

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)

WOOD-FIRED IPPS' MOTION FOR REHEARING

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") filed a motion to dismiss PSNH's petition on December 13, 2010 and a Reply to PSNH's Objection to Wood-Fired IPPS' Motion to Dismiss on January 6, 2011. The Commission denied this motion to dismiss in an order on all pending motions, Order No. 25,192, issued January 14, 2011. Pursuant to RSA 541:3 and Puc 203.33, the Wood-Fired IPPs request reconsideration of the Commission's decision.

The Wood-Fired IPPs raised three main legal issues in their motion to dismiss. The first argument concerned the Commission's lack of statutory power under both RSA 362-F:9, I and RSA 374-F:3, V(c) to authorize entry into a proposed power purchase agreement ("PPA") and to provide for recovery of the costs associated with that PPA through default service rates when the term of the PPA extends for many years beyond the end of the New Hampshire renewable portfolio percentage requirements specified in RSA 362-F:3. The second argument concerned the arrogation of legislative authority by the Commission, if the Commission were to require ratepayers to make subsidy payments despite the lack of legislative authority for those subsidies or for the pass-through of such payments. The Wood-Fired IPPs' third argument concerned the Commission's lack of statutory power to voluntarily waive its jurisdiction under RSA 365:28 by

approving entry into contractual change in law provisions that would have that effect. These legal arguments are more fully set forth in the Wood-Fired IPPs' motion to dismiss, which is appended to this motion for rehearing, and are incorporated herein by reference.

The Commission dispensed with the Wood-Fired IPPs' first two legal arguments by ruling that it has general authority to review properly filed petitions, assumed without deciding that the Wood-Fired IPPs' legal arguments might be correct, and stated:

We will review the PPA to determine whether it meets the public interest consistent with the statute and will also consider whether we should exercise our authority under RSA 362-F:9, I to place conditions on our approval of the PPA. We will consider the individual criteria and other arguments at hearing. The existence of contractual terms that may conflict with statutory requirements or authority is not a basis for dismissal before the facts and arguments in the case are fully developed, rather it is a factor to be considered in our public interest review of the PPA, especially in light of the conditioning authority granted to the Commission under RSA 362-F:9, I.

Order 25,192 at 8.

The Wood-Fired IPPs agree that it is within the Commission's authority to condition a proposed PPA to bring it within the public interest standards articulated in RSA 362-F:9, II. However, the Wood-Fired IPPs assert that the Commission misapprehended this authority as a basis for avoiding a determination of its jurisdiction. The conditioning authority granted in RSA 362-F:9, I goes to the public interest, not to whether the Commission has authority to award the relief requested, which relief is the approval of REC purchases and ratepayer payments for these RECs beyond 2025. The Commission lacks the authority under the RPS statute to grant this relief. Consequently, it was error to hold that contract conditioning by the Commission can remedy this lack of initial jurisdiction, error not to address the underlying legal jurisdictional issues, and error to proceed to hearing.

The Commission dispensed with the Wood-Fired IPP's third argument by stating:

Finally we disagree with the Wood-Fired IPP's argument regarding the interplay of RSA 365:28 and RSA 362-F:9. If we were to claim unlimited authority to revise contractual obligations such as those contained in the PPA after we approved them, the resulting uncertainty would halt the use of PPAs for the procurement of power and RECs. Such uncertainty would be harmful to both utilities and their customers, and would ultimately be detrimental to the development of renewable energy facilities in New Hampshire.

Order 25,192 at 8.

First, the Wood-Fired IPPs believe that the above quoted provision of the order misapprehends the thrust of their argument. The Wood-Fired IPPs never argued that the Commission has unlimited authority to revise contractual obligations contained in PPAs; rather, the Wood-Fired IPPs argued that the Commission lacks the power to approve contract provisions that have the effect of preventing the Commission from revisiting its order approving a PPA and approving the pass-through of the costs associated therewith. This is the plain wording of RSA 365:28 which has not been repealed explicitly or implied by RSA 362-F:9.

Second, this is not a matter of *claiming* jurisdiction; this is a matter of jurisdiction that has already been explicitly granted to the Commission under RSA 365:28 and that was not taken away by RSA 362-F.

Third, dismissal, denial, or conditioning based upon elimination of the change in law provisions would not halt the use of PPAs for the procurement of RECs, and there is no record evidence to support such an assertion. It would simply require contracting parties to take the regulatory risk imposed by existing law, RSA 365:28. This is what RSA 362-F:9, I and RSA 365:28 require. Additionally, as testified to by Mr. McCluskey (regarding long-term NSTAR PPAs in Massachusetts) and as appears in the Lempster docket which the Commission took administrative notice of (Article 3.4 of the Lempster PPS requires each party to take its own

regulatory risk), requiring a developer to assume regulatory risk does not result in non-financeable PPAs.

Last, as demonstrated by PSNH Exhibit 25, a statutory and rule change would have to occur in New Hampshire to accomplish what PSNH and Laidlaw are trying to accomplish through approval of the change in law provisions in the Laidlaw PPA: the continued validity of a state-jurisdictional REC contract if RPS requirements were to cease to exist. In New Hampshire, unlike Massachusetts, there is no statutory authority for vesting in the event of RPS repeal. What the New Hampshire legislature put in place is a requirement that PSNH only contract to the extent of the statutory requirements (RSA 362-F:9, I) and the ability of the Commission to revisit its approval orders when necessary under RSA 365:28.

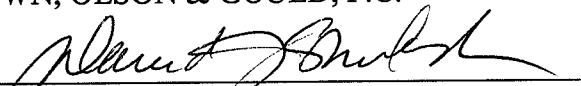
Wherefore, the Wood-Fired IPPs respectfully request that the Commission grant rehearing, and either dismiss or deny PSNH's petition in its entirety, or condition its approval of the PPA in conformity with the law as set forth herein and as contemplated by the Commission in Order 25,192.

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

By Their Attorneys,

BROWN, OLSON & GOULD, P.C.

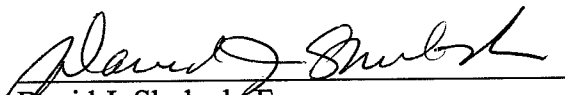
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CERTIFICATE OF SERVICE

I hereby certify that, on this date, I caused the attached Motion for Rehearing to be filed electronically and via hand-delivery with the Commission and served upon the persons identified on the attached Service List in accordance with N.H. Admin. Code Rules PUC 203.11.

Date: February 14, 2011


David J. Shulock, Esq.