

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Petition for Approval of PPA with Laidlaw Berlin BioPower, LLC

Docket No. DE 10-195

OBJECTION TO MOTION TO STRIKE

NOW COMES the Concord Steam Corporation, by and through its attorneys, Upton & Hatfield, LLP, and objects to PSNH's *Motion to Strike* and states as follows:

1. PSNH asks the Commission to exclude testimony submitted by Concord Steam demonstrating that the Laidlaw PPA will have an adverse impact on the price of biomass fuel and biomass markets in New Hampshire. This testimony is inescapably relevant as increases to the cost of biomass fuel at PSNH's Schiller Station will increase the price paid for energy by PSNH's customers under the Laidlaw PPA.¹
2. As set forth in Concord Steam's testimony, Schiller Station already pays more per ton of biomass fuel than any other facility in New Hampshire.² The Laidlaw PPA will cause further increase prices paid at Schiller Station as suppliers respond to the increases in demand at least as large as those observed when Schiller Station

¹ The relationship between the price of biomass at Schiller Station and the price to be paid under the Laidlaw PPA is described in detail in Concord Steam's November 2, 2010 *Motion to Dismiss*, and in the December 17, 2010 *Testimony of John Dalton* on behalf of Concord Steam and *Testimony of George McClusky* on behalf of the Commission's Staff.

² See e.g., *Testimony of Robert Berti et al.*, Page 5 ("In fact, because of its size (50 MW) and the fact that Schiller is on the coast with some of its procurement radius in the ocean, Schiller almost always pays substantially more for its wood than the other existing wood burning facilities in NH."); *Testimony of Mark Saltsman*, Attachment A (relative prices) & Page 10 ("Using Schiller's biomass price ... does not appear to be appropriate given Schiller's location on the coast and the resulting premiums that it pays for biomass supply relative to the existing biomass IPPs.").

came on-line.³ The Laidlaw PPA requires cost recovery of these above market payments as part of its default service.⁴ Thus, PSNH's customers will be required to pay for higher biomass fuel prices even if the prices are imprudent.

3. PSNH argues that the subject of this testimony has already been considered by the Energy Facility Site Evaluation Committee (EFSEC). However, the portions of the decision quoted by PSNH state clearly that EFSEC *did not* consider the price of biomass fuel because it could not predict prices "with any accuracy" and that impact on other facilities was "outside of [its] control".

It is impossible to predict, with any accuracy, how much biomass will be on the market, the price of biomass, and the ability or inability of other facilities to purchase such biomass. In addition, the Subcommittee notes that the business development of other facilities is outside of the Subcommittee's control.

PSNH Motion to Strike, Page 4, Para. 9 (b).

4. In fact, in 2009 the Legislature repealed RSA 162-H:16, IV (d) which allowed EFSEC to consider the Laidlaw project's impact on the State's energy policy.
Laws of 2009, Chapter 65:24, IX. As a result, EFSEC could not legally consider the impact of the Laidlaw PPA on the State's energy policy. EFSEC could only consider whether the Laidlaw project would adversely impact the "orderly development of the region" under RSA 162-H:16, IV.
5. EFSEC review is an environmental and land use (i.e. zoning) analysis that is "conclusive on all questions of siting, land use, air and water quality." RSA 162-

³ See e.g., *Testimony of Mark Saltsman*, Page 7 ("In 2006 wood fuel prices jumped to twenty-four to twenty-six dollars (\$24-26.00) per ton. This fifty percent (50%) increase was a direct result of the Schiller plant, brought on line in 2006 by PSNH that consumed over four hundred thousand (400,000) tons of wood fuel per year.")

⁴ See generally, Concord Steam's November 2, 2010 *Motion to Dismiss*.

H:16, II. EFSEC makes no determinations concerning New Hampshire’s energy policy or any of the criteria under RSA 362-F:9.

6. Concord Steam’s testimony that the Laidlaw PPA will adversely impact the price of biomass, its rate-payers, and other users of biomass fuel, is properly before the Commission in its evaluation of the public interest under RSA 362-F:9, I. It is also directly relevant to the specific criteria set forth in RSA 362-F:9, II.
7. For example, Concord Steam’s testimony demonstrates that the Laidlaw PPA will result in above-market fuel prices and hinder the “efficient and cost-effective realization of the purposes and goals of [RSA 326-F]” under RSA 362-F:9, II (a). Similarly, Concord Steam’s testimony shows that the Laidlaw PPA’s use PSNH’s monopoly over default service to increase biomass fuel prices is contrary to the “restructuring policy principles of RSA 374-F:3” under RSA 362-F:9, II (b). It does not use “*market-driven* competitive innovations and solutions” as required by RSA 362-F:9, II (d). It simply passes all of the costs of the Laidlaw PPA, *undisputed to be at least \$143.5 million above market*,⁵ to PSNH’s customers.
8. Whether or not EFSEC examined these or other issues under RSA 162-H:16, IV has no bearing on this proceeding. The Legislature has directed this Commission make its own determination after considering both the public interest and specific statutory criteria under RSA 362-F:9, II. There is no legal basis to disregard relevant testimony simply because it may (or may not) have been considered by a different body applying different criteria.

⁵ PSNH’s own projections show the project is above market. See e.g., Testimony of John Dalton, Page 17 (“In a data request response, PSNH indicates that the cumulative over payments for energy (i.e., contract energy price less the market energy price) under the “Base Case” forecast would be \$143.5 million over the 20-year PPA term. (Response to Data Request STAFF-01, Q-STAFF-011-RV01, Attachment 3).”).

9. Concord Steam does not agree with PSNH's characterization of its participation in the EFSEC docket. Concord Steam was not a party to the EFSEC proceeding. It attended one of the hearings and offered comments as noted by PSNH.

WHEREFORE Concord Steam respectfully requests that the Commission:

- A. Deny PSNH's *Motion to Strike*;
- B. Direct PSNH to focus on the relevant criteria under RSA 362-F:9; and
- C. Grant such other relief as justice may require.

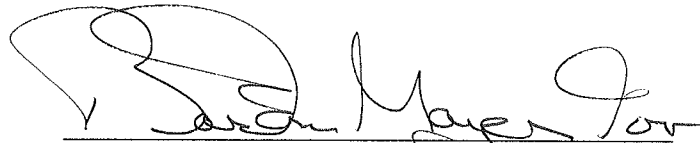
Respectfully submitted,

CONCORD STEAM CORPORATION,

By its Attorneys,

UPTON & HATFIELD, LLP

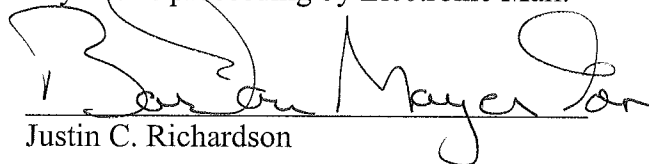
Date: December 28, 2010



Robert Upton, II (NHBA #2599)
Justin C. Richardson (NHBA #12148)
23 Seavey Street
PO Box 2242
North Conway, NH 03860-2242
(603) 356-3332
rupton@upton-hatfield.com
jrichardson@upton-hatfield.com

CERTIFICATE OF SERVICE

I hereby certify that on this day, a copy of the foregoing was forwarded to all counsel or parties of record for discovery in this proceeding by Electronic Mail.



Justin C. Richardson