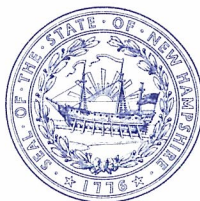


THE STATE OF NEW HAMPSHIRE

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June 2, 2011

Debra Howland
Executive Director & Secretary
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, New Hampshire 03301-7319



RE: DE 10-195 PSNH Petition for Approval of Power Purchase Agreement between PSNH and Laidlaw Berlin BioPower, LLC
Revised PPA

Dear Ms. Howland:

As you know, on May 18, 2011 PSNH filed an "Amended and Restated Power Purchase Agreement ("amended PPA") in the above-referenced docket. The Company states in its filing that the amended PPA "compl[ies] with the terms set forth in Order No. 25,213." On May 25, 2011 the Commission issued a secretarial letter suspending Order No. 25,213 pending its review of motions for rehearing and to make a "determination of compliance of the revised PPA with the terms set forth in such order." The purpose of this letter is to provide the OCA's comments regarding compliance of the amended PPA with the Order.

We believe that there are several potential issues for the Commission to consider when reviewing the amended PPA, and we discuss them below.

The first issue relates to Section 6.1.3 of the amended PPA, which is inconsistent with the limitation on the purchase of energy approved by the Commission in the Order. In the Order, the Commission clearly limited the annual amount of energy that PSNH's ratepayers are required to purchase at the price set by the PPA at 500,000 MWh. See Order at p. 96. The Order also states that Laidlaw is free to sell any remaining energy to any party at market rates or under separate terms (which could include PSNH).

However, Section 6.1.3 of the amended PPA includes language related to "Energy deliveries in excess of 500,000 MWh," and creates an "Excess MWh Adjustment" mechanism in order to price that excess energy. This appears to obligate PSNH's ratepayers to purchase 100% of the output of the plant. This is not consistent with the Commission's Order, which clearly

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limits the energy purchase obligation under the PPA at 500,000 MWh.¹ As a result, PSNH must revise the amended PPA so that it is consistent with the energy cap in the Order. We understand from speaking with PSNH that the cap may pose implementation challenges. However, the approach that PSNH has proposed – for ratepayers to be obligated to purchase all output of the plant – simply goes beyond the Commission’s conditional approval of the PPA.

The second issue relates to Section 6.1.4 of the amended PPA, which addresses the “Cumulative Factor” for the “Cumulative Reduction Fund.” To be consistent with the Order, Section 6.1.4 should make clear that “excess cumulative reduction” is a subset of “cumulative reduction” that will serve to reduce the purchase price of the Facility as provided in the Purchase Option Agreement. It should also be revised to include the additional statement that if the reduction in the purchase price does not serve to refund the “excess cumulative reduction,” then Laidlaw shall reimburse PSNH the excess cumulative reduction in cash. Under 6.1.4(c), Laidlaw must reimburse the value of the excess only if PSNH does not purchase the Facility.

Finally, with respect to the excess cumulative reduction, why is there no security for the excess cumulative reduction? How does the PUC know that the contracting party (which may be a successor of one of the current contracting parties) will have sufficient funds to reimburse PSNH without some form of security?

The third issue relates to the requirement in the Order that “the PPA be revised to add a provision that expressly recognizes the Commission’s retention of such traditional regulatory authority in such circumstances.” Order at p. 98. We do not see such language in the amended PPA. Section 24.1 includes language that does not prevent either *Party* from making certain filings, and allows PSNH to seek Commission “review and/or approval of any material discretionary actions to be taking by PSNH in performing under this Agreement....” We question whether this language meets the condition that the PPA “expressly recognize” the traditional regulatory authority of the Commission, which we believe is an important condition.

Thank you for your consideration of these comments and questions regarding the amended PPA.

Respectfully,



Meredith A. Hatfield
Consumer Advocate

cc: DE 10-195 Service List (electronically)

¹ In addition to being contrary to the Commission’s Order, this provision seems to also require that ratepayers carry the costs of any overpayment of energy over 500,000 MWh for a year. If PSNH does seek to purchase energy over 500,000 MWh, such a contract must be structured so that ratepayers do not have to carry those costs for a year. For example, the excess energy could be determined hourly and purchased using hourly market rates, or determined hourly and purchased using a monthly market average to make an adjustment on a monthly invoice.