

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

**DE 10-195**

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

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

**OBJECTION**  
**of**  
**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**  
**to**  
**PLEADING**  
**of**  
**EDREST PROPERTIES**

**March 15, 2011**

Pursuant to N.H. Code of Admin Rule Puc 203.07(e), Public Service Company of New Hampshire (“PSNH”) hereby objects to the untitled pleading filed by party-intervenor Edrest Properties (“Edrest”) dated March 14, 2011 (the “Pleading”).

**Discussion**

Edrest Properties is a full party intervenor in this proceeding. *See* “Petition for Intervention of Edrest Properties LLC” dated September 23, 2010. The Commission granted all petitions to intervene in this proceeding, including Edrest’s, in Order No. 25,158 dated October 15, 2010.

Edrest’s Pleading does not state any changes to the Berlin biomass project that were not already aired during the now completed adjudicative hearings or which are material to the RSA Chapter 362-F considerations now being deliberated by the Commission.

The Pleading touches on three issues which are before the New Hampshire Site Evaluation Committee in its Docket Number 2011-01: i) a corporate restructuring of the Project; ii) a request to amend the Project’s certificate to allow the facility to generate up

to 75 MW gross; and, iii) the use by the Project of a new steam turbine generator instead of a used steam turbine generator. None of these three matters requires “another round of discovery” as requested in the Edrest Pleading.

As noted, all three of the issues raised by Edrest are pending before the Site Evaluation Committee. It is that agency’s responsibility to determine whether these matters necessitate changes to the Project’s "certificate of site and facility" and, if so, whether to grant such changes.

The scope of the instant proceeding before this Commission is much smaller. It is limited to whether or not PSNH’s Petition to approve the Power Purchase Agreement (“PPA”) should be granted pursuant to RSA Chapter 362-F.

### **i. Corporate Restructuring**

The ultimate corporate structure of the Project has no impact on PSNH’s contractual rights and obligations under the PPA. The PPA itself, in Article 17, sets forth detailed requirements for any assignment of the PPA by either Party. In addition, Article 26.8 of the PPA expressly states that the PPA “binds and inures to the benefit of the Parties, their successors and assigns.”

Moreover, PSNH has no obligation to make any payments under the PPA unless and until the Project is built and actually produces the “Products” set forth in the PPA. In addition, PSNH’s obligation to begin the purchase of Products under the PPA is contingent upon the satisfaction of all the conditions set forth in Article 4 of the PPA. Those conditions include, *inter alia*:

- 4.1.2 PSNH has received evidence to its reasonable satisfaction that Seller has obtained all permits, licenses, approvals and other governmental authorizations needed to commence commercial generation of Products, including certification to produce NH Class I RECs;
- 4.1.3 PSNH has received from the NHPUC a final, nonappealable decision acceptable to PSNH in its sole discretion, approving and allowing for full cost recovery of the rates, terms and conditions of this Agreement;
- 4.1.4 The Parties shall execute as of the In-Service Date, a Purchase Option Agreement that is acceptable to PSNH in

its sole discretion in the form as set forth in Appendix B hereto, to be recorded, and PSNH shall have been issued a title insurance policy insuring its rights under the Purchase Option Agreement. The Purchase Option Agreement will provide that the Site Owner (as defined therein) may terminate the Purchase Option Agreement if this Agreement is terminated by Seller by reason of a PSNH Event of Default under Section 12.1.1 hereunder. If the Purchase Option Agreement is terminated for any other reason, PSNH may immediately terminate this Agreement without further liability.

Therefore, PSNH will have no obligation to purchase under the PPA unless and until:

- (1) the Site Evaluation Committee has granted the necessary certificate of site and facility;
- (2) this Commission has issued the requisite decision approving the PPA;
- (3) PSNH receives an executed Purchase Option Agreement granting PSNH property rights superior to all secured lending arrangements, mortgages, leaseholds and other liens and encumbrances upon the Facility Site and other Facility Assets, and consistent and acceptable in PSNH's sole discretion with the Form of Purchase Option Agreement set forth in Appendix B of the PPA; and,
- (4) the Products defined in the PPA are actually produced and delivered to PSNH.

For these reasons, the corporate restructuring issue pending before the Site Evaluation Committee has no impact on the Commission's deliberations concerning the PPA, and it does not require a re-opening of the record in this proceeding.

## **ii. Project Generating Capacity**

Edrest claims that the Project's request to the Site Evaluation Committee to allow the facility to generate up to 75 MW gross "can impact the offered price of power on the PPA." The 75 MW generating capacity of the Project is not a new issue. That level of capacity was known and discussed as part of the Commission's adjudicative hearings in this docket.

On the very first day of hearings (January 24, 2011), counsel for the Wood-Fired IPPs asked PSNH witness Mr. Long, "Q. Now, Schiller Station is a 50-megawatt facility, and *Laidlaw is now proposing a 75-megawatt facility*; is that right?" (Transcript, 1/24/11, p.m. session, p. 55, line 11, *emphasis added*.) Mr. Long responded, "A. (Mr. Long) Yes,

plus or minus. Schiller operates a little less than 50. But, yes.” (*Id.* at line 14). The Wood-Fired IPPs’ counsel also asked, “Q. So you haven’t done any sort of projections or analyses or sensitivity studies as to whether *a new 75-megawatt facility* is going to start raising the wood price at Schiller?” (*Id.* at p. 57, line 8, *emphasis added*) and “Q. So, has PSNH studied or analyzed the impact of *a 75-megawatt wood-burning facility*, what impact that will have on the cost of Massachusetts Class I RECs?” (*Id.* at p. 68, line 8, *emphasis added*). These questions, referring to a “75 MW facility” during the first day of hearings in this proceeding, clearly demonstrate that the 75 MW gross generating capacity issue was known to the parties in this proceeding, and that the parties had, and exercised, their ability to raise that matter during the now-completed hearings.

Therefore, the 75 MW generating capacity issue does not require a re-opening of the record in this proceeding.

### **iii New Versus Used Turbine**

Finally, Edrest raises the issue of the Project’s proposed use of a new steam turbine generator instead of a used steam turbine generator. Edrest claims that this matter is relevant to the Commission’s deliberation on the PPA because, “We know little about the expense differential between the used turbine and the proposed new turbine, nor do we know what potential impact it may have towards achieving greater value of the facility at the end of twenty years.” There can be little debate that the cost of a new steam turbine is greater than the cost of a used steam turbine. Regardless, the ultimate cost of the facility is not relevant to the consideration of the PPA that is before the Commission in this proceeding. As any added cost to the Project of a new steam turbine would not impact the terms, conditions, or costs set forth in the PPA, this matter is irrelevant to the Commission’s deliberations in this docket.

In addition, the Project’s Motion in NHSEC Docket 2011-01 states that “a used steam turbine generator would have had a significantly lower efficiency than a new machine.” The use of a new, more efficient steam turbine in lieu of a used, less efficient turbine can only result in greater value of the facility at the end of twenty years. To the extent that there is greater value at the end of the PPA’s term, that added value would provide

additional monetary protection for PSNH's customers under the PPA's Cumulative Reduction mechanism.

Therefore, the turbine issue does not require a re-opening of the record in this proceeding.

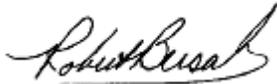
**Conclusion**

For the reasons set forth above, the issues raised in Edrest's Pleading do not require a re-opening of the record or any additional discovery in this proceeding. Those issues are before the Site Evaluation Committee, and it is that Committee – not this Commission – which should determine what, if anything, needs to be done. The Commission should deny Edrest's request.

**WHEREFORE**, PSNH respectfully requests this Commission grant PSNH's objection and deny the request set forth in Edrest Properties' Pleading.

Respectfully submitted this 15<sup>th</sup> day of March, 2011,

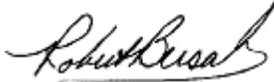
**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE**

By:  \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that I served an electronic or written copy of this filing on the various  
Petitioners pursuant to Rule Puc 203.11.



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