

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

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

DE 10-195

OBJECTION OF CONCORD STEAM CORPORATION TO  
MOTION FOR REHEARING

NOW COMES Concord Steam Corporation, Intervenor in the above-docket, and objects to Public Service Company of New Hampshire's Motion for Rehearing. In support of its objection Concord Steam Corporation says as follows:

1. Public Service Company of New Hampshire ("PSNH") has petitioned for the approval of a Power Purchase Agreement ("PPA") with Laidlaw Berlin BioPower, LLC ("Laidlaw") under RSA 362-F:9. The Petition asks the Commission to approve "full cost recovery of the rates, terms and conditions of the PPA" including above-market energy payments that will be applied to the purchase of Laidlaw's facility by PSNH over a twenty year period. Concord Steam, as a regulated utility, believes that PSNH's Petition will have catastrophic implications for its ratepayers, the ratepayers of PSNH and for the competitive markets for RECs and wood fuel in New Hampshire which make the Petition contrary to the public interest.

2. PSNH seeks rehearing of Order No. 25,158 dated October 15, 2010 in which the Commission denied confidential treatment of the PPA's pricing terms.

3. In reaching its Decision set forth in Order No. 25,158, the Commission engaged in the three step analysis approved by the New Hampshire Supreme Court in Lamy v. New Hampshire Public Utilities Commission, 152 NH 106 (2005).

4. The Commission first determined whether the information for which confidential treatment was sought was in fact confidential, commercial, financial information in which PSNH had a privacy stake. It then examined whether there was a public benefit or interest in the disclosure of the identified information and concluded that disclosure was central to the public's understanding of how the Commission would evaluate whether the PPA met the public interest standard articulated in RSA 362-F:9 (II). The Commission further found that absent disclosure of the pricing terms and details, the public's ability to understand how the Commission determined whether the PPA met the public interest standard would be diminished and that "disclosure of the pricing terms would permit a fully transparent review of the costs of the PPA." The Commission then determined whether the harm to PSNH in disclosing the pricing details outweighed the benefit of disclosure to the public and concluded that it did not inasmuch as approval of this PPA could make future PPA's less likely.

5. PSNH asserts that the Commission misunderstood the pre-filed testimony of Gary Long that PSNH's interest in entering into additional long term power agreements was highly limited. However, Order No. 25, 158 makes it clear that the Commission made an independent judgment that approval of the PPA, because of its size, would make future PPAs less likely. It then noted that Mr. Long's testimony supported that judgment. Mr. Long's testimony was not the basis for the judgment made by the Commission that approval of the PPA could make future PPA's less likely. Even if the

Commission “misunderstood” Mr. Long’s testimony (which it did not), PSNH’s Motion for Rehearing does not present sufficient grounds to rehearing as the Commission properly weighed PSNH’s and Laidlaw’s limited interest in confidentiality against the stronger interest in public disclosure of financial impact of the proposed PPA on PSNH’s customers.

6. PSNH also argues that Order No. 25,185 is inconsistent with the Commission’s past practice and precedent. However, what the Commission may or may not have done in other dockets is not dispositive. The three step analysis set forth in *Lamy, supra*, must be applied by the Commission in each case on its own merits to determine whether information should be protected from public disclosure pursuant to RSA 91-A. Each case is unique and confidential treatment will depend on application of its facts to the three step analysis.

7. PSNH, in its Motion asserts that Concord Steam Corporation’s interest was not to determine whether the PPA was in the public interest, but whether it was in its interest as a direct competitor of PSNH. PSNH’s assertion is not supported by any evidence and is beside the point. PSNH asks the Commission to approve above market energy payments over a twenty year period. Concord Steam seeks disclosure of the terms of the PPA for the purpose of demonstrating that the PPA will have catastrophic implications for its ratepayers, the ratepayers of PSNH and for the competitive markets for RECs and wood fuel in New Hampshire, which make the Petition contrary to the public interest.

8. Puc 203.08 (j) clearly recognizes that interested parties should have access to confidential information that is provided to Staff particularly where, as here,

confidential information is at the center of whether the above market pricing contained in the PPA is in the public interest. Without such information Concord Steam and its counsel can not effectively show that the PPA will adversely impact the markets for RECs, energy and wood fuel to the harm of its own customers and the customers of PSNH. Denial of disclosure of such information to Concord Steam, given the implications of approval of the PPA, would be a denial of its due process.

WHEREFORE, Concord Steam Corporation respectfully:

- A. Objects to the Motion for Rehearing and urges the Commission to deny the same.
- B. Prays the Commission confirm Order No. 25, 158 denying confidential treatment to the pricing terms.
- C. Prays the Commission grant such other and further relief as justice may require.

Respectfully submitted,

**CONCORD STEAM CORPORATION,**

By its Attorneys,

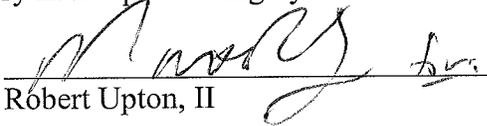
**UPTON & HATIFIELD, LLP**

Date: October 29, 2010

  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this day, a copy of the foregoing OBJECTION OF CONCORD STEAM CORPORATION TOMOTION FOR REHEARING was forwarded to all counsel or parties of record for discovery in this proceeding by Electronic Mail.

  
Robert Upton, II