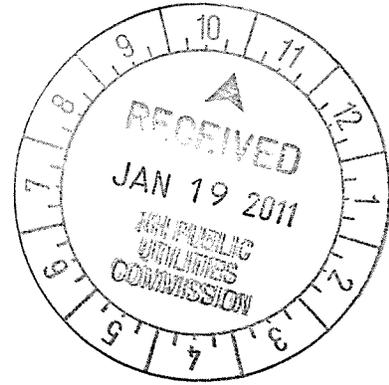


**THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION**

DE 10-195

Petition for Approval of Power Purchase Agreement with
Laidlaw Berlin BioPower, LLC



CONCORD STEAM'S OBJECTION TO PSNH'S MOTION TO COMPEL

January 18, 2011

NOW COMES Concord Steam Corporation and objects to PSNH's

January 7, 2011 *Motion to Rescind the Grant of Intervenor Status to Concord Steam*

Corporation or, in the Alternative, Motion to Strike Testimony Submitted by Concord

Steam Corporation and Motion to Compel Discovery (hereafter the "Motion to Compel")

and states as follows:

I. BACKGROUND

1. PSNH submits an unprecedented motion to rescind Concord Steam's intervention in this proceeding. PSNH and its supporters hope to prevent the Commission from considering testimony submitted by Concord Steam that demonstrates that the Laidlaw PPA is not in the public interest because, by way of summary:¹

- The Laidlaw PPA will require PSNH's customers to purchase energy, capacity and RECs at prices estimated to be \$453 million above-market;
- The Laidlaw PPA adversely impact Concord Steam's utility customers because of its impact on the price for biomass fuel;
- The Laidlaw PPA adversely impact existing Wood-fired generating stations in New Hampshire and the communities they serve.

¹ This list is only a brief summary of the Testimony for the sole purpose of responding to PSNH's Motion to Compel.

2. As set forth herein, PSNH's Motion to Compel should be denied because:
 - PSNH is not entitled to conduct wide-ranging discovery concerning confidential financial information that is not necessary to understand the Laidlaw PPA.
 - PSNH requests confidential financial data that belongs to Concord Power and Steam, LLC that is not a party subject to discovery in this proceeding.
 - Concord Steam has in fact answered the relevant requests with responsive information.
3. Each of these reasons is discussed further below.

II. PSNH IS NOT ENTITLED TO DISCOVERY OF CONFIDENTIAL FINANCIAL INFORMATION UNRELATED TO ITS PROPOSAL

4. In its November 5, 2010, *Objection of Public Service Company of New Hampshire to Concord Steam Corporation's Motion to Compel*, PSNH argued that the Commission's rules do not require disclosure of competitive financial information, stating on Pages 1-2 that:

[Concord Steam Corporation] a competitor to PSNH and Laidlaw in the energy, REC, and biomass markets, primarily asks the Commission to provide it with confidential, commercial, financial information that neither PSNH, Laidlaw, nor any other participant in the competitive free market, would provide to such a competitor. [...] Providing CSC with confidential information from PSNH when CSC has expressed its own desire to sell to PSNH would distort the full and fair competition principle of the restructuring law by giving unregulated competitive market participants access to PSNH's fuel, energy, capacity, REC, planning, analytical, and forecasting documents, while PSNH would have no access to identical information from them. PSNH must deal with these same entities as both potential suppliers of energy, capacity, and RECs, and potentially compete with them for fuel in the open marketplace. Such a situation would ultimately cause harm that would be borne by retail consumers in the form of higher costs

5. The Commission agreed in Order No. 25174, noting for example that "[b]ased upon PSNH's assertions, we agree that such information is confidential and is

- competitively sensitive.”² It therefore concluded under the test set forth in *Lamy v. NH Public Utilities Commission*, 152 N.H. 106 (2005), that data requests for “bids and proposals from competitive providers” received by PSNH is “confidential and is competitively sensitive”. Order No. 25,174, Page 12.
6. In fact, the Commission ordered only limited production of information because “[t]he proposed PPA with Laidlaw ... poses significantly more costs for default service ratepayers ... and warrants a full and transparent review.”³ The Commission ordered disclosure because “based on the balancing of the benefits of public disclosure of the PPA’s financial terms with the harm to PSNH if those terms are made public.”⁴
 7. PSNH presents no convincing argument that there are any “benefits of public disclosure” of Concord Power and Steam, LLC’s confidential financial information. There are none. Neither Concord Power nor Concord Power have asked the Commission to approve an above-market PPA; nor have they asked for cost recovery. As a result, there are no grounds for disclosure of any confidential information unrelated to the Laidlaw PPA.
 8. It should be noted that PSNH is free to submit rebuttal testimony or conduct cross-examination based on its own market data or other information. It cannot, however, use the machinery of discovery requests to force disclosure of unrelated confidential financial information or to rescind Concord Steam’s right of participation in this proceeding. If PSNH’s Motion to Compel is granted, it will provide a road map for future discovery disputes before the Commission that

² Page 12.

³ Page 14.

⁴ Page 15.

would force any market participant to avoid participating in any proceeding or face a substantial risk that its confidential financial information would be disclosed.

III. CONCORD POWER & CONCORD STEAM ARE DISTINCT ENTITIES

9. PSNH argues that Concord Steam Corporation (Concord Steam) and Concord Power and Steam, LLC (Concord Power) are essentially the same corporate entity. They are not.
10. The Commission has found that “Concord Steam is a public utility providing retail steam service in Concord while cogenerating electrical power at its plant on Pleasant Street in Concord”. *Order No. 24,969*. Concord Steam is nearing the end of its lease and “intends to purchase its steam from Concord Power and Steam, LLC (Concord Power) pursuant to a long term Steam Purchase Agreement (SPA).” *Id.* Concord Steam has provided its Steam Purchase Agreement in response to PSNH Data Request 43, which is a matter of public record.
11. It is true that Concord Steam’s *Petition for Intervention* in this proceeding inadvertently stated that “*Concord Steam* has been developing a wood-fired combined heat and power plant” (emphasis added). This was an error because, under the SPA approved by the Commission, “Concord Steam will no longer operate a steam production plant or generate electricity, it proposes to sell certain utility owned equipment no longer necessary for utility service to Concord Power.” *Order No. 24,969*, Pages 1-2.
12. Unfortunately, Concord Steam’s regular legal counsel serves as counsel for Laidlaw and was not available to represent Concord Steam in this proceeding.

Concord Steam prepared its intervention without its legal counsel and inadvertently failed to distinguish between Concord Steam and Concord Power.

13. However, Concord Steam and Concord Power have distinct legal interests. For example, “Concord Steam ... is not obligated to, purchase all of its steam requirements from Concord Power since it has the right to buy steam from others and generate steam itself.” *Order No. 24,969*, Page 6. Concord Power also differs from Concord Steam because “one or more third party investors are expected to acquire a substantial interest in Concord Power in exchange for an equity investment”.
14. The Commission’s rules, Puc 203.09 (b), are clear that data requests may be served “upon any party”. Despite an inadvertent error in Concord Steam’s intervention, Concord Power & Steam is not a party and is not subject to data requests.

IV. CONCORD STEAM HAS RESPONDED TO THE RELEVANT DATA REQUESTS

15. Notwithstanding its objections, Concord Steam has provided answers to nearly all of PSNH’s data requests that are the subject of its Motion to Compel.
16. *PSNH Requests to Concord Steam witness John Dalton*. Concord Steam has provided complete responses to the following PSNH Data Requests to Concord Steam witness John Dalton that are the subject of its Motion to Compel: No. 4; No. 5; No. 6; No. 7; No. 9;⁵ No. 12; No. 14. These Responses, attached hereto as Exhibit A, are complete and PSNH’s Motion to Compel is therefore moot.

⁵ Concord Steam’s Response to PSNH Data Request No. 9 is subject to its *Motion for Confidential Treatment*.

16. Concord Steam has also answered PSNH Data Requests No. 1; No. 2; No. 10 and No. 18, to the extent that they did not require disclosure of confidential financial or other information that is not the proper subject of discovery. These Responses, attached hereto as Exhibit B, have been answered to the extent required and PSNH's Motion to Compel is moot. As noted herein, to the extent that PSNH seeks to compel disclosure of confidential financial information unrelated to its proposal, its Motion to Compel should be denied.
17. *PSNH Requests to Concord Steam witness Mark Saltsman.* Concord Steam has answered PSNH's Data Requests to Concord Steam witness Mark Saltsman, except to the extent that PSNH impermissibly seeks disclosure of confidential financial information of Concord Power. *See Exhibit C*, attached. PSNH Data Request No. 29 (by reference to PSNH 28); No. 30 (by reference to PSNH 27); No. 31; No. 32; No. 33; No. 35; No. 36; No. 37; No. 39; No. 40; No. 43; No. 52; No. 53; No. 54; and No. 56, are therefore moot as answers have been provided.
18. PSNH Data Requests No. 55; No. 57; No. 58; No. 59; and No. 60, included in Exhibit C, were properly objected to because they seek Concord Power's financial projections and related information.
19. For the reasons set forth herein, to the extent that PSNH seeks to compel disclosure of confidential financial information concerning Concord Power, its Motion to Compel should be denied.

WHEREFORE, Concord Steam respectfully requests that the Commission:

- A. Deny PSNH's Motion to Compel; and
- B. Grant such other relief as justice may require.

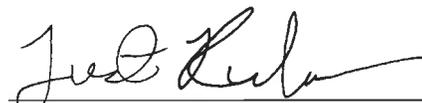
Respectfully submitted,

CONCORD STEAM CORPORATION,

By its Attorneys,

UPTON & HATFIELD, LLP

Date: January 18, 2011



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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

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