

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 TO COMPEL

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”) hereby move the Commission to order Public Service Company of New Hampshire (“PSNH”) to provide full and complete responses to the Wood-Fired IPPs’ second, third and fourth sets of data requests as follows:

STATEMENT OF FACTS

1. On October 18, 2010, the Wood-Fired IPPs issued a second set of data requests seeking discovery of information from PSNH regarding Laidlaw Berlin Biopower, LLC (“Laidlaw”), its affiliates, power plant project (“Facility”) and proposed operations, the output of the Facility and its wood fuel procurement and consumption, the Power Purchase Agreement (“PPA”) and form of purchase option agreement (“POA”) for which PSNH has sought approval in this proceeding and their development and execution, and PSNH’s analysis of the costs, benefits and ratepayer impacts of the proposed PPA and POA relative to potential alternatives.

2. On October 22, 2010, the Wood-Fired IPPs issued a third set of data requests to PSNH seeking discovery of PSNH’s positions and interpretations regarding various provisions of the PPA and the POA.

3. On October 25, 2010, the Wood-Fired IPPs issued a fourth set of data requests to PSNH requesting data, documents, information and responses regarding issues relevant to the consideration of the PPA and POA, including a number of questions regarding specific pricing and adjustment provisions of the PPA.

4. On October 22, 2010, PSNH responded to the Wood-Fired IPPs' second set of data requests. These responses stated numerous objections on a variety of grounds and provided limited and incomplete responses to certain of the data requests that were answered. These responses and objections are the subject of the Motion to Compel filed by the Wood-Fired IPPs on October 29, 2010.

5. On October 28, 2010, PSNH provided substantive responses to the Wood-Fired IPPs' second set of data requests. As described below, the Wood-Fired IPPs believe that a number of these PSNH responses are inadequate, either because they are unresponsive to the questions asked or because they refer to responses provided to Commission staff for which PSNH has claimed confidential treatment and has withheld information from the Wood-Fired IPPs and other intervenors. Copies of these data requests and PSNH's responses thereto are appended as Exhibit A.

6. On October 27, 2010, PSNH responded to the Wood-Fired IPPs' third set of data requests. As described below, these responses contain numerous objections on the grounds that the questions seek a legal opinion from PSNH. Copies of the Wood-Fired IPPs' third set of data requests and PSNH's responses thereto are appended as Exhibit B.

7. On October 29, 2010, PSNH responded to the Wood-Fired IPPs' fourth set of data requests. As described below, these responses contain numerous objections on the grounds that the data requests seek information that is the subject of PSNH's "Motion for Confidential

Treatment Pursuant to RSA Chapter 91-A and N.H. Code Admin. Rules Puc §203.08” dated July 26, 2010 and PSNH's "Motion for Rehearing" dated October 22, 2010. PSNH indicates in each such objection that “[u]pon the Commission's ruling on PSNH's "Motion for Rehearing, PSNH will revisit this question to determine whether a substantive response is required.” Copies of Wood-Fired IPPs’ fourth set of data requests and PSNH’s responses thereto are appended as Exhibit C.

8. The Wood-Fired IPPs believe that PSNH’s responses to their data requests state unfounded objections and unsupported claims of confidentiality, or are unresponsive, overly narrow and otherwise inadequate. Therefore, the Wood-Fired IPPs have filed this motion to compel.

MOTION TO COMPEL

9. The New Hampshire Supreme Court has held that a party in a legal proceeding in New Hampshire is entitled to be “fully informed and have access to all evidence favorable to his side of the issue. This is true whether the issue is one which has been raised by him or by his opponents . . .” *Scotsas v. Citizens Insurance Co.*, 109 N. H. 386 (1969). *See also Yancey v. Yancey*, 119 N.H. 197, 198 (1979) (holding that New Hampshire takes a “liberal view of discovery”); *also cf. Barry v. Home*, 117 N.H. 693, 694 (1977) (stating intent of Superior Court Rule 35(b)(1) is to allow “very broad discovery”).

10. Under general rules of discovery, even information and documents that would be inadmissible at trial may be subject to pre-trial discovery from a party “if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” N.H. Super. Ct. R. 35(b)(1).

11. The Commission has confirmed that its policies are “consistent with Superior Court Rule 35(b) regarding the scope of discovery,” and that it requires parties “to show that the information being sought in discovery is relevant to the proceeding or is reasonably calculated to lead to the discovery of admissible evidence.” *City of Nashua*, Order No. 24,681 (October 23, 2006). The Commission has stated that “[d]iscovery should be relevant to the proceeding or reasonably calculated to the discovery of admissible evidence,” and the Commission “will deny a motion to compel discovery only ‘when [it] can perceive of no circumstance in which the requested data will be relevant.’” (citations omitted). *Re Public Service Company of New Hampshire*, 86 NH PUC 730, 731-732 (2001).

12. The Commission’s stated positions reflect important due process considerations in litigated regulatory proceedings. *See, e.g.*, N.H. Const. Pt. 1, Art 15 (right of due process established); N.H. Code Admin Rules Puc 203.09(a) (establishing intervenors’ right to discovery); RSA 541-A:33, IV and N.H. Code Admin. Rules Puc 203.24 (establishing right to full and effective cross examination for full and true disclosure of the facts); *Appeal of Office of Consumer Advocate*, 134 N.H. 651, 659-60 (1991) (applying N.H. Const. Pt. 1, Art 15 due process of law provisions to proceedings before the Commission).

13. Therefore, data requests for relevant information and documents must be answered even if the information provided and documents produced in response would not be admissible during the hearing, in the interest of guarantying full due process rights to all parties. There is no question that PSNH, as the regulated utility petitioner and proponent of pre-filed testimony in this proceeding, is properly the subject of discovery and may be compelled to provide complete and definitive responses to relevant data requests.

I. Certain PSNH Responses are Incomplete, Unresponsive, Overly Narrow and Otherwise Inadequate

14. Certain of PSNH's responses to the Wood-Fired IPPs' data requests issued to PSNH in their second, third and fourth sets of data requests are incomplete, unresponsive, overly narrow and otherwise inadequate. These data requests seek discovery of information of great relevance to the Commission's evaluation of PSNH's petition for approval of the PPA and the POA under the "public interest" standard set forth in RSA 362-F:9, II, as described below. PSNH should be compelled to provide complete and definitive to these data requests.

15. The Wood-Fired IPPs' data request 2-22 asks PSNH, with reference to the pre-filed testimony of Terrance J. Large (Large (7/26/10) at 9), to confirm whether it believes that "its customers and the regional electric system in general receive the same or greater security benefits from purchasing power from one centralized renewable facility totaling 65 MW rather than purchasing the equivalent amount of power from smaller renewable generators that are geographically distributed throughout the state", and, if so, to explain the basis for this position. PSNH did not object to this question, but its answer claims it "cannot respond" because the "question is hypothetical in nature and requires speculation concerning the nature, ownership and operation of unknown smaller renewable generators, located in unspecified areas of the state." Exhibit A. This data request seeks discovery of information regarding a factor relevant to the Commission's evaluation of the PPA and the POA under the "public interest" standard with reference to a claimed benefit put in issue by Mr. Large's testimony sponsored by PSNH. See RSA 362-F:9, II(c). Therefore, PSNH should be compelled to provide a complete and definitive response to data request 2-22.

16. The Wood-Fired IPPs' data request 2-25 addresses Mr. Large's testimony as to the net effects of the Facility on New Hampshire biomass capacity and carbon-neutral power sources. Large (7/26/10) at 12-13). The data request asks whether PSNH has conducted any

economic modeling, studies, analyses, or forecasts of the effect of the Facility and PPA on other wood-to-energy electric generation facilities and other potentially Class I NH REC eligible facilities in the state and region and, if not, then to explain why it has not. PSNH's one word response is "no", without any explanation why such modeling, studies, analyses or forecasts were not conducted. Exhibit A. This data request seeks discovery of information regarding a matter relevant to the Commission's evaluation of the PPA and the POA under the "public interest" standard with reference to a claimed benefit put in issue by Mr. Large's testimony and Dr. Shapiro's testimony, specifically whether claimed economic and environmental benefits are "net" and whether there would be an effect on Class III of the New Hampshire renewable portfolio standard ("RPS"). See RSA 362-F:9, II(a), (c) and (e). Therefore, PSNH should be compelled to provide a complete and definitive response to data request 2-25.

17. The Wood-Fired IPPs' data request 2-28b asks whether it is "PSNH's position that its administrative efficiency outweighs potential savings to ratepayers from requiring potential developers of large blocks of energy supply to compete in a request for proposals process", and, if so, to explain this position. The data request refers to the pre-filed testimony of Mr. Large related to this issue. Large (7/26/20) at 14. PSNH's response to this data request is that, [s]ince PSNH did not conduct a request for proposal process, PSNH has no information that is responsive to this request." Exhibit A. This response neither states PSNH's position on the issue nor explains the basis for such position. PSNH's answer is therefore unresponsive and inadequate, the question is relevant under RSA 362-F:9, II(a)-(d), and PSNH should be compelled to provide a complete and definitive response to data request 2.28b.

18. The Wood-Fired IPPs' data request 2-46 asks whether PSNH anticipates obtaining any renewable energy certificates ("RECs") from any purchase power resources that

PSNH has under agreement, including the number of any such certificates that PSNH expects to receive and the class of certificates pursuant to RSA 362-F. PSNH responds to this data request by cross-referencing its “response to IPP-02, Q-IPP-010.” Exhibit A. PSNH’s response to “IPP-02, Q-IPP-10” consists of general objections as to relevancy, overbreadth and confidentiality, and is the subject of the Wood-Fired IPPs motion to compel filed on October 29, 2010. PSNH’s attempt to incorporate this objection in its response to data request 2-46 after the five-day deadline for objections to data requests is ineffective. Therefore, its response to this data request is unresponsive and wholly inadequate, and PSNH should be compelled to provide a complete and definitive response to data request 2-46.

19. The Wood-Fired IPPs’ data request 2-47 asks whether PSNH considered conducting a request for proposals to obtain the RECs it ultimately decided to purchase from the Facility, to explain its decision to conduct or not conduct such a process, and to provide any documents that reflect PSHH’s consideration of such a process. PSNH answers in the negative, with no further explanation but with a cross-reference to its “response to IPP-02, Q-IPP-028.” Exhibit A. PSNH’s failure to explain its decision and its cross-reference to a response which is itself unresponsive and inadequate, as noted in paragraph 17 above, is an inadequate response. PSNH’s answer to 2-47 is therefore unresponsive and inadequate, the question is relevant under RSA 362-F:9, II(a) and (d), and PSNH should be compelled to provide a complete and definitive response to this data request.

20. The Wood-Fired IPPs’ data requests 2-48, 2-49 and 2-50 ask what measures, if any PSNH took to ensure that the PPA prices were the lowest and the 20-year contract term was the shortest necessary for the Facility to receive financing and operate and maintain the Facility with a reasonable return, and to ensure that PSNH was not committing to purchase more of

Laidlaw's output than necessary for the Facility to receive financing. PSNH provided the identical response to each of these three data requests: "The negotiation process between the parties resulted in an interrelated set of terms and conditions that reflect the best efforts of each party to provide for their [sic] unique interests." Exhibit A. This general, blanket answer is unresponsive and inadequate, the questions are relevant under RSA 362-F:9, II(a) and (d), and PSNH should be compelled to provide complete and definitive responses to data requests 2-48, 2-49 and 2-50.

21. The Wood-Fired IPPs' data request 2-58 asks PSNH to identify and explain each factor it examined or otherwise took into account in concluding that PPA Section 6.1.3 and the cumulative reduction noted therein will protect PSNH ratepayers from unknown future market energy prices over the term of the PPA. PSNH responded that it "considers the Cumulative Reduction, the Right of First Refusal, and the Purchase Option Agreement to be three of the unique PPA features that enabled the successful negotiation of the PPA." Exhibit A. This vague and general response does not state that it identifies each relevant factor, nor does it attempt to explain how the cited PPA provision will serve to protect ratepayers from "unknown future market energy prices." PSNH has provided an unresponsive and inadequate response to a question relevant to terms PSNH obviously considers essential to the PPA, and it therefore should be compelled to provide a complete and definitive response to data request 2-58.

22. The Wood-Fired IPPs' data request 2-59 asks PSNH to calculate or provide in \$/MWh, for each year of the PPA term, the amount of the \$/MWh energy price that will cover or equal the biomass fuel cost expense in each year of the PPA term and, if PSNH has not performed such a calculation or does not otherwise have such data, to explain why. PSNH responded that it "has no unique data with which to perform the requested calculation", and

invited the requestor to “assume a fuel price (in dollars per ton), estimate a fuel heat content to enable a \$/MBTU conversion, and assume a facility heat rate to convert the fuel cost into a \$/MWh equivalent.” Exhibit A. Contrary to PSNH’s suggestion, in order to provide meaningful information, the calculation must be based on the actual projected fuel prices, fuel heat content and heat rate of the Facility, not based on generic industry assumptions. The information sought is relevant to the costs of the wood price adjustment, and PSNH’s answer is unresponsive and inadequate; therefore, PSNH should be compelled to provide a complete and definitive response to data request 2-59.

23. The Wood-Fired IPPs’ data request 2-72b asks whether PSNH studied, analyzed, or otherwise compared the differences in costs and benefits to its ratepayers between entering the PPA and other options for procuring Class I RECs, such as, but not limited to, purchasing from other developers or purchasing RECs unbundled from energy and capacity and, if not, to explain why not, and if so, to describe and provide all such studies, analyses or forecasts, state all assumptions made, and provide all related work papers, projections, analyses, and documents. PSNH responded with a cross-reference to its “response to STAFF-01, Q-STAFF-031.” Exhibit A. This is presumably intended to be a cross-reference to STAFF-01, Q-STAFF-032¹, which includes comparisons to the PPA of proposals received from Concord Steam Corporation and Clean Power Development, LLC in July 2009 (these proposals and the comparisons referred to are both claimed by PSNH to be confidential and have not been provided to the Wood-Fired IPPS or to other intervenors). PSNH’s response does not fully answer the questions asked by the Wood-Fired IPPs in this data request, and the answers it does provide are not available due to the claim for confidential treatment. The information sought is relevant to RSA 362-F:9, II(a) and

¹ STAFF-01, Q-STAFF-031 addresses the need for Commission approval of transfer of the right of first refusal and purchase option to an affiliate or third party.

(c), and PSNH's answer is unresponsive and inadequate; therefore, PSNH should be compelled to provide a complete and definitive response to data request 2-72b.

24. The Wood-Fired IPPs data request 3-9 asks PSNH, in reference to the pre-filed testimony of Gary Long (Long (7/26/10) at 4), to describe the factors that it evaluated in reaching its conclusion that the PPA meets the State's renewable resource, environmental, and climate change goals in a cost competitive manner from a customer's viewpoint, and, for each of the factors evaluated, to state and explain PSNH's conclusion and to provide all documents related thereto. PSNH's responded that "[a]ll of the factors are described in the testimony filed in this proceeding." Exhibit B. First, PSNH has not even bothered to specify where in the pre-filed testimony all such factors are described. Second, the requested information is not contained in the pre-filed testimony. Third, PSNH has not provided or even referenced the relevant documents that would be responsive to the question. The information sought by this question is relevant under RSA 362-F:9, II(a), and PSNH's answer is unresponsive and inadequate; therefore, PSNH should be compelled to provide a complete and definitive response to data request 3-9.

25. The Wood-Fired IPPs' data request 4-7 asks PSNH to provide the estimated percentage of PSNH's Class I REC obligation that will be met each year with RECs purchased from the Facility during the term of the PPA. PSNH responded by cross-referencing its "response to STAFF-01, Q-STAFF-019." Exhibit C. This response provided to the Commission staff provides a table of forecasts for PSNH's Class I REC obligation and Laidlaw's projected contribution toward meeting such requirements only for the years 2011-2015. PSNH has not provided any projections for years after 2015, despite the proposed 20-year term of the PPA and the requirement under RSA 362-F:9, I that multi-year purchase agreements with renewable

energy sources for RECs must “meet reasonably projected renewable portfolio requirements and default service needs to the extent of such requirements.” PSNH’s response to this question is therefore incomplete and inadequate, and PSNH should be compelled to provide a complete and definitive response to data request 4-7.

II. PSNH’s Responses Referencing Responses Subject to Claims of Confidential Treatment

26. In a number of its substantive responses to the Wood-Fired IPPs’ data requests, PSNH has merely cross-referenced its responses provided to the Commission staff, despite the fact that these responses to staff assert claims for confidential treatment and the allegedly confidential material has not been provided to the Wood-Fired IPPs or other intervenors. These include PSNH’s responses to data requests 2-7b, 2-7c, 2-7i, 2-7l, 2-12, 2-39, 2-45, 2-56, 2-62, 2-67, and 2-72b. Exhibit A.

27. For example, the PSNH responses to data request 2-7b and 2-7c cross-references its “responses to STAFF-01, Q-STAFF-017 and -032.” Exhibit A. PSNH’s responses to these staff questions provides information regarding proposals to sell renewable energy received from Concord Steam Corporation and Clean Power Development, LLC in July 2009 and comparisons to these proposals to the proposed Laidlaw PPA; however, this information has not been provided to the Wood-Fired IPPs or other intervenors as a result of PSNH’s claim of confidential treatment. Likewise, PSNH’s responses to data request 2-7i and 2-7l both cross-reference its response to “STAFF 01, Q-STAFF-011.” Exhibit A. PSNH’s response to this staff question provides copies of PPA price and cost forecasts, comparisons and analyses that have not been provided to the Wood-Fired IPPs or to other intervenors as a result of PSNH’s claim of confidential treatment.

28. The Wood-Fired IPPs' motion to compel discovery responses from PSNH filed on October 29, 2010 asked to the Commission to compel PSNH to disclose to the Wood-Fired IPPs the information, documents and materials claimed to be confidential in PSNH's responses to Q-STAFF-011, Q-STAFF-015, Q-STAFF-017, Q-STAFF-018 and Q-STAFF-032. If this motion is granted with respect to such disclosure to the Wood-Fired IPPs, then PSNH should be compelled to provide complete and definitive answers to the Wood-Fired IPPs' data requests 2-7b, 2-7c, 2-7i, 2-7l, 2-12, 2-39, 2-45, 2-56, 2-62, 2-67, and 2-72b, including provision of the information described in the responses to staff data requests noted above, subject to any appropriate confidentiality restrictions required by the Commission.

29. As noted in the Wood-Fired IPPs' October 29, 2010 motion to compel, if deemed warranted by the Commission, the Wood-Fired IPPs are prepared to execute an appropriate confidentiality agreement prior to receiving any such material, consistent with the provisions of N.H. Code Admin. Rules PUC 203.08(j), which authorize the Commission to "include in its protective order a directive that all parties receiving the material shall also treat it as confidential." Such a confidentiality agreement may include restrictions on disclosure of protected information to the Wood-Fired IPPs' competitive employees and limit distribution to their counsel and outside consultants.

30. Therefore, PSNH should be compelled to provide complete and definitive responses to the referenced data requests, pursuant to the discussion above.

III. PSNH's Objections that Data Requests Seek a Legal Opinion

31. PSNH objected to a number of questions contained in the Wood-Fired IPPs' third set of data requests issued to PSNH on the grounds that these questions seek "a legal opinion." These data requests include 3-1, 3-2, 3-3, 3-4, 3-5, 3-6, 3-7, 3-8, 3-13, and 3-14a. In general,

these data requests seek discovery of PSNH's positions and interpretations regarding various provisions of the PPA and the POA. Exhibit B.

32. For example, data request 3-3 asks PSNH whether it is PSNH's position that the REC prices in the PPA, once approved by Commission order, cannot be subsequently modified by the Commission, and, if so, to identify with specificity the New Hampshire law that provides the Commission with the authority to issue such an order and, if it is PSNH's position that a Commission order approving the PPA long-term REC pricing can subsequently be modified by the Commission, to state and explain the New Hampshire law standard applicable to such modification, and identify the New Hampshire authority that allows such an order. PSNH's responded to this data request as follows: "PSNH objects to this question as it seeks a legal opinion. The Commission's discovery process is primarily an opportunity to develop factual issues rather than to query opposing counsel on the legal support for a position." Exhibit B.

33. PSNH's objections on these grounds are unsustainable. First, the Commission has stated that, "as a matter of Commission practice and procedural rules, it would be improvident to declare flatly" that data requests asking a party to assert a position or to explain such a position with regard to how the law applies to the facts "are always out of bounds" and objectionable, merely because they call for opinion or contention. *Verizon New England, Inc., et al., Petition for Authority to Transfer Assets and Franchise*, Docket 07-011, Order No. 24,789 (September 21, 2007).

34. Second, it is not the Wood-Fired IPPs' intent to obtain a legal opinion or elicit a conclusion of law from PSNH, but merely to discover PSNH's *understanding* of and its *intent* with respect to various contractual terms and provisions to which it has agreed in the PPA and the POA. A complete understanding of these PPA terms and provisions, their operation and

effect, both now and in the future during the 20-year term of the PPA, is of paramount importance in evaluating whether the PPA and the POA should be approved under the RSA 362-F:9, II “public interest” standard.

35. In order to further clarify their intent, the Wood-Fired IPPs have recently re-phrased and re-issued many of the data requests contained in its third set in a new fifth set of data requests sent to PSNH on November 1, 2010. The Wood-Fired IPPs have not yet received PSNH’s responses to this fifth set, however, and in view of the five-day deadline to file motions to compel under the expedited procedural schedule adopted in this proceeding, the Wood-Fired IPPs have included these data requests in this motion to compel. Therefore, PSNH should be compelled to provide complete and definitive responses to the referenced data requests.

IV. PSNH’s Other Objections to Wood-Fired IPPs’ Data Requests

36. PSNH also has objected to certain of the questions contained in the Wood-Fired IPPs’ third set of data requests to PSNH on grounds other than or in addition to the “legal opinion” objection addressed above in this motion. These objections are also unsustainable, as shown below.

37. The Wood-Fired IPPs’ data request 3-6 asks a number of questions regarding the potential effect of “future laws” on PSNH’s obligations under the PPA, including any future changes in REC obligations, alternative compliance payment schedules, or ratepayer cost recovery provisions. PSNH objected to each of these questions because it “seeks a legal opinion”, but also on the grounds that it “requires speculation regarding unspecified future legislation.” Exhibit B. The “future law” scenarios outlined in the questions, however, are reasonably foreseeable legal and regulatory changes which may well occur over the extended 20-year term of the PPA. Any such changes could have a material and substantial effect on the

costs of the PPA passed through to ratepayers, as well as the local and regional markets for renewable power and biomass fuel. These questions are of great relevance in this proceeding, and PSNH should be compelled to provide complete and definitive responses to data request 3-6.

38. The Wood-Fired IPPs' data request 3-13 asks PSNH whether it takes the position that it may exercise its right of first refusal pursuant to PPA Article 7 if the Facility and/or the Facility site is transferred in the process of a stock or membership interest sale of the companies owning same or of their respective parent companies, and to explain its answer to this question. PSNH objected to this question because it "seeks a legal opinion", but also on the grounds that it "requires speculation regarding an unspecified future transaction." Exhibit B. The "future transaction" scenarios outlined in the question, however, are reasonably foreseeable and may well occur at some time during the extended 20-year term of the PPA. Any such transactions would implicate the very question set forth in this data request, and could have a material and substantial effect on the ability of PSNH to use the right of first refusal mechanism to recover the "cumulative reduction" amount based on any above-market costs incurred by PSNH during the term of the PPA up to that time. These issues are of great relevance in this proceeding, and PSNH should be compelled to provide a complete and definitive response to data request 3-13.

39. The Wood-Fired IPPs' data request 3-14a asks PSNH to state whether PSNH or any of its affiliates has conducted any study, analysis, or evaluation of the effect on the market price for RECs in Massachusetts, Connecticut, Rhode Island, and New Hampshire if large scale hydroelectric power were to qualify for RPS eligibility in any or all of those states, and how changes in those market prices would affect the dollar value of PSNH's REC payments under the PPA, and, if so, to provide all documents pertaining to the study, analysis, or evaluation. PSNH objected to this question because it "seeks a legal opinion", but also on the grounds that it

“requires speculation regarding unspecified future legislation.” Exhibit B. The introduction to this question, however, specifically refers to a magazine article reporting that the chief executive officer of Northeast Utilities, PSNH’s parent corporation, has “signaled that [it] wants New England states to amend their laws so that large scale hydropower that [it] intends to import from Canada will qualify in state RPS programs.” The very future legislation that PSNH attempts to characterize as “speculative” and “unspecified” will be sponsored by its own parent company, and any such legislation clearly would have a material and substantial effect on the availability and market value of RECs, including the RECs to be produced at the Facility and sold to PSNH under the proposed PPA. These issues are of relevance in this proceeding, and PSNH should be compelled to provide a complete and definitive response to data request 3-14a.

40. Similarly, the Wood-Fired IPPs’ data requests 3-14b and 3-14c ask PSNH to (i) state whether PSNH or any of its affiliates has conducted any study, analysis, or evaluation of the effect of the qualification of large scale hydro in the RPS programs of Massachusetts, Connecticut, Rhode Island, and New Hampshire on PSNH's need for the PPA over its 20 year term, and if so, to provide all documents pertaining to the study, analysis, or evaluation, and (ii) provide all documents in PSNH's or any of its affiliates' control regarding any plans, strategies, or discussions regarding the amendment of RPS programs in Massachusetts, Connecticut, Rhode Island, or New Hampshire with the purpose of qualifying large scale hydropower for these states' RPS programs.

41. PSNH objected to each of these data requests on the grounds that “it is neither relevant nor material to this proceeding, and not likely to lead to the discovery of admissible evidence. The PPA in question is for Class I NH RECs. It would require speculation to produce any study, analysis, or evaluation that not only discusses potential future changes in law, but that

also guesses how such future legislation might significantly change the definitions of generation entitled to Class I status.” Exhibit B. These objections are unsustainable. The very “potential future changes in law” that PSNH attempts to characterize as unforeseeable except through “speculation” will be sponsored by its own corporate parent. Any such legislative changes clearly would have a material and substantial effect on the availability and market value of RECs, including the RECs to be produced at the Facility and sold to PSNH under the proposed PPA. These issues are of relevance in this proceeding, and PSNH should be compelled to provide a complete and definitive response to data requests 3-14b and 3-14c.

V. PSNH’s Objections Based on Claimed Confidential Treatment of the PPA and the POA

42. The Wood-Fired IPPs’ fourth set of data requests issued to PSNH contains six questions, 4-1, 4-2, 4-3, 4-4, 4-5, and 4-6, that address pricing and payment terms under the PPA. This questions seek discovery of information regarding the start price applicable for the first three months after the in-service date of the Facility and the derivation of the conversion factor used in the wood price adjustment under PPA Section 6.1.2(a)(ii). In response to each of these six questions, PSNH stated the identical objection (Exhibit C):

PSNH objects to this question, as it requests information that is the subject of PSNH's “Motion for Confidential Treatment Pursuant to RSA Chapter 91-A and N.H. Code Admin. Rules Puc §203.08” dated July 26, 2010, and PSNH's "Motion for Rehearing" dated October 22, 2010. Upon the Commission's ruling on PSNH's "Motion for Rehearing," PSNH will revisit this question to determine whether a substantive response is required.

43. For the reasons stated in their “Objection to PSNH’s Motion for Rehearing” filed on October 29, 2010², the Wood-Fired IPPs believe that PSNH is not entitled to withhold the

² These reasons, which are incorporated by this reference as if fully set forth herein, include the public’s paramount interest in access to relevant information regarding governmental actions under RSA 91-A, the “Right-to-Know” law, the principle that the applicable balancing test does not create a privilege against discovery (see *Verrazzano Trading Corp. v. United States*, 69 Cust. Ct. 307, 308 (1972)), the Commission’s recognition that “whatever

PPA pricing information from parties in this proceeding. If PSNH's "Motion for Rehearing" is denied, in full or in part, and the pricing terms and conditions of the PPA are made public in general or to parties subject to appropriate confidentiality restrictions, then PSNH would have no further basis to withhold from the Wood-Fired IPPs these terms and the related information requested in the six data request questions.

44. The Wood-Fired IPPs acknowledge that the Commission has not yet ruled on PSNH's "Motion for Rehearing." PSNH, however, has not committed in its response to these data requests to provide the requested information in response to each question if its "Motion for Rehearing" is denied, in full or in part, but merely to "revisit this question to determine whether a substantive response is required." In view of the five-day deadline to file motions to compel under the expedited procedural schedule adopted in this proceeding, the Wood-Fired IPPs therefore have included the six data request questions in this motion to compel.

45. Based on and subject to the foregoing, PSNH should be compelled to provide complete and definitive responses to data requests 4-1, 4-2, 4-3, 4-4, 4-5 and 4-6.

CERTIFICATION AND CONCLUSION

46. In accordance with N.H. Code of Admin. Rules PUC 203.09(i), counsel for the Wood-Fired IPPs has contacted counsel for PSNH to attempt in good faith to resolve the discovery disputes that are the subject of this motion.

information we might reasonably rely upon in making a decision should be accessible to all Parties . . ." (see *North Atlantic Energy Corporation*, 87 NH PUC 396, 399 (2002), and the due process rights of litigants to adequate discovery under the New Hampshire Constitution (see N.H. Const. Pt. 1, Art 15; N.H. Code Admin Rules Puc 203.09(a); RSA 541-A:33, IV and N.H. Code Admin. Rules Puc 203.24; *Appeal of Office of Consumer Advocate*, 134 N.H. 651, 659-660 (1991)).

47. To the extent that PSNH posits new or expanded arguments for objecting to the Wood-Fired IPPs' data requests referenced in this motion, the Wood-Fired IPPs reserve the right to respond to such arguments in writing or at oral argument.

48. In addition, to the extent that the responses to any data requests to which PSNH is compelled to respond create the need for follow-up data requests, the Wood-Fired IPPs request that the Commission amend the procedural schedule to provide the Wood-Fired IPPs with an opportunity for such additional discovery as they would have been afforded had PSNH provided timely and complete responses in the first instance.

WHEREFORE, the Wood-Fired IPPs respectfully request the following relief:

- A. Order PSNH to provide full and complete responses to all of the Wood-Fired IPPs' data requests referenced in this motion; and
- B. Grant such other and further relief as the Commission deems just.

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,

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CERTIFICATE OF SERVICE

I hereby certify that, on this date, I caused the attached Motion to Compel to be filed in hand and electronically to the Commission and electronically, or by U.S. Mail, first class, to the persons identified on the attached Service List in accordance with N.H. Admin. Code Rules PUC 203.11(a).

Date: November 3, 2010

David J. Shulock, Esq.
David J. Shulock, Esq.

EXHIBIT A

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-02

**Dated: 10/18/2010
Q-IPP-007**

Page 1 of 1

**Witness: Terrance J. Large
Request from: Wood-Fired Small Power Producers**

Question:

For each subquestion in Q. 2-6 please provide the documents noted in the subquestion for each affirmative answer (whether in whole or part) in Q. 2-6. Also provide all evaluations, analyses, studies, reports, and forecasts pertaining to any such documents and their subject matter.

Response:

- a. See response to CSC-01, Q-CSC-016.
- b. See responses to STAFF-01, Q-STAFF-017 and -032.
- c. See responses to STAFF-01, Q-STAFF-017 and -032.
- d. Schiller Unit 5 is currently qualified to supply Class I NH RECs. The qualification decision can be accessed on the web address below.

<http://www.puc.state.nh.us/regulatory/CaseFile/2008/08-044/LETTERS,%20MEMOS/08-044%202008-08-07%20Sec%20Ltr%20Approving%20Certification-Smagula.PDF>

- e. See response to IPP-02, Q-IPP-006.
- f. See response to STAFF-01, Q-STAFF-005 and -008.
- g. and h. See response to IPP-02, Q-IPP-006.
- i. See response to STAFF-01, Q-STAFF-003, -006 and -011.
- j. See response to STAFF-01, Q-STAFF-005 and -008.
- k. See response to IPP-02, Q-IPP-006.
- l. See response to STAFF-01, Q-STAFF-011.

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-02

Dated: 10/18/2010

Q-IPP-012

Page 1 of 1

Witness: Richard C. Labrecque
Request from: Wood-Fired Small Power Producers

Question:

Please provide all calculations, spreadsheets, proformas, evaluations, analyses and studies of or for the expected cash flows (whether annual or cumulative and inclusive of any or all of the following: financial returns, revenues, expenses, taxes, depreciation, net revenue) of the Facility for the term of the PPA and for each year of said term prepared by or on behalf of PSNH or any affiliate or in their possession or control.

Response:

See response to STAFF-01, Q-STAFF-011 and -015.

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-02

**Dated: 10/18/2010
Q-IPP-022**

Page 1 of 1

**Witness: Terrance J. Large
Request from: Wood-Fired Small Power Producers**

Question:

Referencing pages 9 of Mr. Large's testimony dated July 26, 2010, is it PSNH's position that its customers and the regional electric system in general receive the same or greater security benefits from purchasing power from one centralized renewable facility totaling 65 MW rather than purchasing the equivalent amount of power from smaller renewable generators that are geographically distributed throughout the state? If so, please explain with reference to each factor PSNH considers to provide greater benefit than purchases from smaller, more distributed generators.

Response:

The question is hypothetical in nature and requires speculation concerning the nature, ownership and operation of unknown smaller renewable generators, located in unspecified areas of the state. Therefore, PSNH cannot respond.

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-02

Dated: 10/18/2010

Q-IPP-025

Page 1 of 1

**Witness: Terrance J. Large
Request from: Wood-Fired Small Power Producers**

Question:

In his testimony dated July 26, 2010, at pages 12-13, Mr. Large states that addition of the Facility's capacity will result in a net increase of 0.2% biomass capacity and will increase the capacity from renewable or CO2 neutral sources from 12.6% to 12.8%. In arriving at these net increases, did PSNH conduct any economic modeling, studies, analyses, or forecasts of any kind of the effect of the Facility and PPA will likely have on other wood-to-energy electric generation facilities and other potentially Class I NH REC eligible facilities in the state and region and thereby on the "net" increases referred to? If not, please explain why not. If so, please state and explain PSNH's conclusion, and provide the economic models, studies, analyses or forecasts, state all assumptions made, and provide all related work papers, projections, analyses, and documents.

Response:

No.

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-02

**Dated: 10/18/2010
Q-IPP-028**

Page 1 of 1

**Witness: Terrance J. Large
Request from: Wood-Fired Small Power Producers**

Question:

Referencing page 14 of Mr. Large's testimony dated July 26, 2010, (a) is it PSNH's position that "direct negotiation" over a two year period produces greater administrative efficiency and produces a contract in a more "timely manner" than issuing a request for proposals would? If so, please explain and (b) Is it PSNH's position that its administrative efficiency outweighs potential savings to ratepayers from requiring potential developers of large blocks of energy supply to compete in a request for proposals process? If so, please explain.

Response:

- a. It is PSNH's position that, in this specific case, direct negotiation produced a superior PPA to present to the NH PUC than other alternatives. The negotiation of the real property purchase option agreement which would allow a means to mitigate any over-market energy payments over the life of the PPA was the result of the direct negotiation process.
- b. Since PSNH did not conduct a request for proposal process, PSNH has no information that is responsive to the request.

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-02

**Dated: 10/18/2010
Q-IPP-039**

Page 1 of 1

**Witness: Richard C. Labrecque
Request from: Wood-Fired Small Power Producers**

Question:

If PSNH has issued any request for proposals or other solicitations to procure renewable energy certificates, please provide a copy of any documents concerning or reflecting such requests or solicitations, any replies to the request or solicitation, and the results of the request or solicitation.

Response:

See response to STAFF-01, Q-STAFF-018.

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-02

**Dated: 10/18/2010
Q-IPP-045**

Page 1 of 1

**Witness: Richard C. Labrecque
Request from: Wood-Fired Small Power Producers**

Question:

Has PSNH studied, analyzed, projected or forecasted the fair market value of the Facility over the PPA term and/or at the end of the term of the PPA? If not, please explain PSNH's decision not to do so. If so, please provide any projections in PSNH's possession or control regarding the fair market value of the Facility project for any and all of the years during which the PPA and PSNH's right of first refusal to purchase and option to purchase are expected to be in effect. Please provide all assumptions made and provide all related work papers, projections, analyses, and documents.

Response:

See response to STAFF-01, Q-STAFF-011.

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-02

Dated: 10/18/2010

Q-IPP-046

Page 1 of 1

Witness: Richard C. Labrecque
Request from: Wood-Fired Small Power Producers

Question:

For any purchased power resources that PSNH has under agreement, please indicate whether PSNH anticipates being entitled to any New Hampshire renewable energy certificates associated with such resource. For each such resource please list the number of certificates that PSNH expects to receive and the class of certificates pursuant to RSA 362-F.

Response:

See response to IPP-02, Q-IPP-010.

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-02

**Dated: 10/18/2010
Q-IPP-047**

Page 1 of 1

**Witness: Terrance J. Large
Request from: Wood-Fired Small Power Producers**

Question:

Did PSNH consider conducting a request for proposals to obtain the renewable energy certificates it ultimately decided to purchase from the Facility? Please explain PSNH's decision to conduct or not conduct such a process and provide any documents that reflect PSNH's consideration of such a process.

Response:

No. See also response to IPP-02, Q-IPP-028.

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-02

**Dated: 10/18/2010
Q-IPP-048
Page 1 of 1**

**Witness: Terrance J. Large
Request from: Wood-Fired Small Power Producers**

Question:

What measures, if any, did PSNH take to ensure that the prices in the PPA reflect the lowest prices necessary for the Facility to receive financing and operate and maintain the Facility with a reasonable return?

Response:

The negotiation process between the parties resulted in an interrelated set of terms and conditions that reflect the best efforts of each party to provide for their unique interests.

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-02

**Dated: 10/18/2010
Q-IPP-049**

Page 1 of 1

**Witness: Terrance J. Large
Request from: Wood-Fired Small Power Producers**

Question:

What measures, if any, did PSNH take to ensure that the 20-year duration of the PPA was the shortest contract duration necessary for the Facility to receive financing and operate and maintain the Facility with a reasonable return?

Response:

The negotiation process between the parties resulted in an interrelated set of terms and conditions that reflect the best efforts of each party to provide for their unique interests.

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-02

**Dated: 10/18/2010
Q-IPP-050**

Page 1 of 1

**Witness: Terrance J. Large
Request from: Wood-Fired Small Power Producers**

Question:

What measures, if any, did PSNH take to ensure that it was not committing to purchase more of Laidlaw's output than necessary for the Facility to receive financing?

Response:

The negotiation process between the parties resulted in an interrelated set of terms and conditions that reflect the best efforts of each party to provide for their unique interests.

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-02

Dated: 10/18/2010

Q-IPP-056

Page 1 of 1

**Witness: Richard C. Labrecque
Request from: Wood-Fired Small Power Producers**

Question:

Regarding PSNH consultants study.

- a. Did PSNH or any of its consultants study, examine, review, evaluate or otherwise conduct any analyses of the import, risks or effects of:
 - i. Potential N.H. or other state regulatory and/or legislative changes on the prices of Class I NH RECs over the term of the PPA or any set of lesser years?
 - ii. Market forces (other than regulatory changes) on the prices of Class I NH RECs over the term of the PPA or any set of lesser years?
 - iii. Present and expected supply and changes in supply of renewable energy certified sellers that do or reasonably could qualify as Class I NH REC sellers over the term of the PPA or any set of lesser years, and the effect of such supply and changes in supply on the price of NH Class I RECs?
- b. If the answer to any subquestion in Q. 2-56(a) is affirmative, please provide all such studies, examinations, reviews, evaluations and any analyses.

Response:

- a. and b. See response to STAFF-01, Q-STAFF-011 which includes a "Low REC" scenario. PSNH has no other information responsive to the question.

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-02

**Dated: 10/18/2010
Q-IPP-058**

Page 1 of 1

**Witness: Richard C. Labrecque
Request from: Wood-Fired Small Power Producers**

Question:

Please identify and explain each factor PSNH examined or otherwise took into account in concluding that Section 6.1.3 of the PPA and the cumulative reduction noted therein will protect PSNH ratepayers from unknown future market energy prices over the term of the PPA.

Response:

PSNH considers the Cumulative Reduction, the Right of First Refusal, and the Purchase Option Agreement to be three of the unique PPA features that enabled the successful negotiation of the PPA.

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-02

Dated: 10/18/2010

Q-IPP-059

Page 1 of 1

**Witness: Richard C. Labrecque
Request from: Wood-Fired Small Power Producers**

Question:

For each year of the PPA term, please calculate or provide in \$/MWH, the amount of the \$/MWH energy price that will cover or equal the biomass fuel cost expense in each year of the term of the PPA. If PSNH has not performed such a calculation or does not otherwise have such data please explain why.

Response:

PSNH has no unique data with which to perform the requested calculation. The requestor need only to assume a fuel price (in dollars per ton), estimate a fuel heat content to enable a \$/MBTU conversion, and assume a facility heat rate to convert the fuel cost into a \$/MWH equivalent.

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-02

**Dated: 10/18/2010
Q-IPP-062
Page 1 of 1**

**Witness: Terrance J. Large
Request from: Wood-Fired Small Power Producers**

Question:

Regarding PPA Section 12.3.1

- a. With reference to PPA Section 12.3.1 please provide the "total installed cost consistent with sellers budgeted costs" as stated therein.
- b. Please provide seller's "budgeted costs" as stated in PPA Section 12.3.1.
- c. Did PSNH evaluate or cause to be evaluated or obtain from any third party the range of or "return on total investment in the Facility" that is referenced in PPA Section 12.3.1? If so, please provide all documents pertaining thereto in PSNH's possession or control.

Response:

- a. PSNH has no information that is responsive to the question that could not be obtained through examination of the publically-available record in the LBB Site Evaluation Committee proceeding.
- b. PSNH has no information that is responsive to the question that could not be obtained through examination of the publically-available record in the LBB Site Evaluation Committee proceeding.
- c. See response to STAFF-01, Q-STAFF-015 and note that the analysis provided in that response is based on PSNH internal cost estimates, i.e. the cost estimates were not provided by LBB.

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-02

Dated: 10/18/2010

Q-IPP-067

Page 1 of 1

Witness: Richard C. Labrecque
Request from: Wood-Fired Small Power Producers

Question:

Please provide the biomass fuel price forecast used by PSNH to determine the increase or decrease to the annual energy payment under Section 6.1.2(a) of the PPA. Please identify all assumptions, including but not limited to tons of fuel, fuel moisture content, dollars per ton of fuel.

Response:

See response to STAFF-01, Q-STAFF-011 and OCA-01, Q-OCA-008.

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-02

**Dated: 10/18/2010
Q-IPP-072**

Page 1 of 1

**Witness: Terrance J. Large
Request from: Wood-Fired Small Power Producers**

Question:

In his testimony dated July 26, 2010, at page 5, Mr. Large states that execution of the Laidlaw PPA is consistent with the planning concept put forward in Docket No. DE 07-108 to add at least 50 MW of Class I renewable biomass power to PSNH's supply portfolio.

- a. Please describe in what ways the execution of the PPA and the planning concept put forward in Docket DE 07-108 are consistent and inconsistent.
- b. Did PSNH study, analyze, or otherwise compare the differences in costs and benefits to its ratepayers between entering the PPA and other options for procuring Class I RECs, such as, but not limited to, purchasing from other developers or purchasing RECs unbundled from energy and capacity? If not, please explain why not. If so, please describe and provide all the studies, analyses or forecasts, state all assumptions made, and provide all related work papers, projections, analyses, and documents.

Response:

- a. The PPA is consistent with respect to the size of the facility and the fuel source. The PPA is inconsistent only with respect to the fact that the planning concept in DE 07-108 was for a cost-of-service facility that would be owned by PSNH.
- b. See response to STAFF-01, Q-STAFF-031.

EXHIBIT B

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-03

Dated: 10/22/2010

Q-IPP-001

Page 1 of 1

Witness: Richard C. Labrecque
Request from: Wood-Fired Small Power Producers

Question:

Reference PPA Section 24.2

- a. With reference to PPA Section 24.2 and the authority stated therein of the NHPUC to change the PPA please identify with specificity the authority that "applies when the Parties have irrevocably waived their right to seek to have the NHPUC change any term of this Agreement."
- b. Please provide the citation or reference to the authority noted in Q. 3-1(a).

Response:

- a. PSNH objects to this question as it seeks a legal opinion. The Commission's discovery process is primarily an opportunity to develop factual issues rather than to query opposing counsel on the legal support for a position.

Notwithstanding this objection, PSNH provides the following response:

The contractual provision contained in Section 24.2 contains standard language included in many similar power transactions. See, e.g., Maine PUC Docket No. 2006-324, Order dated July 24, 2006; Standard Offer Service Wholesale Sales Agreement between The Connecticut Light and Power Company and NRG Power Marketing, Inc., dated October 29, 1999 (attached to SEC Form 10-Q filing of NRG dated November 12, 1999).

- b. See the response to (a), above.

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-03

Dated: 10/22/2010

Q-IPP-002

Page 1 of 1

Witness: Richard C. Labrecque
Request from: Wood-Fired Small Power Producers

Question:

Regard NHPUC approval of PPA

- a. If the NHPUC approves the PPA as filed, please explain whether the NHPUC subsequently, on its own motion or that of a non-party to the PPA, could hold a hearing and issue an order modifying or eliminating the REC purchase price under the PPA.
- b. Please explain the standard of review that would apply to the proceeding noted in Q. 3-1(a) if the NHPUC were able to so act and provide the citation or reference to that standard in N.H. law.

Response:

- a. PSNH objects to this question as it seeks a legal opinion. The Commission's discovery process is primarily an opportunity to develop factual issues rather than to query opposing counsel on the legal support for a position.
- b. PSNH objects to this question as it seeks a legal opinion. The Commission's discovery process is primarily an opportunity to develop factual issues rather than to query opposing counsel on the legal support for a position.

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-03

**Dated: 10/22/2010
Q-IPP-003**

Page 1 of 1

**Witness: Richard C. Labrecque
Request from: Wood-Fired Small Power Producers**

Question:

Is it PSNH's position that the REC prices in the PPA, once approved by NHPUC order, cannot be subsequently modified by the NHPUC? If so please identify with specificity the N.H. law that provides the NHPUC with the authority to issue such an order. If it is PSNH's position that a NHPUC order approving the PPA long-term REC pricing can subsequently be modified by the NHPUC, please state and explain the N.H. law standard applicable to such modification, and identify the N.H. authority that allows such an order.

Response:

PSNH objects to this question as it seeks a legal opinion. The Commission's discovery process is primarily an opportunity to develop factual issues rather than to query opposing counsel on the legal support for a position.

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-03

Dated: 10/22/2010

Q-IPP-004

Page 1 of 1

**Witness: Richard C. Labrecque
Request from: Wood-Fired Small Power Producers**

Question:

With reference to PPA Section 24.3 and its subparagraphs (which are misnumbered, but which will be referred to in this question by the numbers used in the PPA, i.e., 24.2.1, 24.1.2, 24.1.3 and 24.1.4) please explain:

- a. whether the entirety of Section 24.3 only applies to FERC proceedings or whether it also applies to proceedings before the NHPUC pertaining to the PPA; and
- b. whether the "public interest application of the just and reasonable standard review" stated in PPA Section 24.1.1 applies to the NHPUC, the Office of Consumer Advocate or intervenors in proceedings before the NHPUC regarding potential subsequent modification of the PPA.

Response:

- a. PSNH objects to this question as it seeks a legal opinion. The Commission's discovery process is primarily an opportunity to develop factual issues rather than to query opposing counsel on the legal support for a position.

Notwithstanding this objection, PSNH responds as follows: The cited section applies to proceedings before FERC.

- b. See the response to subsection (a), above.

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-03

**Dated: 10/22/2010
Q-IPP-006
Page 1 of 2**

**Witness: Richard C. Labrecque
Request from: Wood-Fired Small Power Producers**

Question:

PPA Section 22.1(iv) provides that "interpretation and performance" of the PPA is controlled by "future laws."

a. Is PSNH bound to continue to pay for RECs, energy or capacity under the PPA if any such "future law" were to:

- i. preclude or otherwise limit full cost recovery of the amounts to be paid for any or all of RECs, energy, or capacity under the PPA?
- ii. eliminate or reduce the amounts of Class I NH RECs required to be purchased by PSNH under RSA 362-F?
- iii. reduce the alternative compliance payment ("ACP") schedule, amount, or its escalation or change over time for Class I NH RECs.

Please explain your answer to each subquestion in Q. 3-6(a) and in that explanation also provide the reference to the PPA sections that inform or direct your response.

b. If the NHPUC approves the PPA as filed and the "future laws" identified in Q 3-6(a) become effective during the PPA term, is it PSNH's position that the NHPUC, on its own motion, or otherwise could after notice and hearing issue an order to:

- i. reduce the amounts to be paid under the PPA that were affected by the future law to the amount allowed under the future law or limit the recovery from PSNH ratepayers to the amounts allowed under the future law?
- ii. reduce or eliminate the REC payment under the PPA?
- iii. adjust the REC payment under the PPA to utilize the ACP of the future law in lieu of the Renewable Products Payment under PPA Section 6.1.2(c), including cases where the future law reduces the ACP below the ACP in effect on June 8, 2010 or any subsequent date?

Please explain your answer to each subquestion in Q. 3-6(b) and in that explanation also provide the reference to the PPA sections that inform or direct your response.

Response:

- a.
 - i. PSNH objects to this question as it seeks a legal opinion, and requires speculation regarding unspecified future legislation. The Commission's discovery process is primarily an opportunity to develop factual issues rather than to query opposing counsel on the legal support for a position.

- ii. PSNH objects to this question as it seeks a legal opinion, and requires speculation regarding unspecified future legislation. The Commission's discovery process is primarily an opportunity to develop factual issues rather than to query opposing counsel on the legal support for a position.
 - iii. PSNH objects to this question as it seeks a legal opinion, and requires speculation regarding unspecified future legislation. The Commission's discovery process is primarily an opportunity to develop factual issues rather than to query opposing counsel on the legal support for a position.
- b.
- i. PSNH objects to this question as it seeks a legal opinion, and requires speculation regarding unspecified future legislation. The Commission's discovery process is primarily an opportunity to develop factual issues rather than to query opposing counsel on the legal support for a position.
 - ii. PSNH objects to this question as it seeks a legal opinion, and requires speculation regarding unspecified future legislation. The Commission's discovery process is primarily an opportunity to develop factual issues rather than to query opposing counsel on the legal support for a position.
 - iii. PSNH objects to this question as it seeks a legal opinion, and requires speculation regarding unspecified future legislation. The Commission's discovery process is primarily an opportunity to develop factual issues rather than to query opposing counsel on the legal support for a position.

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-03

**Dated: 10/22/2010
Q-IPP-005**

Page 1 of 1

**Witness: Richard C. Labrecque
Request from: Wood-Fired Small Power Producers**

Question:

Is it PSNH's position that the FERC has authority with respect to the REC pricing terms and conditions of the PPA? If so provide the specific citation or reference to such authority, and explain the scope of FERC's authority over the REC pricing terms and conditions of the PPA.

Response:

PSNH objects to this question as it seeks a legal opinion. The Commission's discovery process is primarily an opportunity to develop factual issues rather than to query opposing counsel on the legal support for a position.

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-03

**Dated: 10/22/2010
Q-IPP-007**

Page 1 of 1

Witness: Richard C. Labrecque
Request from: Wood-Fired Small Power Producers

Question:

Does the PPA provide that the amount of NH Class I RECs available to be purchased under the PPA during its term will:

- a. not be affected by a Change in Law?
- b. be determined under and by the term of RSA 362-F in effect as of June 8, 2010? Please explain your answer and provide the references to the PPA sections that inform or direct your answer, inclusive of PPA Section 6.1.2(c).

Response:

- a. PSNH objects to this question as it seeks a legal opinion. The Commission's discovery process is primarily an opportunity to develop factual issues rather than to query opposing counsel on the legal support for a position.
- b. PSNH objects to this question as it seeks a legal opinion. The Commission's discovery process is primarily an opportunity to develop factual issues rather than to query opposing counsel on the legal support for a position.

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-03

Dated: 10/22/2010

Q-IPP-008

Page 1 of 1

Witness: Richard C. Labrecque
Request from: Wood-Fired Small Power Producers

Question:

Does the PPA provide that Renewable Products Payment (as that term is defined in the PPA) will never be less than that which would result under the ACP schedule and mechanism in RSA 362-F, as it exists on June 8, 2010, even if during the PPA term RSA 362-F's ACP schedule and mechanism were subsequently repealed or amended to produce a lower alternative compliance payment? Please explain your answer and provide the references to the PPA sections that inform or direct your answer, inclusive of PPA Section 6.1.2(c).

Response:

PSNH objects to this question as it seeks a legal opinion. The Commission's discovery process is primarily an opportunity to develop factual issues rather than to query opposing counsel on the legal support for a position.

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-03

Dated: 10/22/2010

Q-IPP-009

Page 1 of 1

**Witness: Terrance J. Large
Request from: Wood-Fired Small Power Producers**

Question:

Referencing page 4 of Mr. Long's testimony dated July 26, 2010, please describe the factors that PSNH evaluated in reaching its conclusion that the PPA meets the State's renewable resource, environmental, and climate change goals in a cost competitive manner from a customer's viewpoint. For each of the factors evaluated, please state and explain PSNH's conclusion and provide all documents related thereto.

Response:

All of the factors are described in the testimony filed in this proceeding.

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-03

Dated: 10/22/2010

Q-IPP-010

Page 1 of 1

Witness: Richard C. Labrecque
Request from: Wood-Fired Small Power Producers

Question:

Please state whether, under the PPA Section 6.1.2(a) wood price adjustment , the price paid to Laidlaw for energy may increase even if Laidlaw's fuel costs do not increase. If so, has PSNH conducted any studies, analyses, or evaluations of the overall cost of energy price increases that are not associated with actual fuel price increases at the Facility? Please provide all related documents.

Response:

The wood price adjustment is described in Article 6.1.2(a) and is indexed to the cost of biomass fuel at Schiller Station. PSNH has no further information which is responsive to the question.

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-03

Dated: 10/22/2010

Q-IPP-011

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Witness: Richard C. Labrecque
Request from: Wood-Fired Small Power Producers

Question:

Does the PPA limit or impose any condition on Laidlaw's sale or other transfer of its interest in the PPA or the member interest (in whole or part) of Laidlaw as distinct from the transfer of ownership of the Facility noted in PPA Article 18? In your response please identify all PPA provisions that create such a limitation.

Response:

See Section 2.4. Also, note that PSNH's option to purchase shall be prior in right to any leasehold or other estate granted to LBB by Site Owner.

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-03

**Dated: 10/22/2010
Q-IPP-013**

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**Witness: Richard C. Labrecque
Request from: Wood-Fired Small Power Producers**

Question:

If the Facility and/or Facility Site is transferred in the process of the stock or membership interest sale of the companies owning same, or of their respective parent companies, does PSNH take the position that PSNH may exercise its right of first refusal pursuant to Article 7 of the PPA? Please explain.

Response:

PSNH objects to this question as it seeks a legal opinion, and requires speculation regarding an unspecified future transaction. The Commission's discovery process is primarily an opportunity to develop factual issues rather than to query opposing counsel on the legal support for a position.

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-03

Dated: 10/22/2010

Q-IPP-014

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Witness: Terrance J. Large
Request from: Wood-Fired Small Power Producers

Question:

According to an October 21, 2010 article in the Boston Business Journal, Northeast Utilities ("NU") CEO Charles Shivery signaled that NU wants New England states to amend their laws so that large scale hydropower that NU intends to import from Canada will qualify in state RPS programs. Please:

- a. State whether PSNH or any of its affiliates has conducted any study, analysis, or evaluation of the effect on the market price for RECs in Massachusetts, Connecticut, Rhode Island, and New Hampshire if large scale hydro were to qualify for RPS eligibility in any or all of those states, and how changes in those market prices would affect the dollar value of PSNH's REC payments under the PPA. If so, please provide all documents pertaining to the study, analysis, or evaluation.
- b. State whether PSNH or any of its affiliates has conducted any study, analysis, or evaluation of the effect of the qualification of large scale hydro in the RPS programs of Massachusetts, Connecticut, Rhode Island, and New Hampshire on PSNH's need for the PPA over its 20 year term. If so, please provide all documents pertaining to the study, analysis, or evaluation.
- c. Provide all documents in PSNH's or any of its affiliates' control regarding any plans, strategies, or discussions regarding the amendment of RPS programs in Massachusetts, Connecticut, Rhode Island, or New Hampshire with the purpose of qualifying large scale hydro for these states' RPS programs.

Response:

- a. PSNH objects to this question as it seeks a legal opinion, and requires speculation regarding unspecified future legislation. The Commission's discovery process is primarily an opportunity to develop factual issues rather than to query opposing counsel on the legal support for a position.
- b. PSNH objects to this question as it is neither relevant nor material to this proceeding, and not likely to lead to the discovery of admissible evidence. The PPA in question is for Class I NH RECs. It would require speculation to produce any study, analysis, or evaluation that not only discusses potential future changes in law, but that also guesses how such future legislation might significantly change the definitions of generation entitled to Class I status.
- c. See the response to subsection (b), above.

EXHIBIT C

**Public Service Company of New
Hampshire
Docket No. DE 10-195**

Data Request IPP-04

Dated: 10/25/2010

Q-IPP-001

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Witness: Richard C. Labrecque
Request from: Wood-Fired Small Power Producers

Question:

Please provide the conversion factor described at page 5, line 13 of Mr. Labrecque's testimony dated July 26, 2010.

Response:

PSNH objects to this question, as it requests information that is the subject of PSNH's "Motion for Confidential Treatment Pursuant to RSA Chapter 91-A and N.H. Code Admin. Rules Puc § 203.08" dated July 26, 2010, and PSNH's "Motion for Rehearing" dated October 22, 2010. Upon the Commission's ruling on PSNH's "Motion for Rehearing," PSNH will revisit this question to determine whether a substantive response is required.

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Hampshire
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Data Request IPP-04

Dated: 10/25/2010

Q-IPP-002

Page 1 of 1

Witness: Richard C. Labrecque
Request from: Wood-Fired Small Power Producers

Question:

Please explain how the conversion factor was determined and identify all engineering studies, data, reports or other documents establishing the basis for the conversion factor.

Response:

PSNH objects to this question, as it requests information that is the subject of PSNH's "Motion for Confidential Treatment Pursuant to RSA Chapter 91-A and N.H. Code Admin. Rules Puc § 203.08" dated July 26, 2010, and PSNH's "Motion for Rehearing" dated October 22, 2010. Upon the Commission's ruling on PSNH's "Motion for Rehearing," PSNH will revisit this question to determine whether a substantive response is required.

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Data Request IPP-04

Dated: 10/25/2010

Q-IPP-003

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Witness: Richard C. Labrecque
Request from: Wood-Fired Small Power Producers

Question:

Please provide copies of all documents identified in response to Q. 4-2.

Response:

PSNH objects to this question, as it requests information that is the subject of PSNH's "Motion for Confidential Treatment Pursuant to RSA Chapter 91-A and N.H. Code Admin. Rules Puc § 203.08" dated July 26, 2010, and PSNH's "Motion for Rehearing" dated October 22, 2010. Upon the Commission's ruling on PSNH's "Motion for Rehearing," PSNH will revisit this question to determine whether a substantive response is required.

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Data Request IPP-04

**Dated: 10/25/2010
Q-IPP-004
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**Witness: Richard C. Labrecque
Request from: Wood-Fired Small Power Producers**

Question:

Please state the price in dollars/MWh that will be paid for electric energy generated by the Facility during the first three months after the In-Service Date, (the "Start Price").

Response:

PSNH objects to this question, as it requests information that is the subject of PSNH's "Motion for Confidential Treatment Pursuant to RSA Chapter 91-A and N.H. Code Admin. Rules Puc § 203.08" dated July 26, 2010, and PSNH's "Motion for Rehearing" dated October 22, 2010. Upon the Commission's ruling on PSNH's "Motion for Rehearing," PSNH will revisit this question to determine whether a substantive response is required.

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Data Request IPP-04

**Dated: 10/25/2010
Q-IPP-005
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**Witness: Richard C. Labrecque
Request from: Wood-Fired Small Power Producers**

Question:

Please explain how the Start Price was calculated and the basis for each component when summed equals the Start Price.

Response:

PSNH objects to this question, as it requests information that is the subject of PSNH's "Motion for Confidential Treatment Pursuant to RSA Chapter 91-A and N.H. Code Admin. Rules Puc § 203.08" dated July 26, 2010, and PSNH's "Motion for Rehearing" dated October 22, 2010. Upon the Commission's ruling on PSNH's "Motion for Rehearing," PSNH will revisit this question to determine whether a substantive response is required.

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Data Request IPP-04

Dated: 10/25/2010

Q-IPP-006

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Witness: Richard C. Labrecque
Request from: Wood-Fired Small Power Producers

Question:

Please provide all documents, studies, reports, data analyses and related material that formed the basis for the calculation requested in Q. 4-5.

Response:

PSNH objects to this question, as it requests information that is the subject of PSNH's "Motion for Confidential Treatment Pursuant to RSA Chapter 91-A and N.H. Code Admin. Rules Puc § 203.08" dated July 26, 2010, and PSNH's "Motion for Rehearing" dated October 22, 2010. Upon the Commission's ruling on PSNH's "Motion for Rehearing," PSNH will revisit this question to determine whether a substantive response is required.

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Data Request IPP-04

**Dated: 10/25/2010
Q-IPP-007**

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**Witness: Richard C. Labrecque
Request from: Wood-Fired Small Power Producers**

Question:

Please provide the estimated percentage of PSNH's Class I REC obligation that will be met each year with RECs purchases from Laidlaw during the term of the PPA.

Response:

See response to STAFF-01, Q-STAFF-019.