

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 10-195

PUBLIC SERVICE OF NEW HAMPSHIRE

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

Prehearing Conference Order

ORDER NO. 25,158

October 15, 2010

APPEARANCES: Robert A. Bersak, Esq. on behalf of Public Service Company of New Hampshire; Rath, Young and Pignatelli by Andrew W. Serell, Esq. and M. Curtis Whittaker, Esq. on behalf of Laidlaw Berlin BioPower, LLC; McLane, Graf, Raulerson and Middleton by Barry Needleman, Esq. on behalf of Laidlaw Berlin BioPower, LLC; Mark Saltsman on behalf of Concord Steam; James T. Rodier, Esq. on behalf of Clean Power Development, LLC ; Brown, Olson & Gould by Robert A. Olson, Esq. and David J. Shulock, Esq. on behalf of Bridgewater Power Company, L.P., Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Springfield Power LLC, Whitefield Power & Light Company, and Indeck Energy -- Alexandria, LLC; Jonathan Edwards on behalf of Edrest Properties LLC; Chris Boldt on behalf of the City of Berlin; Sandi Hennequin, Esq. on behalf of New England Power Generators Association; Meredith A. Hatfield, Esq. Office of Consumer Advocate on behalf of residential ratepayers; and Suzanne G. Amidon, Esq. for the Staff of the Public Utilities Commission.

I. PROCEDURAL HISTORY

On July 26, 2010, Public Service Company of New Hampshire (PSNH) filed a petition for approval of a Power Purchase Agreement (PPA) with Laidlaw Berlin BioPower, LLC (Laidlaw) for the acquisition of energy, capacity and renewable energy certificates (RECs). With its petition, PSNH filed the supporting testimony of Gary A. Long, President of PSNH; Terrance J. Large, Director of Business Planning and Customer Support Services for PSNH; Richard C. Labrecque, Manager of Supplemental Energy Sources for the Company; and Dr. Lisa K. Shapiro, an economist consulting with PSNH. PSNH also filed a motion for confidential

treatment of pricing information in the PPA and for portions of Mr. Labrecque's testimony which discussed the pricing terms.

On August 3, 2010, the Office of Consumer Advocate (OCA) filed notice of its intent to participate in this docket on behalf of residential utility consumers pursuant to RSA 363:28. On September 1, 2010, the Commission issued an Order of Notice establishing a Prehearing Conference for September 29, 2010.

On August 17, 2010, Laidlaw filed a Petition for Intervention and Motion for Expedited Consideration. Concord Steam filed a petition for intervention on September 3, 2010. Petitions to intervene were filed on September 24, 2010 by Clean Power Development (CPD); Bridgewater Power Company, L.P., Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Springfield Power LLC, Whitefield Power & Light Company, and Indeck Energy -- Alexandria, LLC (collectively, the Wood Independent Power Producers (Wood IPPs)); Edrest Properties, LLC (Edrest) and the City of Berlin. New England Power Generators Association, Inc. (NEPGA) filed a petition to intervene on September 28, 2010.

Also, on September 28, 2010, PSNH filed an objection to all petitions to intervene with the exception of the City of Berlin. On September 29, 2010, Laidlaw filed an objection to all pending petitions to intervene, also with the exception of the City of Berlin. The prehearing conference was held on September 29, 2010. At the prehearing conference, the Commission granted all pending motions for intervention.

II. PRELIMINARY POSITIONS OF THE PARTIES AND STAFF

A. Public Service Company of New Hampshire

PSNH stated that state policies and objectives regarding environmental improvement call for increased use of renewable energy resources. The Company said that one of its strategies to

achieve these goals includes entering into strategic renewable resource based power purchase agreements like the PPA with Laidlaw. At the same time, PSNH said it intended to meet these goals in a cost competitive manner from a customer viewpoint. According to PSNH, because the Laidlaw facility is a new renewable energy project, it will not only advance the environmental goals of state energy policy, but will also provide the Company with the Class I (new renewable) RECs it needs to comply with the electric renewable portfolio standard (RPS) of RSA 362-F.

According to the Company, a Wood Price Adjustment (WPA) provision in the PPA will provide market adjustments to the negotiated cost of power. In addition, the Company explained that the PPA contains two options for PSNH to purchase the facility from Laidlaw under certain circumstances, one before the contract terminates and the other at the end of the contract term. PSNH said that approval of the PPA is a prerequisite to moving forward with the financing, construction and eventual operation of the facility

The Company stated that the Laidlaw facility will provide environmental benefits as well as economic benefits including jobs for up to 40 positions as well as approximately 200 indirect jobs in the region. According to PSNH, the plant is eligible for federal tax credits provided that construction begins before the end of the year. On that basis, PSNH supported Laidlaw's motion for expedited consideration of the petition and said that one of the reasons it objected to the motions to intervene is the delay that would result from the intervention of additional parties.

Regarding its motion for confidential treatment of certain financial information contained in the PPA and in Mr. Labrecque's testimony, PSNH maintained that the Commission has granted confidential treatment for similar information contained in PPAs in the past, although PSNH also acknowledged that the purchases contemplated with this PPA are substantially larger than those envisioned under prior PPAs.

B. Laidlaw Berlin BioPower, LLC

Laidlaw agreed with PSNH's position and requested that the Commission approve the PPA by November 10, 2010. According to Laidlaw, its project qualifies for new market tax credits. Those credits have already been allocated for the project, and the project is at risk of losing the tax credits if it does not close the financing by November 15, 2010. The project is also at risk of losing additional tax credits if it is not "in construction" by the end of the year. For the purpose of qualifying for tax credits, "in construction" means the commencement of construction, which can include the ordering of equipment and on-site or field work. Laidlaw confirmed that the project is still financially viable if no tax credits are available. Nonetheless, Laidlaw emphasized the benefits to the local community resulting from the tax credits. Because the financial closing depends on finality of the PPA, Laidlaw urged the Commission to proceed with an expedited schedule.

C. Clean Power Development, LLC

CPD stated that it is a New Hampshire limited liability company focusing on the development of renewable and sustainable wood-fueled biomass-energy facilities. CPD said it wanted to construct a biomass plant known as the Berlin Clean Power Facility. According to CPD, despite numerous attempts, CPD's efforts to negotiate a PPA with PSNH were rebuffed by the Company. CPD said it has a complaint pending before the Commission in Docket No. DE-09-067 that raises issues related to PSNH's willingness to discuss a power purchase agreement with CPD.

Regarding the petition to intervene, CPD said it and the Wood IPPs have standing to intervene as competitors and that no case law disallows intervention by competitors. Regarding the request for expedited approval of the PPA, CPD stated that is not opposed to an expedited

schedule so long as the schedule allows for due process and reasonable discovery. CPD did note that PSNH and Laidlaw had a letter agreement in September 2008 and are only now seeking approval and on an expedited basis.

Finally, regarding PSNH's motion for confidential treatment, CPD stated that it had no objection to the motion, but claimed that CPD and the Wood IPPS should have access to the confidential information so that they are fully informed about the terms of the PPA and able to meaningfully address all issues in this proceeding.

D. Wood IPPs

The Wood IPPs said that the Commission should fully explore the 20-year contract before approving it. The Wood IPPs asserted that the Commission should not expedite the review process because it will foreclose due process opportunities for intervenors. The Wood IPPs stated that they have a direct economic interest because a 20-year contract for the Laidlaw facility will affect the price and availability of wood for competitors of Laidlaw. The Wood IPPs pointed out that PSNH intends to purchase the RECs associated with the power supplied by Laidlaw to meet the Company's Class I RPS requirements. According to the Wood IPPs, the proposed PPA will affect the price of wood products, the market for IPP energy and customer rates and will interfere with local small biomass facilities and wood suppliers. The Wood IPPs cautioned that these small biomass facilities could go out of business as a result of approval of the Laidlaw PPA.

Regarding the request for confidential treatment of financial information, the Wood IPPs agreed that information should be withheld from public disclosure, but that all participants in this matter should have access to the information. The Wood IPPs suggested that any intervenors

wanting access to the confidential information could enter into confidentiality agreements with PSNH and Laidlaw, if necessary.

E. New England Power Generators Association, Inc.

NEPGA stated that its interest in this matter is based on policy issues, specifically the process that PSNH employed to enter into the PPA. NEPGA said that its member companies have an interest in ensuring that PSNH's solicitation process in this proceeding was fair and open to all willing participants in order to procure the most reliable and cost-effective electricity available. NEPGA opined that it would be beneficial to combine the docket examining procurement, Docket No. DE 10-160, with the instant proceeding. Regarding an expedited process, NEPGA cautioned that the Commission should not move too quickly because the resolution of Docket No. DE 10-160 may impact this proceeding.

F. Concord Steam

Concord Steam stated that the Commission has a responsibility to all ratepayers in New Hampshire and opined that the PPA is not in the public's best interest. According to Concord Steam, the PPA will adversely affect Concord Steam because its above-market pass-through provision for wood purchases will have a substantial upward impact on wood prices. Higher wood prices will require that Concord Steam pay more for its existing wood heating plant and for its proposed wood fired combined heat and power plant. Concord Steam also argued that the PPA will allow PSNH to create a monopoly for Class I RECs and undermine the competitive market promoted by RSA 374-F.

With respect to PSNH's motion for confidential treatment, Concord Steam stated that it is in the interests of the intervenors to have access to the information and that lack of access to the information would render the intervenors unable to participate fully in this matter. Regarding the

request for expedited consideration of this proceeding, Concord Steam opposed an expedited schedule and said that the issues should be carefully considered.

G. City of Berlin

The City of Berlin stated its cautious support for the PPA and for the expedited schedule. According to the City, the Laidlaw project is vitally important to the city and surrounding area in terms of jobs and economic benefits that will result from its construction and operation. As the host community for the Laidlaw plant, the City of Berlin said it should be granted intervenor status and noted that PSNH and Laidlaw have no objection to its request for intervention. Regarding the issue of confidentiality, the City stated that it wants access to the unredacted material and is willing to enter into a confidentiality agreement.

H. Edrest Properties

Mr. Edwards said that he is concerned about rising electric rates that can be attributed to the absence of competitive bidding for a PPA. Edrest owns and/or leases properties with electric heat and services that can be substantially impacted by rate increases triggered by the absence of competitive bidding. According to Mr. Edwards, approval of this PPA may threaten the continued operation of numerous North Country biomass companies that support the backbone of North Country. Such an effect can, in turn, lead to the downward spiral of significant tax revenue through closure of these facilities that provide a significant portion of North Country revenue through taxes and jobs. Regarding the motion for confidential treatment, Mr. Edwards said that rate payers should be able to know the costs associated with the PPA.

I. Office of Consumer Advocate

The OCA took no position at the prehearing conference and stated that it will be working with Staff and the parties through the discovery process. The OCA said it will carefully review

the procurement policy, the wood price adjustment and purchase power agreement among other factors and anticipates utilizing a consultant for further review of the information.

The OCA took no position on the motion for confidential treatment. Regarding the request for an expedited proceeding, the OCA stated its concern that the deadline proposed by Laidlaw will be challenging.

J. Staff

Staff stated that it had not commenced discovery, but upon conclusion of its review of the docket, it will be making a recommendation to the Commission regarding the filing. Staff also noted that in the matter of PSNH's PPA with Lempster Wind, Docket No. DE 08-077, the proceeding took 12 months. Staff expressed concern about the requested expedited schedule. Staff said that the tentative procedural schedule it had developed did not contemplate a hearing before February 2011. Staff did not take a position on the motion for confidential treatment at the time of the prehearing conference. Staff stated its support for the motions to intervene filed by the Wood IPPs, but did not take a position on the other pending motions for intervention.

Following the prehearing conference, Staff met in technical session with the parties and submitted a proposed procedural schedule to the Commission. In addition, Staff requested that the Commission promptly consider the merits of PSNH's motion for confidential treatment as several intervenors stated that access to that information is necessary for their analysis of the PPA between PSNH and Laidlaw. The proposed procedural schedule is as follows:

Rolling Data Requests	October 8 through October 25, 2010
Last Day for Responses to Data Requests	November 2, 2010
Staff/Intervenor Testimony	November 23, 2010
Data Requests on Staff/Intervenor Testimony	December 2, 2010
Responses to December 2nd Data Requests	December 15, 2010
Rebuttal Testimony	December 22, 2010

In its letter, Staff also mentioned that the parties had agreed to an expedited discovery schedule, which provided that responses would be made as soon as possible, but no later than ten calendar days from the issuance of discovery requests. Further, the Parties and Staff agreed that recipients of data requests would have five calendar days within which to object to data requests, and requesting parties would have five calendar days to file motions to compel.

III. COMMISSION ANALYSIS

A. Motions for Intervention

In reviewing petitions for intervention the Commission considers the facts alleged in the petition and determines whether the petition has demonstrated "rights, duties, privileges, immunities or other substantial interests [that] may be affected by the proceeding" RSA 541-A:32, I (b). If it finds that the petition meets this test, and that the intervention would not impair the orderly and prompt conduct of the proceeding, the intervention is granted. Alternatively, the Commission may grant intervention in the interest of justice so long as the intervention "would not impair the orderly and prompt conduct of the proceedings." RSA 541-A:32, II.

Laidlaw, as a party to the proposed PPA has interests directly affected by this proceeding and its intervention is therefore granted. The Wood IPPs, Concord Steam and CPD are all existing or potential competitors of the proposed Laidlaw facility and thus have interests affected by this proceeding. As a result, their interventions are all granted. Mr. Edwards and the City of Berlin are ratepayers who may be affected by the purchased power costs incurred by PSNH resulting from the approval of this PPA and their eventual recovery in PSNH energy service rates, and are therefore granted intervention. The NEPGA has expressed an interest on behalf of its members in the process used to negotiate this PPA and we grant its intervention as

a matter of discretion. We reiterate here that the Wood IPPs, CPD, Concord Steam and NEPGA have expressed common or similar interests and that, as a result, they should endeavor to consolidate or coordinate their discovery, testimony, cross examination, argument and other written submissions.

B. Motion for Protective Order

With the petition, PSNH filed a Motion for Confidential Treatment pursuant to N.H. Code Admin. Rules Puc 203.08 (a) and RSA 91-A:5 for the detailed pricing information contained in the PPA and the unredacted testimony of Richard C. Labrecque. According to PSNH, the pricing terms and the information contained in the unredacted testimony represent confidential, commercial, or financial information exempt from the Right-to-Know Law pursuant to RSA 91-A:5, IV. PSNH said that the PPA was the result of protracted and detailed confidential negotiations. The Company pointed out that the PPA includes a term requiring both PSNH and Laidlaw to use “reasonable efforts to minimize the scope of any disclosure and have the recipients maintain the confidentiality of any documents or confidential information covered by this provision, including, if appropriate, seeking a protective order or similar mechanism in connection with any disclosure.” Article 26.1 of the PPA, cited at PSNH Motion at 2. PSNH claimed that if the PPA’s pricing provisions are not protected disclosure would be detrimental to PSNH’s ability to attract negotiating partners in the future as well as Laidlaw’s competitive position in the marketplace. PSNH cited several proceedings where the Commission had granted confidential treatment for similar confidential, commercial, or financial information including Docket No. DE 08-077 concerning a PPA and Renewable Energy Certificate Option Agreement between PSNH and Lempster Wind. Order No. 24,965 (May 1, 2009).

The Right-to-Know Law provides each citizen with the right to inspect public information in the possession of the Commission. RSA 91-A:4, I. RSA 91-A:5, IV exempts from public disclosure any records that constitute confidential, commercial, or financial information. In *Lamy v. New Hampshire Public Utilities Commission*, 152 N.H. 106 (2005), the New Hampshire Supreme Court described a three-step analysis it uses to determine whether information should be protected from public disclosure pursuant to the Right-to-Know law. We apply the three-step analysis in reviewing motions for confidential treatment filed with the Commission. See, e.g., *Unitil Corporation and Northern Utilities, Inc.*, Order No. 25,014 (September 22, 2009) and *Public Service Co. of New Hampshire*, Order No. 25,037 (October 30, 2009).

First, the analysis requires an evaluation of whether there is a privacy interest at stake that would be invaded by the disclosure. If no such interest is at stake, the Right-to-Know Law requires disclosure. Second, when a privacy interest is at stake, the public's interest in disclosure is assessed. Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted. Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure.

In furtherance of the Right-to-Know Law, the Commission's rule on requests for confidential treatment, Puc 203.08, is designed to facilitate the balancing test required by the relevant case law. The rule requires petitioners to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring

confidentiality; and (3) provide a detailed statement of the harm that would result from disclosure to be weighed against the benefits of disclosure to the public. Puc 203.08 (b).

The pricing terms for which PSNH seeks confidential treatment include: (1) the base price for energy on a per megawatt hour (MWh) basis; (2) a reference price for wood and the multiplier used in the WPA to modify the base energy price; (3) the price of capacity and the annual increment used to calculate the future price of capacity; (4) the price of the Class I RECs and the annual increment used to calculate the future cost of Class I RECs; (5) the value of property to be protected by title insurance; (6) portions of Mr. Labrecque's testimony regarding the foregoing; and (7) Schedule RCL-1 of Mr. Labrecque's testimony, which depicts the estimated prices of energy, capacity and RECs over the proposed 20 year term of the contract. Because this information is a product of confidential business negotiations between PSNH and Laidlaw and has not otherwise been publicly disclosed, we agree that it is confidential, commercial, or financial information in which the companies have a privacy stake.

Step two in the three-step analysis requires us to examine whether there is a public benefit or interest in the disclosure of the identified information. The purpose in our examination is whether the disclosure of the information would inform the public of the Commission's conduct of its authority. We find that the disclosure of this information 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. The statute provides that, in determining the public interest, the Commission must find that the proposal is, on balance, "substantially consistent with the following factors:

- (a) The efficient and cost-effective realization of the purposes and goals of this chapter;
- (b) The restructuring policy principles of RSA 374-F:3;

- (c) The extent to which such multi-year procurements are likely to create a reasonable mix of resources, in combination with the company's overall energy and capacity portfolio, in light of the energy policy set forth in RSA 378:37 and either the distribution company's integrated least cost resource plan pursuant to RSA 378:37-41, if applicable, or a portfolio management strategy for default service procurement that balances potential benefits and risks to default service customers;
- (d) The extent to which such procurement is conducted in a manner that is administratively efficient and promotes market-driven competitive innovations and solutions; and
- (e) Economic development and environmental benefits for New Hampshire." RSA 362-F:9, II.

Absent disclosure of the pricing terms and details, the public's ability to understand how the Commission reaches a finding on most of these factors would be diminished; particularly with regard to factors (a) and (c) relating to "cost-effective realization" of the purposes of RSA 362-F and whether the procurement is consistent with PSNH's most recent least cost resource plan. Disclosure of the pricing terms would permit a fully transparent review of the costs of the PPA. However, it is not apparent to us how the disclosure of the value of property to be protected by title insurance will inform the public of the Commission's conduct. While it is a provision of the proposed form of purchase option agreement, it is not apparent that it will be a factor in the Commission's evaluation of the proposal and thus we do not find a public benefit in disclosure of this information at this time.

Finally, we must determine whether the harm to the Company in disclosing the pricing details outweighs the benefits of disclosure to the public. PSNH states that the pricing terms are a product of confidential negotiations and that the disclosure of the pricing terms could affect PSNH and Laidlaw's ability to negotiate such contracts in the future. We do not find that the possibility of such harm outweighs the public interest in being informed of the pricing terms of the contract inasmuch as approval of a PPA of this size could make future PPAs less likely.

Indeed, in this case in his prefiled testimony (at p. 5) PSNH President Gary Long states that “[a]t this time, PSNH’s interest in entering into additional long term power purchase agreements is highly limited.” We, therefore, deny the motion for confidential treatment and direct PSNH to promptly provide the information at issue, except for the value of property to be protected by title insurance, to the interveners in this docket and to file an unredacted copy of the PPA as well as Mr. Labrecque’s testimony and exhibits in the public record of this proceeding.

C. Procedural Matters

At the prehearing conference, there was a request that we take administrative notice of the Site Evaluation Committee’s (SEC) record in its review of Laidlaw’s petition to build the biomass facility. Both the Administrative Procedures Act, RSA 541-A:33, V, and our procedural rules, N.H. Code Admin. R Puc 203.27, allow the Commission to take “official notice” of the record of other proceedings before the Commission. The SEC, however, is a separate agency and its docket is not a Commission proceeding. As a result, we are not in a position to take administrative notice of the Laidlaw proceeding before the SEC. To the extent that parties wish to introduce information from the SEC proceeding in this proceeding, they may seek that information through discovery of Laidlaw.

We approve the proposed procedural schedule as recommended by Staff along with the agreed-upon process for discovery and related objections and motions to compel. We are mindful that discovery disputes may impact the procedural schedule and we will consider requests for modifications to the procedural schedule as needed and will act promptly on such requests.

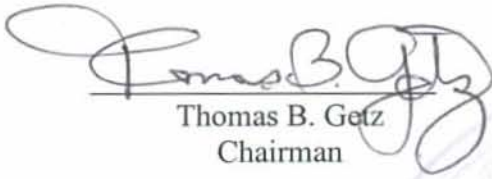
Based upon the foregoing, it is hereby


ORDERED, that the procedural schedule as proposed is APPROVED; and it is

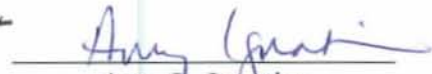
FURTHER ORDERED, that the pending motions to intervene are GRANTED; and it is

FURTHER ORDERED, that PSNH's motion for protective order is DENIED, with the exception of the value of property to be protected by title insurance.


By order of the Public Utilities Commission of New Hampshire this fifteenth day of October, 2010.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy L. Ignatius
Commissioner

Attested by:


Debra A. Howland
Executive Director

