fired IPPs, recognizing their interests as "existing or potential competitors of the proposed Laidlaw facility and thus hav[ing] interests affected by this proceeding." Order No. 25,158 (October 15, 2010) at 9-10.<sup>4</sup> In their petition to intervene, the Wood-Fired IPPs also asserted their interests as back-up service ratepayers of PSNH. Petition to Intervene of Wood-Fired IPPs (9/24/10) at 4. Under the Administrative Procedure Act, RSA 541-A:32, III and IV, an intervenor's participation in administrative proceedings may be conditioned to limit "the intervenor's use of cross-examination and other procedures so as to promote the orderly and prompt conduct of the proceedings," *provided*, however, that the conditions and limitations "shall not be so extensive as to prevent the intervenor from protecting the interest which formed the basis of the intervention." The Wood-Fired IPPs protect their asserted interests in this proceeding by actively developing the record upon which the Commission will determine whether or not the proposed PPA is in the

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<sup>4</sup> The Commission staff, moreover, confirmed on the record at the prehearing conference its support for the intervention and active participation of the biomass plant intervenors, stating that "they have information which would shed light on whether or not the terms and conditions and the pricing terms of the contracts are reasonable and, therefore, in the public interest", and that their intervention "would assist the Staff in its work reviewing the docket." Transcript, 9/29/10, pp. 65-66.

“public interest”, as required under RSA 362-F:9, II. Therefore, no limitations on the Wood-Fired IPPs’ participation in this docket are warranted.

10. The Wood-Fired IPPs have been granted full party status and are active participants in a litigated Commission proceeding to consider whether a long-term power purchase agreement with a single renewable energy project developer meets the statutory requirements for approval under RSA 362-F:9, including the requirement that the contract is found to be in the “public interest” within the statutory boundaries. All parties in this proceeding, including the Wood-Fired IPPs, have a vital interest in assuring that discovery of facts and issues relevant to the “public interest” standard set forth in RSA 362-F:9 is permitted so that a complete record can be created that will enable the Commission to determine whether the PPA meets this standard.<sup>5</sup>

WHEREFORE, the Wood-Fired IPPs respectfully request the following relief:

- A. That the Commission accept this reply to PSNH’s Objection to the Wood-Fired IPPs’ Motions to Compel in order to clarify the record in this proceeding; and
- B. Order PSNH to provide full and complete responses to all of the Wood-Fired IPPs’ data requests referenced in their Motions to Compel; and
- C. Grant such other and further relief as the Commission deems just.

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<sup>5</sup> In a similar manner as in the instant docket, certain of the Wood-Fired IPPs actively participated as intervenors in Docket No. DE 03-166 regarding PSNH’s petition for authority to modify Schiller Station Unit No. 5 to burn wood biomass fuel. In that proceeding the Commission, following extensive discovery conducted by and issues raised by such intervenors and others, denied PSNH’s petition as filed and specified certain material conditions under which the petition would be granted. *Public Service Company of New Hampshire*, Order No. 24,276 (February 6, 2004).

Respectfully submitted,

BRIDGEWATER POWER COMPANY, L.P.,  
PINETREE POWER, INC.,  
PINETREE POWER-TAMWORTH, INC.,  
SPRINGFIELD POWER LLC,  
DG WHITEFIELD, LLC d/b/a WHITEFIELD POWER &  
LIGHT COMPANY, and  
INDECK ENERGY-ALEXANDRIA, LLC

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CERTIFICATE OF SERVICE

I hereby certify that, on this date, I caused the attached Motion to Compel to be filed in hand and electronically to the Commission and electronically, or by U.S. Mail, first class, to the persons identified on the attached Service List in accordance with N.H. Admin. Code Rules PUC 203.11(a).

Date: November 15, 2010

  
David J. Shulock, Esq.

**Public Service Company of New  
Hampshire  
Docket No. DE 10-195**

**Data Request IPP-02**

**Dated: 10/18/2010**

**Q-IPP-016**

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**Witness: Richard C. Labrecque**  
**Request from: Wood-Fired Small Power Producers**

**Question:**

Mr. Large's testimony at page 2, lines 22-25 states that the Facility will utilize approximately 750,000 tons of biomass fuel annually when operating at full capacity.

- a. Please explain the rationale for not limiting the amount of biomass material that is subject to the wood price adjustment in the PPA Section 6.1.2 to this amount.
- b. Would PSNH accept such a limitation? If not, please explain. If PSNH would accept a different number as a limitation, please state that number and explain PSNH's rationale for its use instead of the number quoted by Mr. Large.
- c. Please provide PSNH's calculation and analysis of the increase in the energy price attributable to the wood price adjustment under Section 6.1.2 of the PPA over the term of the PPA and for each year of the PPA. Please identify all assumptions used for data inputs under said Section and calculation. Please provide all workpapers and any documents used or consulted to determine the data inputs.

**Response:**

- a. The PPA is a result of detailed negotiations between two parties regarding numerous interrelated terms and conditions. The question presupposes that a limited wood price adjustment option was available.
- b. PSNH objects to this question as it is hypothetical and speculative in nature and not likely to lead to the discovery of evidence admissible in this proceeding, which is to review the PPA as submitted.
- c. See response to STAFF-01, Q-STAFF-011.