

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire

Petition for Approval of PPA with Laidlaw Berlin BioPower, LLC

Docket No. DE 10-195

**CONCURRENCE OF CITY OF BERLIN WITH PSNH'S MOTION TO RESCIND THE
GRANT OF INTERVENOR STATUS TO CONCORD STEAM CORPORATION**

NOW COMES the City of Berlin, ("the City") to state its concurrence with the Motion to Rescind the Grant of Intervenor Status to Concord Steam Corporation filed by the Public Service Company of New Hampshire ("PSNH"). This concurrence is based upon the following:

1. A hearing date on this matter is set for January 24, 25 and 26, 2011.
2. In this matter, PSNH has petitioned the PUC for approval of a power purchase agreement ("PPA") between PSNH and Laidlaw Berlin BioPower, LLC.
3. For the City, approval of the PPA means the creation of jobs, an increased tax base, and the ability to take advantage of approximately three million dollars (\$3,000,000) in community benefits from New Market Tax Credits allocated to the project. The best expression of the importance of the timely approval of the PPA to the City is in the letter of 28 September 2010 from Patrick MacQueen, City Manager, to the Commission, a copy of which was previously filed by the City and is attached again hereto as **Exhibit 1**.
4. If the PPA is not approved, and thus financed, in a timely manner, the New Market Tax Credits may not be available and the City's taxpayers could lose millions of dollars in community benefits. For an economically struggling City such as Berlin, the above economic benefits are crucial.

5. On December 26, 2010, PSNH submitted data requests to Concord Steam Corporation (“CSC”) following CSC’s December 17, 2010 submission of testimonies from Mark E. Saltsman, John Dalton, Robert J. Berti and James C. Dammann. January 7, 2011 PSNH Motion at ¶ 1, 2.
6. Based upon the data requests submitted by PSNH to CSC, the City chose not to submit its own duplicate requests to CSC. The information requested of CSC nevertheless is necessary for the City and its expert to properly cross examine the above individuals at the scheduled hearing.
7. On January 3, 2011, CSC objected to over half of PSNH’s data requests and refused to produce the information requested by these data requests.
8. Given CSC’s prior Petition for Intervention filed in this matter, which contradicts the basis of CSC’s current objections, CSC’s objections are untimely and appear calculated to cause delay.
9. CSC filed a Petition for Intervention in this matter with the Commission on September 3, 2010. The Petition indicates that it was filed by “Concord Steam Corporation.” A copy of this Petition is attached at **Exhibit 2**. In that Petition, CSC stated:

“Concord Steam is one of a few wood-fired district-heating plants in the world. It provides District Heating service to the downtown Concord, New Hampshire area.” ¶ 3.

“Concord Steam has been developing a wood-fired combined heat and power plant in Concord since 2007. The project has all of the necessary permits and approvals and has financing lined up.” ¶ 4.

“As a result of the . . . provisions contained in the PPA . . . the Laidlaw project will have a substantial upward impact on the price of wood that Concord Steam will consume at its wood-fired combined heat and power plan in Concord.” ¶ 5.

“ . . . Concord Steam has a substantial interest in the issues presented to the Commission in the proceeding[.]” ¶ 7.

10. CSC’s Petition asserted, and the Commission accepted, that CSC was a party in interest to these proceedings because CSC owned the wood-fired district-heating plant in Concord, and that CSC had obtained the necessary permits, approvals and financing for the plant. RSA 541-A:32, V (providing that intervention may be granted only if the petitioner demonstrates that “the petitioner’s rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding.” (emphasis added)).
11. CSC’s objections to PSNH’s data requests contradict the statements made in CSC’s Petition for Intervention. For example, CSC objects to producing “all documents related to the financing of the purchase or construction of CSC’s facility” on the basis that “Concord Power and Steam, LLC is not a party to this proceeding under Puc 203.09(b) and therefore not subject to discovery. Concord Steam Corporation is a separate entity and does not have the legal authority to disclose Concord Power and Steam, LLC’s confidential financial information.” CSC Objection to First Set of Data Request by PSNH, at 1.A. CSC asserts this objection 21 additional times as a basis to withhold requested information. Id. at 9.A., 10.A., 18, 29-33, 35-37, 43, 52-60.
12. Accepting CSC’s objections as accurate statements, CSC is not a proper intervenor in this matter; but rather the proper intervenor would have been Concord Power and Steam, LLC based upon CSC’s objections. See RSA 541-A:32, I(b).
13. It is too late for Concord Power and Steam, LLC to file a Petition for Intervention in this proceeding.
14. CSC intervenor status must therefore be withdrawn.

15. Otherwise, if the Commission were to follow the general procedural course – i.e. allow CSC to respond to PSNH’s Motion, issue a decision, and, ultimately, order CSC to produce the requested information – this would result in either a delayed hearing, or, production of the requested information after the hearing date. A delayed hearing will severely prejudice the City, as discussed above. Delayed production of the requested information from CSC will prejudice the City, PSNH, and potentially all of the other remaining parties who may need CSC’s withheld information for the hearing. Allowing CSC to proceed in this manner will therefore impair the orderly process of this proceeding.
16. Given that faithful adherence to the 24, 25 and 26 January 2011 hearing date is of critical importance to the City as discussed above and given CSC’s lack of candor with the Commission, withdrawal of CSC’s intervenor status is an appropriate and equitable result.
17. CSC’s tactics are putting at risk millions of dollars which could benefit the City’s taxpayers. The City requests that the Commission not condone CSC’s tactics and withdraw their Intervenor status. See RSA 541-A:31, V (“The presiding officer may modify the order [granting intervention] at any time, stating the reasons for the modification.”)

WHEREFORE, the City respectfully requests that the Commission:

- A. Withdraw the Intervenor status of Concord Steam Corporation;
- B. Strike the pre-filed testimony and all data request responses submitted by Concord Steam Corporation, in accordance with the revocation of Concord Steam Corporation’s Intervenor status; and

C. Grant such other and further relief as the Commission deems just and equitable.

Respectfully submitted,

THE CITY OF BERLIN

By its attorneys:

DONAHUE, TUCKER & CIANDELLA, PLLC

Date: 12 January 2011

By: /s/ Keriann Roman
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CERTIFICATE OF SERVICE

Pursuant to Rules Puc 203.02(2) and Puc 203.11, I hereby certify that on this 12th day of January 2011, I served copies of this Concurrence to those parties listed on the Service List and to the Office of Consumer Advocate.

/s/ Keriann Roman
Keriann Roman, Esq.

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