

**STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION**

Public Service Company of New Hampshire

In re: Petition for Approval of PPA with Laidlaw Berlin BioPower, LLC

Docket No. DE 10-195

**OBJECTION TO LAIDLAW BERLIN BIOPOWER, LLC'S
MOTION FOR CONFIDENTIAL TREATMENT**

NOW COMES Concord Steam Corporation, Intervenor in the above docket, and objects to Laidlaw Berlin BioPower, LLC's ("LBB") Motion for Confidential Treatment. In support of its Objection, Concord Steam Corporation says as follows:

1. LBB seeks confidential treatment under RSA 91-A of a pro forma prepared by it which represents "LBB's business plan/financial model showing projected revenue and expenses for the LBB Berlin project."
2. LBB seeks to limit access to the pro forma to the PUC staff, the Commissioners, and the OCA. However, the Commission's regulations contemplate that confidential information is to be provided to "all parties" subject to a protective order or confidentiality agreement as is common practice. *See Puc 203.08 (j)* ("the commission shall include in its protective order a directive that *all parties* receiving the material shall also treat it as confidential.").
3. Puc 203.08 (j) clearly recognizes that interested parties should have access to confidential information that is provided to staff, particularly where, as here, the confidential information is at the center of whether the above market pricing contained in the PPA is in the public interest. Without the ability to have access to such information, Concord Steam and its counsel cannot effectively show that the PPA will adversely impact the markets for RECs, energy and wood

fuel, to the harm of customers of PSNH and potentially its own customers. By failing to make the confidential information timely available to Concord Steam on reasonable terms, PSNH and Laidlaw will undermine Concord Steam's ability to participate in discovery and testimony in this proceeding.

4. Moreover, the public benefit and interest in the disclosure of the pro forma outweighs LBB's interests in nondisclosure and LBB cannot satisfy the 3-step analysis set forth in *Lamy v. NHPUC*, 152 N.H. 106 (2005).

5. As the Commission has already recognized regarding the pricing terms of the PPA, the information contained in the pro forma is "central to the public's understanding of how the Commission evaluates whether this particular PPA meets the public interest standard as articulated in RSA 362-F:9, II."¹ Under RSA 362-F:9, II, the Commission must find that the proposal is "substantially consistent" with certain factors including the "cost-effective realization of the purposes and goals of this chapter." These criteria require consideration of the costs of the PPA relative to the expected costs of the services over the life of the agreement.

6. Furthermore, the PPA itself provides for adjustment to the purchase price for PSNH to acquire the LBB generating station based on the extent to which its energy prices are above market. *Testimony of Gary Long*, Page 30 (PPA Section 6.1.3). It seems likely that public interest requires consideration of whether, based on pro forma market projections, whether the PPA itself is merely a vehicle for PSNH to make installment payments on the purchase of a generating station, when there is no statutory authority for PSNH to make such payments and, if included in PSNH's default service as proposed, are in fact prohibited under the statutory principles for restructuring of New Hampshire electric markets. *See e.g. RSA 374-F:3, III*

¹ Order No. 25,158, p. 12.

(“services and rates should be unbundled to provide customers clear price information on the cost components of generation, transmission, distribution”).

7. Without disclosure of LBB’s business plan/financial model showing the projected revenues and expenses of the project, the ability of the public, including the Intervenor, to understand how the Commission reaches its decision on this factor in particular will be diminished. Disclosure of the pro forma will inform the public whether the PPA is truly cost-effective or whether it results in windfall payments to LBB at the expense of ratepayers.

8. LBB has not presented any argument or reasons why the harm to it from disclosure of the pro forma outweighs the benefits of disclosure to the public other than its assertion that “a private company does not open up its confidential financial model by entering into an agreement with a regulated company.” What LBB overlooks, however, is that it will receive considerable benefits from its agreement with the regulated company; that the agreement must be in the public interest as defined by RSA 362-F:9, II; and that disclosure will advance the public’s understanding of whether the agreement is in fact in the public interest. In addition, to the extent may have already disclosed the information in the pro form to PSNH in the course of its negotiations, the Commission should determine whether LBB has any privacy interest to be protected. Finally, if disclosure is so contrary to its privacy interests, LBB can always withdraw from the PPA.

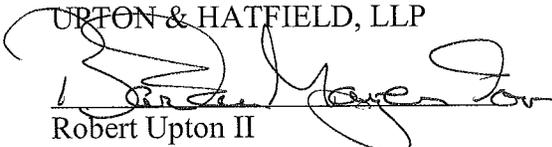
WHEREFORE, Concord Steam Corporation objects to the Motion for Confidential Treatment and respectfully prays the Commission:

- A. Deny such Motion;
- B. Find that LBB has not met its burden under *Lamy v. NHPUC, supra*;
- C. Order LBB to disclose its pro forma consistent with Order No. 25,258; and

D. Grant such other and further relief as justice may require.

Respectfully submitted,
Concord Steam Corporation
By its attorneys
URTON & HATFIELD, LLP

By:


Robert Upton II
33 Seavey St., P.O. Box 2242
N. Conway, NH 03860-2242
(603) 356-3332

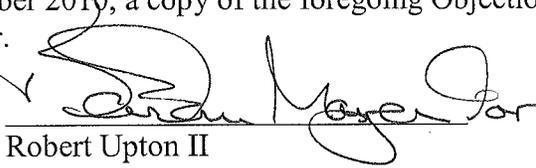
Dated: October 22, 2010

and

Justin C. Richardson
159 Middle St.
Portsmouth, NH 03801
(603) 436-7046

Certificate of Service

I hereby certify that on this 22nd day of October 2010, a copy of the foregoing Objection has been forwarded to the Service List in this matter.


Robert Upton II

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

Executive.Director@puc.nh.gov	ocalitigation@oca.nh.gov
aoconnor@ncpga.org	peter@concordstcam.com
aws@rathlaw.com	rolson@bowlaw.com
bersara@psnh.com	rupton@upton-hatfield.com
bneedleman@mclanc.com	steve.mullen@puc.nh.gov
cboldt@dtclawyers.com	suzanne.amidon@puc.nh.gov
dpatch@orr-reno.com	tom.frantz@puc.nh.gov
dshulock@bowlaw.com	
edward.damon@puc.nh.gov	
generalmail@dtclawyers.com	
george.mcclusky@puc.nh.gov	
grant.siwinski@puc.nh.gov	
hallsr@nu.com	
jmt@rathlaw.com	
jonathandwards@ne.rr.com	
jrichardson@upton-hatfield.com	
jrodier@freedomenergy.com	
Ken.E.Traum@oca.nh.gov	
labrerc@psnh.com	
largetj@psnh.com	
martide@nu.com	
mcw@rathlaw.com	
Meredith.A.Hatfield@oca.nh.gov	
mes@concordstcam.com	

Docket #: 10-195-1 Printed: October 22, 2010

FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:
- DEBRA A HOWLAND
EXEC DIRECTOR & SECRETARY
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.