

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

Docket No. DE 10-195

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

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

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S
OBJECTION
TO
EDREST PROPERTIES LLC'S MOTION FOR REHEARING**

Pursuant to Rule Puc §203.07(f), Public Service Company of New Hampshire ("PSNH") hereby objects to Edrest Properties LLC's Motion for Rehearing dated May 17, 2011. By that Motion, Edrest requested that the Commission grant rehearing of its decision in Order No. 25,213 (the "Order").

PSNH objects to the Motion, because: i) it does not allege sufficient good reason for rehearing or reconsideration as required by RSA 541:3; and ii) it seeks relief that is within the jurisdiction of another agency (the Site Evaluation Committee) and is outside the authority granted to the Commission.

In support of this Objection, PSNH says the following:

I. Introduction

Edrest's Motion for Rehearing is a rambling email¹ which lists myriad concerns of Edrest, but which fails to "set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable" as required by RSA

¹ The email Motion fails to meet the filing requirements set forth by the Commission in Rules Puc 202.06 (a)(4), 202.07, 203.04 (a), 203.05 (a), 203.07 (d), and 203.16 (b)(1).

541:4. In fact, the Motion does not allege any specific matter where Order No. 25,213 is unlawful or unreasonable.

The Motion includes the following concerns:

- i. “changes to the ownership structure, size and fuel supplier have occurred since the PPA was conditionally approved by the PUC....” (Motion at para. 1).
- ii. “the PUC’s decision to approve the amended special contract without the benefit of an adjudicatory hearing pertinent to the changes in ownership structure and fuel supplier is a violation of due process....” (*Id.* at para. 6).
- iii. “There has been considerable debate over the authority of the commission to rule on this PPA after year 2025....” (*Id.* at para 7).
- iv. “broadening the 35% depreciation zone impacting the entire value base within the city of Berlin that offsets the economic benefit derived from the PPA .” (*Id.* at para 8).
- v. “incentives exist for wood price escalation that could significantly risk substantial job base and tax revenue to all of NH and western Maine....” (*Id.* at 10).

None of these concerns meets the standards set forth in RSA Chapter 541 or by this Commission for the granting of rehearing. Therefore, the Motion should be denied.

II. Discussion

a. The Law

Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when a party states good reason for such relief. Good reason may be shown by identifying new evidence that could not have been presented in the underlying proceeding, *see O’Loughlin v. N.H. Personnel Comm’n*, 117 N.H. 999, 1004 (1977), or by identifying specific matters that were “overlooked or mistakenly conceived” by the deciding tribunal. *Dumais v. State*, 118 N.H. 309, 311 (1978). A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *See Connecticut Valley Electric Co.*, Order No. 24,189, 88 NH PUC 355, 356 (2003); *Comcast Phone of New Hampshire*, Order No. 24,958 (April 21, 2009); and *Public*

Service Co. of New Hampshire, Order No. 25,168 (November 12, 2010, issued earlier in this docket).

b. The Facts

The Motion fails to “set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable” as required by RSA 541:4.

In fact, the Motion does not allege any specific matter where Order No. 25,213 is unlawful or unreasonable. It merely provides a rambling statement of dissatisfaction by Edrest that includes the following:

i. Alleged “changes to the ownership structure, size and fuel supplier” do not impact the lawfulness or reasonableness of Order No. 25,213. The purpose of this proceeding was to determine whether a power purchase agreement entered into by PSNH met the public interest standard contained in RSA 362-F:9. In the Order, the Commission ruled on these very issues in response to Edrest’s letter dated March 14, 2011, to which PSNH objected on March 15, 2011. In its March 14 letter, Edrest’s Managing Partner, Jonathan Edwards stated: “I am writing in regards to significant changes that have recently been made by Laidlaw Berlin Biopower aka Berlin Station to the ownership structure and original proposal submitted to the NHSEC. I assume that the NH PUC is familiar with these changes.”

The Commission rejected Edrest’s letter suggesting that the Commission should reopen the record and allow further discovery for the matters pending before the Site Evaluation Committee:

We agree with PSNH that these issues do not warrant reopening of the Commission record. The capacity of the facility is relevant to consideration of the PPA but the potential 75 MW gross (67.5 MW net) output was explored in the hearings and is discussed in this order. Though corporate restructuring of the project was known to the Commission, it is not relevant to our determination as to whether the PPA is in the public interest.

Order, *slip op.* at 106-107.

Edrest’s Motion merely reasserts prior arguments and requests a different outcome. The Commission has repeatedly held that such repetition does not meet the standard required for the grant of rehearing.

ii. Edrest’s allegation that the Commission failed to provide the parties with “an adjudicatory hearing pertinent to the changes in ownership structure and fuel supplier” is both baffling and irrelevant.

It is baffling, because the Order resulted from a fully litigated adjudicative process. The Order goes on for 100+ pages detailing that process. Edrest Properties was granted full intervenor status in that proceeding and fully exercised that right. For it to now allege that the proceeding violated its “due process under both the Federal and State Constitutions” is absurd.

Moreover, as previously noted, these issues have been determined to be irrelevant to this proceeding. Thus, there is no basis for granting rehearing to provide the demanded adjudicatory hearing on matters outside the scope of this docket.

It should be noted that Edrest Properties has requested and been granted full intervenor status by the Site Evaluation Committee in its Docket No. 2011-01. *See* “Order on Motion to Intervene and Further Procedural Order,” NHSEC Docket No. 2011-01, May 2, 2011. To the extent that Edrest deems it necessary to pursue these issues, that is the forum that is both appropriate and available to them to do so.

iii. Edrest states, “There has been considerable debate over the authority of the commission to rule on this PPA after year 2025....” (Id. at para 7). This statement does not identify new evidence that could not have been presented in the underlying proceeding, nor does it identify specific matters that were overlooked or mistakenly conceived by the Commission.

The statement is just that – a statement – that does not specify any errors in the Order nor indicate a necessity for the granting of rehearing.

For these reasons, this “statement” does not allege a sufficient basis for the grant of rehearing.

iv. Edrest’s allegation that the PPA will result in “broadening the 35% depreciation zone impacting the entire value base within the city of Berlin that offsets the economic benefit derived from the PPA” has been fully addressed by the Commission in

its Order. Edrest fails to identify any new evidence that could not have been presented in the underlying proceeding, nor does it identify specific matters that were overlooked or mistakenly conceived by the Commission.

v. Edrest's allegation that "incentives exist for wood price escalation that could significantly risk substantial job base and tax revenue to all of NH and western Maine" relates back to the issues pending before the Site Evaluation Committee in its Docket 2011-01. As previously noted, these issues have been determined to be irrelevant to this proceeding. Thus, there is no basis for granting rehearing to provide the demanded adjudicatory hearing on matters outside the scope of this docket.

Again, to the extent that Edrest deems it necessary to pursue these issues, the Site Evaluation Committee is the forum that is both appropriate and available to them to do so.

c. Standing

PSNH reiterates its objection to the granting of intervenor status to the Wood-Fired IPPs, for the reasons set forth in its "Objection of Public Service Company of New Hampshire to Petitions to Intervene" dated September 28, 2010, which is incorporated herein by reference.

III. Conclusion

Edrest Properties LLC has failed to meet the requirement for rehearing set forth in RSA 541:3 that "good reason for the rehearing be stated in the motion." Its Motion either reasserts prior arguments with a request for a different outcome, or seeks to have this Commission assert jurisdiction over matters that are now properly pending before the Site Evaluation Committee.

For the reasons set forth herein, the Commission should sustain its original decision in Order No. 25,192, deny Edrest Properties LLC's Motion for Rehearing, and reverse its prior approval of intervenor status for Edrest Properties LLC..

Respectfully submitted this 24th day of May, 2011.

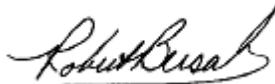
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

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CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2011, I served an electronic copy of this filing with each person identified on the Commission's service list for this docket pursuant to Rule Puc 203.02(a).



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