

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' first and second set of data requests as follows:

STATEMENT OF FACTS

1. On October 13, 2010, the Wood-Fired IPPs, as intervenors granted full party status in this proceeding, issued a first set of data requests to PSNH. This first set requested copies of its responses to the data requests of all other parties, the Commission staff, and the Office of Consumer Advocate ("OCA") in this docket, "said requests being incorporated herein by reference as if fully set forth herein."¹ Pursuant to IPP 1-2, the Wood-Fired IPPs also requested unredacted copies of certain PSNH testimony and of the Power Purchase Agreement ("PPA") and form of purchase option agreement ("POA") for which PSNH has sought approval in this proceeding.

2. On October 18, 2010, the Wood-Fired IPPs issued a second set of data requests to PSNH requesting data, documents, information and responses regarding issues relevant to the

¹ Copies of the Wood-Fired IPPs' first and second sets of data requests to PSNH, together with PSNH's October 22, 2010 responses thereto (and PSNH's responses to Commission staff data requests claiming confidential treatment for certain responsive information and materials), are appended to this motion as Exhibit A.

consideration of the PPA and POA, including numerous questions addressing Laidlaw Berlin Biopower, LLC (“Laidlaw”), its affiliates, power plant project and proposed operations, the output of the Laidlaw power plant and its wood fuel procurement and consumption, the PPA and POA 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.

3. On October 22, 2010, PSNH responded to the Wood-Fired IPPs’ first set of data requests. In response to IPP 1-1, PSNH indicated it would provide copies of all non-confidential responses as part of its normal practice, but “[c]onfidential responses are not being provided pursuant to Rule Puc 203.08.” In a number of instances, PSNH’s responses to data requests issued by the Commission staff claimed confidential treatment of materials without providing a detailed explanation of the basis for the claim.² In response to IPP 1-2, Q-IPP-002, PSNH indicated it would provide unredacted copies of the relevant testimony and the PPA and POA to “comply as necessary pursuant to Rule Puc 203.08.”

4. On October 22, 2010, PSNH also responded to some but not all of 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.

5. The Wood-Fired IPPs believe that PSNH’s responses to their data requests state unfounded objections and unsupported claims of confidentiality, are overly narrow, and mischaracterize the scope of this proceeding and relevancy of information to the issues in this proceeding. Therefore, the Wood-Fired IPPs have filed this motion to compel.

² See PSNH responses to Commission staff data requests Q-STAFF-011, Q-STAFF-015, Q-STAFF-017, Q-STAFF-018 and Q-STAFF-032.

MOTION TO COMPEL

I. PSNH's Claims of Confidential Treatment

6. Pursuant to IPP 1, Q-IPP-001, PSNH is required to provide copies of its responses to the data requests of all other parties, Commission staff, and the OCA in this docket as if such requests had been made by the Wood-Fired IPPs. In response to Commission staff questions Q-STAFF-011, Q-STAFF-015, Q-STAFF-017, Q-STAFF-018 and Q-STAFF-032, PSNH claimed to have a good faith basis for seeking confidential treatment of the attachments to these responses and stated its intent to “submit a motion for confidential treatment regarding such documents at or before the commencement of the hearing in this proceeding.” The materials claimed to be confidential in these responses include economic analyses and comparisons involving the PPA and POA, a July 2008 spreadsheet estimating Laidlaw’s internal rate of return, offers, bids or proposals to sell power and renewable energy certificates (“RECs”) submitted by other renewable energy generators, bidders and winning bids submitted in two recent request for proposal processes, and a comparison with the PPA of two proposals from other renewable energy projects to provide New Hampshire Class I RECs to PSNH. PSNH provided these materials to Commission staff and the OCA without objecting to their relevancy. In response to the Wood-Fired IPPs’ data request 2-16c, PSNH cross-references the response to STAFF-01, Q-STAFF-011, a response which does not include the relevant attachments based on PSNH’s assertion that a claim for confidential treatment will be made.

7. To date, PSNH has not filed a motion for confidential treatment or otherwise justified its claim that the materials referred to in these data request responses must be kept confidential. It is not clear whether PSNH will seek to have these materials protected from disclosure only to the general public or also from disclosure to the parties in this proceeding.

The Wood-Fired IPPs have an important due process interest in having timely access to this information, which is highly relevant to the consideration of the “public interest” served – or not served – by the PPA and the POA under RSA 362-F:9, II.

8. The Commission has not looked favorably on proposals to deny parties access to confidential information, maintaining that “whatever information we might reasonably rely upon in making a decision should be accessible to all Parties . . .” *North Atlantic Energy Corporation*, 87 NH PUC 396, 399 (2002), cited in *City of Nashua, Petition for Valuation Pursuant to RSA 38:9*, Order No. 24,495 (July 29, 2005). The Commission's reluctance to deny parties access to information that the Commission may rely upon reflects important due process considerations in litigation that simply do not arise under standards applicable to public Right- to-Know Law requests and that are not a consideration in the balancing test applied under *Lamay v. New Hampshire Public Utilities Commission*, 152, N.H. 106 (2005). *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).

9. In addition, 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 and whether the evidence is in the possession of his opponent or someone else.” *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. If deemed warranted by the Commission, the Wood-Fired IPPs are prepared to execute an appropriate confidentiality agreement prior to receiving 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.

11. Because the materials withheld from disclosure to intervening parties are of high relevance to the matters at issue in this docket and the Wood-Fired IPPs and other parties require access to these materials to thoroughly and adequately prepare for meaningful participation in this proceeding, PSNH should be compelled to disclose to the Wood-Fired IPPs and all other parties unredacted copies of the materials referenced in PSNH’s responses to Commission staff questions Q-STAFF-011, Q-STAFF-015, Q-STAFF-017, Q-STAFF-018 and Q-STAFF-032 at the earliest possible time, subject to any appropriate restrictions on further disclosure as are deemed necessary under the circumstances.

II. PSNH’s Objections Based on the Claimed Irrelevancy and Inadmissibility of “Negotiation Documents”

12. PSNH objects to the Wood-Fired IPPs’ data requests 2-2, 2-3, 2-4, 2-5, 2-6g, 2-6h, 2-53 and 2-54 on the basis that responses to these requests “would not provide or lead to relevant or admissible evidence” because the requests seek “negotiation documents” rather than

focusing on the actual PPA as submitted to the Commission for approval.³ PSNH cites three prior Commission orders in support of this objection. *See Public Service Co. of New Hampshire*, 89 NH PUC 226 (2004); *City of Nashua*, Order No. 24,654 (August 7, 2006), *rehearing denied*, Order No. 24,671 (Sept. 22, 2006); *Verizon New England Inc., Orders on Motions to Compel Discovery Submitted by the Office of Consumer Advocate*, Order No. 24,767 (June 22, 2007). PSNH's objections on these grounds are not well-founded, for several reasons.

13. First, certain of these data requests are not limited to questions regarding the conduct of negotiations between PSNH and Laidlaw. For example, in data request 2.2 the Wood-Fired IPPs ask that PSNH "provide all documents PSNH examined in evaluating or determining to choose to negotiate *and execute*" the PPA. (emphasis supplied) To the extent this data request asks for documents examined by PSNH in evaluating whether to execute the PPA, it is not directed solely at "negotiation documents." Data request 2-3 is similar in scope and intent, but addresses the POA. Likewise, data request 2-6h asks whether PSNH or any of its consultants or any PSNH affiliate or its consultants evaluated, reviewed, analyzed, examined, or reported on any "drafts *or the final to be executed version* of the PPA." (emphasis supplied) PSNH's objections are thus overbroad with respect to these data requests and relevant evidence regarding the final form of the PPA is being withheld as a result of the overbreadth of PSNH's objections.

14. Second, under general rules of discovery, even information and documents that would be inadmissible at trial may be subject to pre-trial discovery "if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." N.H. Super. Ct. R. 35(b)(1). The Commission has stated that "[d]iscovery should be relevant to the proceeding

³ PSNH also objects to data request 2-4 on the grounds that "it is overly broad and unduly burdensome, and clearly intended to impair the orderly and prompt conduct of the proceedings." The Wood-Fired IPPs believe the scope and breadth of the question is reasonable and appropriate under the circumstances.

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). More recently, the Commission has reaffirmed 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). 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.

15. The Wood-Fired IPPs’ data requests 2-2, 2-3, 2-4, 2-5, 2-6g, 2-6h, 2-53 and 2-54 are intended to discover information and documents relevant to the Commission’s evaluation of the PPA and the POA under the “public interest” standard specified in RSA 362-F:9, II. For example, information considered and positions taken by PSNH and Laidlaw during the negotiation process would serve to clarify the relative values of the right of first refusal and purchase option granted to PSNH, the wood price adjustment clause in Section 6.1.2(a)(ii) of the PPA, the 20-year term of the PPA, and the projected future prices of energy, capacity and RECs. These values are of primary importance in evaluating the effect on ratepayers and other stakeholders of the proposed PPA, which would commit PSNH to purchase the net output of the Laidlaw power plant at fixed base prices over a period of twenty years. New Hampshire ratepayers should know what they are paying for, not just in the aggregate but on an itemized and unbundled basis, and the data requests are intended to discover these values which have not otherwise been disclosed either by PSNH or by Laidlaw.

16. Finally, this is not a case where the Wood-Fired IPPs have requested that PSNH provide a specific and detailed record of all contacts and negotiations between PSNH and Laidlaw; instead, most of the Wood-Fired IPPs' data requests to which PSNH has objected on this ground are more targeted, seeking copies of term sheets, letters of intent, drafts of the PPA and POA, information regarding specific offers made and positions taken during the negotiations and copies of materials exchanged by the parties during the negotiations. *Cf. Public Service Co. of New Hampshire*, Order No. 24,895 (September 17, 2008) (intervenor's motion to compel response to a data request asking PSNH to "provide in minute detail a record of its contacts and negotiations" with Lempster Wind was denied by the Commission as overly broad and intrusive). A similar data request has been issued to PSNH by the Commission staff in this docket. Data request STAFF 01, Q-STAFF-016 requested "copies of all offers or counter offers made by PSNH in the process of negotiating the pricing provisions in the proposed PPA." PSNH has objected to this staff data request on the same grounds as its objections to the Wood-Fired IPPs' data requests.

17. Because the information and documents sought to be discovered by the Wood-Fired IPPs' data requests 2-2, 2-3, 2-4, 2-5, 2-6g, 2-6h, 2-53 and 2-54 are relevant to this proceeding and are reasonably calculated to lead to the discovery of admissible evidence bearing on the "public interest" standard for approval of long-term contracts for renewable energy under RSA 362-F:9, II, PSNH should be compelled to provide complete and adequate responses to these data requests.

III. PSNH's Objections Based on Issues Claimed to be Outside the Scope of the Proceeding

18. PSNH objects to the Wood-Fired IPPs' data requests 2-9, 2-15, 2-19 and 2-71 on the grounds that these requests seek discovery of information regarding issues outside the scope of the docket. PSNH's objections are based on an overly narrow view of the scope of the instant

proceeding. As noted above, parties in Commission proceedings are entitled to discovery as to any information or documents that are relevant to the proceeding or are reasonably calculated to lead to the discovery of admissible evidence.

19. The scope of this proceeding is not defined in or limited by PSNH's petition for approval or the pre-filed testimony it has submitted. The proceeding seeks approval of the PPA and the POA under the "public interest" standard articulated in RSA 362-F:9, II, which requires the Commission to evaluate and balance a wide range of factors, including the extent to which multi-year renewable energy procurements are cost-effective, promote full and fair competition, result in a reasonable mix of resources, are conducted in a manner that is administratively efficient and promotes market-driven competitive innovations and solutions, promote economic development in New Hampshire, and provide environmental benefits for New Hampshire. RSA 362-F:9, II. As shown below, each of the Wood-Fired IPPs' data requests 2-9, 2-15, 2-19 and 2-71 seeks to discover information and documents that are relevant to the broad scope of inquiry required of the Commission in this proceeding.

20. The Wood-Fired IPPs' data request 2-9 asks that PSNH provide the name and address of all proposed biomass suppliers to the Laidlaw power plant and "identify any that are known to also be suppliers to Schiller Station Unit 5." The information requested is relevant to this proceeding because it concerns wood fuel procurement both at the Laidlaw plant and at Schiller Station Unit 5, which procurement procedures may affect the availability, source and price of wood fuel supplies at the two locations. At Schiller Station Unit 5, such factors would affect the price of wood fuel that serves as the reference of the adjustments required to be made under the wood price adjustment clause in Section 6.1.2(a)(ii) of the PPA. At the Laidlaw power plant, these factors affect the price of wood fuel in the local market, which would have an impact

on local economic conditions, including the availability and price of wood fuel supply used by the Wood-Fired IPPs in their existing power plants. Data request 2-9 is relevant to this proceeding and PSNH should be compelled to provide a complete and definitive response to this data request.

21. The Wood-Fired IPPs' data request 2-15 requests information regarding the participation, if any, of Schiller Station Unit 5 in the federal Biomass Crop Assistance Program ("BCAP"), the price effects of such BCAP participation or lack of participation, and whether the wood fuel reference price applicable to the PPA wood price adjustment clause can be adjusted to account for "wood fuel prices paid by PSNH at Schiller Unit 5 that are found to be imprudent or which do not take advantage of available federal or state wood fuel subsidy or discount programs such as BCAP." In its objection to this data request, PSNH states that this docket "is not an examination of Schiller 5 wood procurement practices." Yet these procurement practices will have a direct impact on the prices paid to Laidlaw under the proposed PPA – and the amounts sought to be recovered from ratepayers through PSNH's energy service rates – over the full 20-year term of the PPA. PSNH witness Richard C. Labrecque states that, by indexing the wood price adjustment to procurement practices at Schiller Station rather than to the "sub-optimal wood procurement conditions or procedures at the LBB site," the PPA provides important price protections. Labrecque (7/26/10) at 5. The Wood-Fired IPPs' data requests go directly to these claims. The relevancy of these issues in this proceeding cannot seriously be questioned; therefore, PSNH should be compelled to provide a complete and definitive response to data request 2-15.

22. The Wood-Fired IPPs' data request 2-19 requests documents, materials and other information regarding projections of customer migration or loss of demand for end-use sales in

New Hampshire by PSNH “for all years comprising the term of the PPA.” This data request is a companion to the Wood-Fired IPPs’ data request 2-18, which seeks information, analyses, studies, documents and other materials addressing the projected gap between energy and capacity requirements and resources depending upon varying forecasts of customer sales and migration, with specific reference to the pre-filed testimony of Terrance J. Large submitted by PSNH in support of its petition. Large (7/26/10) at 4-5. PSNH objects to data request 2-19 on the grounds that “it is outside the scope of this docket and more appropriately considered in Docket DE 10-160 [i.e., the Commission’s “Investigation into Effect of Customer Migration on Energy Service Rates”].” When considered in context, however, data request 2-19 seeks information relevant to the potential effects of customer migration on the energy service ratepayers ultimately responsible for amounts paid to Laidlaw under the PPA and the potential effects of the PPA itself on such customer migration. Data request 2-19 is relevant to this proceeding and PSNH should be compelled to provide a complete and definitive response to this data request.

23. The Wood-Fired IPPs’ data request 2-71 seeks discovery of the assumptions identified in PSNH’s forecasts of annual MWh sales used to determine the forecast for Class I New Hampshire RECs, and all work papers, evaluations and analyses and sensitivities analyses pertaining to said forecasts. PSNH has objected to this request on the basis that its “sales forecasting practices are not a subject of this proceeding.”⁴ Clearly, however, PSNH’s forecasts of future electricity sales, which will affect its demand for energy, capacity and Class I RECs to be met in whole or in part with purchases under the proposed PPA, are relevant in this proceeding to consider whether or not approval of the PPA and POA meets the “public interest”

⁴ PSNH also objects to data request 2-71 on the grounds that it is “overly broad and unduly burdensome, and clearly intended to impair the orderly and prompt conduct of the proceedings.” The Wood-Fired IPPs believe the scope and breadth of the data request is reasonable and appropriate under the circumstances.

standard and the other requirements for approval under RSA 362-F:9. Parties must have the opportunity to review the assumptions made, the calculations performed and the contingencies considered in developing such forecasts, in addition to the forecasts themselves, in order to examine and analyze the validity and reliability of such sales forecasts. Data request 2-71 therefore is relevant to this proceeding and PSNH should be compelled to provide a complete and definitive response to this data request.

IV. PSNH's Objections to Calculating the Effect of PPA Costs on the Yearly Bill of its 20 Largest Customers over the 20-Year PPA Term

24. The Wood-Fired IPPs' data request 2-41 asks PSNH to

Please calculate the difference that the over-market or under-market cost of the PPA will make on the yearly bill of each of the 20 largest customers in the GV general delivery class for each of the 20 years that the Laidlaw PPA is expected to be in effect, and provide the net present value of that over or under-market cost. Please account for the effects of customer migration. Please describe all assumptions made, and provide all work papers, projections, analyses, and documents relied upon. Please explain PSNH's choice of discount factor and reasons for rejecting others.

The Wood-Fired IPPs' data request 2-42 asks PSNH to perform the same calculations and to provide the same information, documents and materials with respect to the 20 largest customers in the LG general delivery rate class. PSNH objects to each of these two data requests on the grounds that the question "requires speculation, is vague, is overly broad, and requests calculations that are hypothetical and have not and cannot be performed." PSNH further asserts that it cannot predict the over-market cost, the underlying energy service rate, which customers will be the 20 largest in the applicable rate class, the rates of customer migration, etc. for each of the 20 years during which the PPA will be in effect.

25. The requested calculations would provide relevant and important information regarding the ratepayer impacts on PSNH's large customers, the very customers that may be the

most likely to migrate to competitive suppliers if their energy service rates increase substantially due to the PPA. It would be most useful to the Commission, its staff, the OCA and all intervenors in this proceeding to have such information available when evaluating whether or not the proposed PPA is in the “public interest.”

26. PSNH should be compelled to perform these calculations. The Commission has authority “to require discovery from utilities beyond that required in traditional legal proceedings.” *Re Eastern Utilities Assoc./Unitil Corp.*, DF 89-085, Order No. 19,768, 75 NH PUC 188, 192 (1990). The Commission has the authority to compel utilities to generate new information in response to data requests. *See Re Public Service Company of New Hampshire*, DR 87-151, Order No. 18,880, 72 NH PUC 502, 505 (1987); *Re Public Service Company of New Hampshire*, DF 84-200, Order No. 17,359, 69 NH PUC 690, 692-693 (1984). In determining whether to require the generation of new information, the Commission balances “the necessary effort by the [requestee], the relevance of the material, the potential of the requesting party to undertake the effort of preparing the requested information, and any other relevant criteria.” *Re Public Service Company of New Hampshire*, 72 NH PUC at 504.

27. The requested information is of obvious relevance to this proceeding. The effort required by PSNH appears to be reasonable under the circumstances, and PSNH presumably would make a number of reasonable assumptions as to costs of the PPA, the underlying energy service rate, which customers will be the 20 largest in the applicable rate class, the rates of customer migration and other relevant factors for each of the 20 years during which the PPA will be in effect. The Wood-Fired IPPs cannot perform these calculations because only PSNH has full access to the information and data necessary to prepare reasonable estimates of the PPA’s long-term rate effects on its largest commercial and industrial customers.

28. Accordingly, the Commission should order PSNH to perform the requested calculations and provide full and complete responses to the Wood-Fired IPPs' data requests 2-41 and 2-42.

V. PSNH's Other Objections to the Wood-Fired IPPs' Data Requests

29. The Wood-Fired IPPs' data request 2-6e asks whether PSNH or any of its consultants or any PSNH affiliate or its consultants evaluated, reviewed, analyzed, examined, or reported on (or obtained for another person or entity) the following issue:

Whether Schiller Station Unit 5 biomass can comply with the proposed biomass eligibility requirements for efficiency and fuel harvesting practices as set forth in the draft proposed Massachusetts RPS Class I Regulations (225 CMR 14.00) released on or about September 17, 2010 prepared by the Massachusetts Department of Energy Resources.

30. PSNH objects to the relevancy of this question on the grounds that the PPA was executed prior to the issuance of the draft proposed Massachusetts regulation; thus this draft proposed regulation "could not have been considered when the PPA was agreed to."

31. First, the question merely calls for either an affirmative or a negative response. It does not request the disclosure of any documents or materials, nor does it request that PSNH perform or conduct any studies or analyses which have not already been performed or conducted.

32. Second, the question is relevant to this proceeding, regardless of when the draft proposed Massachusetts regulation was issued. The draft proposed regulation would impose stringent fuel harvesting and efficiency requirements for biomass power plants to remain eligible for qualification as renewable resources under the Massachusetts renewable portfolio standard ("RPS"). See 225 CMR 14.00, *Renewable Energy Portfolio Standard – Class I* (draft proposed

amendments issued on September 17, 2010).⁵ Such new requirements potentially would increase the costs of wood fuel procurement for Schiller Station Unit 5, and these higher costs would increase the amounts paid to Laidlaw under the PPA through operation of the wood price adjustment clause in Section 6.1.2(a)(ii) of the PPA. The new requirements also might reduce the number of RECs produced by Schiller Station Unit 5 that are eligible for the Massachusetts RPS, thereby increasing the number of RECs that PSNH may have available for compliance with the New Hampshire RPS Class I requirements and rendering superfluous some or all of the RECs purchased under the PPA.

33. In view of the high relevance of these issues in this proceeding, PSNH should be compelled to provide a complete and definitive response to data request 2-6e.

34. The Wood-Fired IPPs' data request 2-11 asks PSNH to respond to the following question:

Is it PSNH's position that once the NHPUC approves the PPA, the NHPUC could not subsequently order a revision to the PPA inclusive of its pricing terms, or order the termination of the PPA? If so, please provide the reference to the PPA provisions that so provide and the citation to the authority of the NHPUC to issue such an approval under state law.

35. PSNH objects to this question on the grounds that "it seeks a legal conclusion and not facts subject to discovery." The purpose of the question, however, is not to elicit a legal opinion as to the construction of PPA terms or the regulatory effect of PPA approval, but to discover PSNH's intent in agreeing to such PPA terms and its intent and understanding regarding the effects of such approval on future regulatory authority.

⁵ These draft proposed regulations of the Massachusetts Department of Energy Resources may be found at: <http://www.mass.gov/Eoeea/docs/doer/renewables/biomass/225%20CMR%2014.00%20091710%20to%20SoS.PDF>

36. Data request 2-11 is relevant to the proceeding and does not seek disclosure of privileged information. Therefore, PSNH should be compelled to provide a complete and definitive response to data request 2-11.

37. The Wood-Fired IPPs' data request 2-10 asks PSNH to provide a list of all contracts, or other forms of arrangement entered into by PSNH for a term in excess of three years for the purchase of energy, capacity (whether or not such energy or capacity is renewable generation) or RECs, or any combination of the foregoing, including the name of the counterparty, the term, products to be sold, and pricing terms of the contract or other form of arrangement. The data request also asks PSNH to provide a copy of each such contact or other form of arrangement.

38. PSNH has objected to this data request on the grounds that (1) it is overly broad and unduly burdensome, (2) it is clearly intended to impair the orderly and prompt conduct of the proceedings, (3) the documents requested would not provide or lead to relevant or admissible evidence, and (4) most if not all of any responsive documents would be confidential and the subject of protective orders issued by the Commission.

39. Data request 2-10 seeks information and documents relevant to this proceeding because the source and cost of other long-term energy, capacity and REC supplies bears on the need for the energy, capacity and RECs proposed to be purchased under the PPA and the relative cost-effectiveness of the PPA as a source of such requirements. Given the three-year contract term threshold stated in the question, the Wood-Fired IPPs believe there is a limited number of contracts required to be produced in response to the question. If the terms of these contracts, including pricing, are properly considered confidential, the Wood-Fired IPPs would not object to a protective order, reasonable in scope and effect, which granted them the right to review and use

the confidential information subject to execution of an appropriate confidentiality agreement, consistent with N.H. Code Admin. Rules PUC 203.08(j), which authorizes the Commission to “include in its protective order a directive that all parties receiving the material shall also treat it as confidential.”

40. Accordingly, PSNH should be compelled to provide full and complete responses to the Wood-Fired IPPs’ data requests 2-10.

41. The Wood-Fired IPPs’ data request 2-16b references the pre-filed testimony of Terrance J. Large stating that the Laidlaw power plant will utilize approximately 750,000 tons of biomass fuel annually when operating at full capacity, and asks whether PSNH would accept a limitation on the amount of biomass material that is subject to the wood price adjustment in the PPA Section 6.1.2(a)(ii) to this amount, if not, why not, and if PSNH would accept a different number as a limitation, that this number be stated and the rationale for the different number explained.

42. PSNH objects to this question on the grounds that “it is hypothetical and speculative in nature and not likely to lead to the discovery of evidence admissible in this proceeding, which is to review the PPA as submitted.”

43. PSNH misstates the Commission’s review authority, as RSA 362-F:9, I specifically allows the Commission to place conditions on its authorization. The question is relevant to this proceeding because it seeks to discover what alternative provisions might have been or might be included in the PPA to reduce the risk that excess fuel consumption at the Laidlaw power plant will raise the price of biomass fuel throughout New Hampshire, including the price paid at Schiller Station that serves as the reference price for the wood price adjustment under PPA Section 6.1.2(a)(ii). It is unclear whether the conversion factor included in this price

adjustment mechanism accounts for projected and potential excess fuel consumption at the Laidlaw power plant and, if it does not, how ratepayers may be better protected from the higher PPA costs resulting from the failure to do so.

44. Accordingly, PSNH should be compelled to provide full and complete responses to the Wood-Fired IPPs' data requests 2-16b.

CERTIFICATION AND CONCLUSION

45. 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.

46. 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.

47. 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:

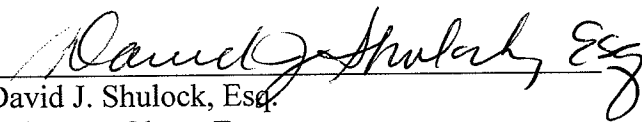
- A. Order PSNH to provide full and complete responses to all of the Wood-Fired IPPs' data requests referenced in this motion; and
- B. Grant such other and further relief as the Commission deems just.

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

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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: October 29, 2010

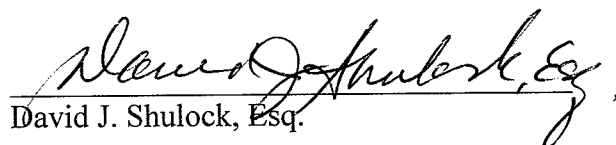

David J. Shulock, Esq.

EXHIBIT A

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

Data Request IPP-01

**Dated: 10/13/2010
Q-IPP-001
Page 1 of 1**

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

Question:

Please provide a copy of all PSNH responses to the data request of all parties, commission staff, and the Office of Consumer Advocate in this docket, said requests being incorporated herein by reference as if fully set forth herein.

Response:

PSNH has provided and will provide copies of all non-confidential responses as part of our normal practice. Confidential responses are not being provided pursuant to Rule Puc 203.08.

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

Data Request IPP-01

**Dated: 10/13/2010
Q-IPP-002
Page 1 of 1**

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

Question:

Please provide unredacted copies of the testimony and exhibits of Gary A. Long and Richard C. Labrecque, including but not limited to, the Power Purchase Agreement and form of purchase option agreement contained in Attachment GL-1.

Response:

PSNH will comply as necessary pursuant to Rule Puc 203.08.

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

Data Request IPP-02

**Dated: 10/18/2010
Q-IPP-001
Page 1 of 1**

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

Question:

Please provide all documents in the possession or under the control of PSNH regarding the fact that "Seller" under the Power Purchase Agreement with Laidlaw ("PPA") does not or will not own the "Facility" and "Facility Site" as those terms are defined in the PPA's Appendix B.

Response:

PSNH objects to this question as it is not relevant or likely to lead to the discovery of admissible evidence on the issues to be decided by the Commission in this proceeding.

Notwithstanding this object, PSNH provides the following response:

PSNH has no such documents.

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

Data Request IPP-02

Dated: 10/18/2010

Q-IPP-002

Page 1 of 1

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

Question:

Please provide all documents PSNH examined in evaluating or determining to choose to negotiate and execute the power sales arrangement with Seller.

Response:

PSNH objects to this question as the documents requested would not provide or lead to relevant or admissible evidence, because the matter before the Commission relates to the actual agreement reached between PSNH and Laidlaw as opposed to the negotiations that preceded it.

This question asks for negotiation documents. The Commission has had several recent opportunities to rule upon similar requests for negotiation documents. On each occasion, the Commission has rejected such requests.

In *Public Service Co. of New Hampshire*, 89 NH PUC 226 (2004), the Commission refused to compel the production of documents related to negotiations between an electric utility and the contractor it selected to build a wood yard (in connection with plans to convert a coal-fired boiler to one capable of burning wood). The Commission ruled that, as to such confidential and competitively sensitive negotiations, and "[i]n contrast to the results of any such negotiations, we can conceive of no circumstances in which we would deem the information [to be] admissible."

Similarly, in *City of Nashua*, Order No. 24,654 (August 7, 2006), *reh'g denied*, Order No. 24,671 (Sept. 22, 2006), the Commission refused to compel the City of Nashua to produce information concerning negotiations leading up to an agreement with an outside contractor for the operation of the water utility system the City is seeking to municipalize pursuant to RSA 38. In that decision, the Commission noted that the standard for allowing discovery in Commission proceedings is a liberal one but is still subject to "principles of reasonableness and common sense." Order No. 24,654, slip op. at 3. The Commission observed that, "the facts that drive the Commission's ultimate decision relate to the costs themselves, as fixed by the contracts in question, regardless of how the contracting parties may have regarded them during contract negotiations and regardless of whether the assumptions that drove such negotiations are at variance with public statements." *Id.* at 4.

In *Verizon New England Inc.*, *Order on Motions to Compel Discovery Submitted by the Office of Consumer Advocate*, Order No. 74,767, June 22, 2007, the Commission noted it is an established principle that the Commission will not compel the discovery of information simply to shed light on the thinking of parties that enter into contracts subject to our review. The rule applied in these situations is that parties are entitled to obtain information in discovery if the information is "relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence." *Order No. 24,654* at 3. But, because the matter before the Commission relates to the actual agreement of the joint petitioners as opposed to the negotiations that preceded it, "[w]e do not perceive circumstances in which information about the negotiations . . . would become part of the record in this proceeding." *Id.*

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

Data Request IPP-02

**Dated: 10/18/2010
Q-IPP-003**

Page 1 of 1

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

Question:

Please provide all documents PSNH examined in evaluating or determining to choose to negotiate and execute an option agreement with PJPD Holdings, LLC.

Response:

See the response to Q-IPP-02-002.

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

Data Request IPP-02

Dated: 10/18/2010

Q-IPP-004

Page 1 of 1

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

Question:

Please provide all documents in PSNH's possession or under its control pertaining to PJPD Holdings, LLC, Seller, and or NewCo Energy, Inc. ("NEWCO") , or any affiliate of any of the foregoing or any member, shareholder or employee of the foregoing pertaining to any of the Facility, Facility Site, the negotiation of the PPA and the PPA and the Option Agreement.

Response:

PSNH objects to this question as it is overly broad and unduly burdensome, and clearly intended to impair the orderly and prompt conduct of the proceedings. PSNH further objects to this question as the documents requested would not provide or lead to relevant or admissible evidence, because the matter before the Commission relates to the actual agreement reached between PSNH and Laidlaw as opposed to the negotiations that preceded it. (See the response to Q-IPP-02-002).

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

Data Request IPP-02

**Dated: 10/18/2010
Q-IPP-005**

Page 1 of 1

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

Question:

Please provide all drafts of the PPA inclusive of those marked-up or commented upon by any PSNH or PSNH affiliate or employee or consultant of either.

Response:

See the response to Q-IPP-02-002.

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

Data Request IPP-02

Dated: 10/18/2010

Q-IPP-006

Page 1 of 2

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

Question:

Did PSNH or any of its consultants or any PSNH affiliate or its consultants evaluate, review, analyze, examine, or report on any of the following or obtain any of the following for another person or entity:

- a. The number of tons of Biomass Fuel (as defined in the PPA) to be combusted annually at the Facility.
- b. Options or opportunities for, or methods to acquire Class I NH RECs over the term of the PPA or any set of lesser years than the term from existing or proposed renewable generators (whether located in New Hampshire or otherwise) other than the Facility.
- c. The projection or estimate of Class I NH RECs over the term of the PPA or any set of lesser years available from renewable generators other than the Facility.
- d. The use of Schiller Station Unit 5 biomass to supply Class I NH RECs.
- e. Whether Schiller Station Unit 5 biomass can comply with the proposed biomass eligibility requirements for efficiency and fuel harvesting practices as set forth in the draft proposed Massachusetts RPS Class I Regulations (225 CMR 14.00) released on or about September 17, 2010 prepared by the Massachusetts Department of Energy Resources.
- f. Estimated or forecast of the price of Massachusetts, Connecticut and Rhode Island Class I RECs over the term of the PPA or any set of lesser years.
- g. Executed and or draft term sheets, letters of intent, or similar documents pertaining to the PPA with Laidlaw or the Option Agreement with PJPD Holdings, LLC or any affiliate of either.
- h. Any drafts of or the final to be executed version of the PPA.
- i. The energy prices used to determine the PPA's over-market energy payment in each year of the term.
- j. The Class I NH REC forecast used in determining the PPA's REC price.
- k. Federal tax credits and grants (e.g., new market tax credits) obtained or proposed to be obtained for use in Facility financing, development or operation and the effect on Facility capital needs and revenue.
- l. Biomass Fuel increases or decreases under PPA Section 6.1.2(a) and the increases or decreases in the PPA energy price resulting therefrom.

Response:

- a through d. Yes

- e. PSNH objects to this question as it is not relevant nor likely to lead to the discovery of admissible evidence on the issues to be decided by the Commission in this proceeding. The Laidlaw PPA was executed on June 8, 2008, more than two months prior to the "draft proposed" Massachusetts regulation. Thus, they could not have been considered when the PPA was agreed to.
- f. Yes
- g. See the response to Q-IPP-02-002.
- h. See the response to Q-IPP-02-002.
- i. through j. Yes
- k. No
- l. Yes

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

Data Request IPP-02

**Dated: 10/18/2010
Q-IPP-008**

Page 1 of 1

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

Question:

To the extent in the possession or under the control of PSNH or its affiliates please provide copies of all biomass fuel contracts whether draft, proposed or final for the Facility.

Response:

PSNH objects to this question as it is not relevant or likely to lead to the discovery of admissible evidence on the issues to be decided by the Commission in this proceeding.

Notwithstanding this objection, PSNH provides the following response:

PSNH has no responsive documents.

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

Data Request IPP-02

**Dated: 10/18/2010
Q-IPP-009
Page 1 of 1**

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

Question:

To the extent, in the possession of, or under the control of PSNH or its affiliates please provide the name and address of all proposed biomass suppliers to the Facility and identify any that are known to also be suppliers to Schiller Station Unit 5.

Response:

PSNH objects to this question as it relates to a matter that was considered by the Site Evaluation Committee and is outside the scope of this PUC proceeding. Notwithstanding this objection, PSNH states: PSNH does not have in its possession any materials related to Laidlaw's biomass fuel suppliers.

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

Data Request IPP-02

**Dated: 10/18/2010
Q-IPP-010**

Page 1 of 1

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

Question:

Please provide a list of all contracts, or other form of arrangement entered into by PSNH for a term in excess of 3 years for the purchase of energy, capacity (whether or not such energy or capacity is renewable generation) or RECs or any combination of the foregoing. In said list please identify the following for each such contract or arrangement:

- a. The name of the contracting counterparty.
- b. The term of the contract or arrangement.
- c. The "products" and amount of products to be sold under the contract or arrangement and whether or not said products are renewable generation under any New England renewable portfolio standard law, and if so, identify which one or ones.
- d. The pricing terms for each product of each contract or arrangement.
- e. Provide a copy of each such contract or other form of arrangement.

Response:

PSNH objects to this question as it is overly broad and unduly burdensome, and clearly intended to impair the orderly and prompt conduct of the proceedings. PSNH further objects to this question as the documents requested would not provide or lead to relevant or admissible evidence. Moreover, most if not all of any responsive documents would be confidential and the subject of protective orders issued by the Commission.

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

Data Request IPP-02

**Dated: 10/18/2010
Q-IPP-011
Page 1 of 1**

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

Question:

Is it PSNH's position that once the NHPUC approves the PPA, the NHPUC could not subsequently order a revision to the PPA inclusive of its pricing terms, or order the termination of the PPA? If so, please provide the reference to the PPA provisions that so provide and the citation to the authority of the NHPUC to issue such an approval under state law.

Response:

PSNH objects to this question as it seeks a legal conclusion and not facts subject to discovery.

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

Data Request IPP-02

**Dated: 10/18/2010
Q-IPP-015**

Page 1 of 1

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

Question:

Regarding Schiller Station Unit 5

- a. Regarding PPA Article 6.1.2 (a)(ii), please state whether PSNH's Schiller Station Unit 5 biomass participated in the Biomass Crop Assistance Program ("BCAP"), and if so state or calculate the impact of such participation on the quarterly and monthly average price of wood in \$/ton provided in response to staff Q. 1-22.
- b. If Schiller Unit 5 did not participate in the BCAP program, please explain why and provide PSNH's calculation and analysis of the increased amount paid for biomass fuel at Schiller Unit 5 in the absence of BCAP participation on the prices provided in response to Staff Q. 1-22.
- c. Please explain, with reference to provisions of the PPA, whether PSNH can adjust the Schiller Unit 5 biomass "actual average \$/ton biomass fuel cost" under Section 6.1.2 (a)(ii) for wood fuel prices paid by PSNH at Schiller Unit 5 that are found to be imprudent or which do not take advantage of available federal or state wood fuel subsidy or discount programs such as BCAP.

Response:

PSNH objects to this question as it is not relevant or likely to lead to the discovery of admissible evidence on the issues to be decided by the Commission in this proceeding. This docket is not an examination of Schiller 5 wood procurement practices.

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

Data Request IPP-02

**Dated: 10/18/2010
Q-IPP-019**

Page 1 of 1

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

Question:

To the extent not provided in response to the previous data request please provide all documents evaluations, testimonies, reports, evaluations and analyses prepared by and on behalf of PSNH or its affiliates or in their possession regarding "customer migration" or the loss of demand for end-use sales in New Hampshire by PSNH and the amount and timing of any subsequent return of or increases in said demand for all years comprising the term of the PPA.

Response:

PSNH objects to this question on the basis that it is outside of the scope of this docket and more appropriately considered in Docket DE 10-160.

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

Data Request IPP-02

**Dated: 10/18/2010
Q-IPP-041**

Page 1 of 1

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

Question:

Please calculate the difference that the over-market or under-market cost of the PPA will make on the yearly bill of each of the 20 largest customers in the GV general delivery class for each of the 20 years that the Laidlaw PPA is expected to be in effect, and provide the net present value of that over or under-market cost. Please account for the effects of customer migration. Please describe all assumptions made, and provide all work papers, projections, analyses, and documents relied upon. Please explain PSNH's choice of discount factor and reasons for rejecting others.

Response:

PSNH objects to this question as it requires speculation, is vague, is overly broad, and requests calculations that are hypothetical and have not and cannot be performed. PSNH cannot predict the over-market cost, the under-market cost, the underlying energy service rate, which customers will be the 20 largest in the GV class, the rates of customer migration, etc. for each of the 20 years of the Laidlaw PPA's effectiveness.

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

Data Request IPP-02

**Dated: 10/18/2010
Q-IPP-042**

Page 1 of 1

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

Question:

Please calculate the difference that the over-market or under-market cost of the PPA will make on the yearly bill of each of the 20 largest customers in the LG general delivery rate class for each of the 20 years that the Laidlaw PPA is expected to be in effect, and provide the net present value of that over-or under-market cost. Please account for the effects of customer migration. Please describe all assumptions made, and provide all work papers, projections, analyses, and documents, etc. relied upon. Please explain PSNH's choice of discount factor and reasons for rejecting others.

Response:

See the response to Q-IPP-02-041.

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

Question:

Please provide a complete and detailed description of any and all specific price points in the negotiations and the basis for the changes in the proposed prices during the negotiations. If any price and non-price terms of the PPA were bundled by either party during the negotiations, please state which price and non-price terms were bundled together and identify the party requesting or offering same.

Response:

PSNH objects to this question as the documents requested would not provide or lead to relevant or admissible evidence, because the matter before the Commission relates to the actual agreement reached between PSNH and Laidlaw as opposed to the negotiations that preceded it.

This question asks for negotiation documents. The Commission has had several recent opportunities to rule upon similar requests for negotiation documents. On each occasion, the Commission has rejected such requests.

In *Public Service Co. of New Hampshire*, 89 NH PUC 226 (2004), the Commission refused to compel the production of documents related to negotiations between an electric utility and the contractor it selected to build a wood yard (in connection with plans to convert a coal-fired boiler to one capable of burning wood). The Commission ruled that, as to such confidential and competitively sensitive negotiations, and "[i]n contrast to the results of any such negotiations, we can conceive of no circumstances in which we would deem the information [to be] admissible."

Similarly, in *City of Nashua*, Order No. 24,654 (August 7, 2006), *reh'g denied*, Order No. 24,671 (Sept. 22, 2006), the Commission refused to compel the City of Nashua to produce information concerning negotiations leading up to an agreement with an outside contractor for the operation of the water utility system the City is seeking to municipalize pursuant to RSA 38. In that decision, the Commission noted that the standard for allowing discovery in Commission proceedings is a liberal one but is still subject to "principles of reasonableness and common sense." Order No. 24,654, slip op. at 3. The Commission observed that, "the facts that drive the Commission's ultimate decision relate to the costs themselves, as fixed by the contracts in question, regardless of how the contracting parties may have regarded them during contract negotiations and regardless of whether the assumptions that drove such negotiations are at variance with public statements." *Id.* at 4.

In *Verizon New England Inc.*, *Order on Motions to Compel Discovery Submitted by the Office of Consumer Advocate*, Order No. 74,767, June 22, 2007, the Commission noted it is an established principle that the Commission will not compel the discovery of information simply to shed light on the thinking of parties that enter into contracts subject to our review. The rule applied in these situations is that parties are entitled to obtain information in discovery if the information is "relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence." *Order No. 24,654* at 3. But, because the matter before the Commission relates to the actual agreement of the joint petitioners as opposed to the negotiations that preceded it, "[w]e do not perceive circumstances in which information about the negotiations . . . would become part of the record in this proceeding." *Id.*

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

Data Request IPP-02

Dated: 10/18/2010
Q-IPP-054
Page 1 of 1

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

Question:

Please provide all materials exchanged between PSNH and Laidlaw in relation to the negotiation process. Include in this response all evaluations, studies, reports, correspondence, e-mails, notes, presentation materials, work papers, letters of intent, term sheets, draft contracts and the like.

Response:

PSNH objects to this question as the documents requested would not provide or lead to relevant or admissible evidence, because the matter before the Commission relates to the actual agreement reached between PSNH and Laidlaw as opposed to the negotiations that preceded it.

This question asks for negotiation documents. The Commission has had several recent opportunities to rule upon similar requests for negotiation documents. On each occasion, the Commission has rejected such requests.

In *Public Service Co. of New Hampshire*, 89 NH PUC 226 (2004), the Commission refused to compel the production of documents related to negotiations between an electric utility and the contractor it selected to build a wood yard (in connection with plans to convert a coal-fired boiler to one capable of burning wood). The Commission ruled that, as to such confidential and competitively sensitive negotiations, and "[i]n contrast to the results of any such negotiations, we can conceive of no circumstances in which we would deem the information [to be] admissible."

Similarly, in *City of Nashua*, Order No. 24,654 (August 7, 2006), *reh'g denied*, Order No. 24,671 (Sept. 22, 2006), the Commission refused to compel the City of Nashua to produce information concerning negotiations leading up to an agreement with an outside contractor for the operation of the water utility system the City is seeking to municipalize pursuant to RSA 38. In that decision, the Commission noted that the standard for allowing discovery in Commission proceedings is a liberal one but is still subject to "principles of reasonableness and common sense." Order No. 24,654, slip op. at 3. The Commission observed that, "the facts that drive the Commission's ultimate decision relate to the costs themselves, as fixed by the contracts in question, regardless of how the contracting parties may have regarded them during contract negotiations and regardless of whether the assumptions that drove such negotiations are at variance with public statements." *Id.* at 4.

In *Verizon New England Inc.*, *Order on Motions to Compel Discovery Submitted by the Office of Consumer Advocate*, Order No. 74,767, June 22, 2007, the Commission noted it is an established principle that the Commission will not compel the discovery of information simply to shed light on the thinking of parties that enter into contracts subject to our review. The rule applied in these situations is that parties are entitled to obtain information in discovery if the information is "relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence." *Order No. 24,654* at 3. But, because the matter before the Commission relates to the actual agreement of the joint petitioners as opposed to the negotiations that preceded it, "[w]e do not perceive circumstances in which information about the negotiations . . . would become part of the record in this proceeding." *Id.*

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

Data Request IPP-02

**Dated: 10/18/2010
Q-IPP-071**

Page 1 of 1

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

Question:

Regarding Q2-20

- a. Please provide forecasts of annual MWh sales used to determine the forecast for Class I NH RECs noted in Q. 2-20.
- b. Please identify all assumptions in producing the forecast in (a) above.
- c. Please provide all work papers, evaluations and analyses and sensitivities analyses pertaining to said forecasts.

Response:

- a. The response to Q-IPP-02-020 includes the requested MWh sales information.
- b. through c. The questions are seeking "all assumptions" and "all work papers" related to the PSNH's sales forecast. PSNH's sales forecasting practices are not a subject of this proceeding. PSNH objects to these questions as they are overly broad and unduly burdensome, and clearly intended to impair the orderly and prompt conduct of the proceedings. PSNH further objects to this question as the documents requested would not provide or lead to relevant or admissible evidence.

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

Data Request STAFF-01

Dated: 10/08/2010
Q-STAFF-011
Page 1 of 39

Witness: Terrance J. Large
Request from: New Hampshire Public Utilities Commission Staff

Question:

Please describe all quantitative assessments or analyses performed by or for PSNH to determine whether the terms of the proposed PPA are in the public interest. Provide all calculations, workpapers, and supporting documentation.

Response:

Pursuant to Rule Puc 203.08(d), PSNH has a good faith basis for seeking confidential treatment of the attachments to this response, and, intends to submit a motion for confidential treatment regarding such documents at or before the commencement of the hearing in this proceeding.

PSNH notes that not all elements of the "public interest" are quantifiable. The attached (below) are a set of documents related to the economics of the contract, which is only one aspect that should be considered in determining if the public interest standard has been met. In addition to the information contained in the following attachments, the direct testimony of Dr. Lisa Shapiro should also be considered as responsive to this question.

The attachments are described below.

Attachment 1 compares the total costs of the PPA (under three capacity factor scenarios) to an estimate of the avoided market costs (under a single scenario) and computes the incremental impact on the Default Energy Service rate in 2014.

Attachment 2 is a table and chart that compares the prices under the PPA to three market price scenarios (base, low, high).

Attachment 3 is an analysis of the economics of the PPA and the PSNH Purchase Option given a "Base Case" forecast for energy, capacity and RECs.

Attachment 4 is a repeat of the Base Case analysis given a "Low Energy" market scenario (energy market prices escalate at 0.5% in Years 18 - 40 vs. the Base Case 2.5% escalator).

Attachment 5 is a repeat of the Base Case analysis given a "Low REC" market scenario (REC market is 10% of ACP in Years 21 - 40 vs. 50% in the Base Case).

Attachment 6 is a repeat of the Base Case analysis given a "Low Wood" fuel price scenario (wood prices escalate at 0.5% during Years 1 - 40 vs. the Base Case 2.5% escalator).

Attachment 7 is a repeat of the Base Case analysis with a revised assumption about the Laidlaw lease payments (\$17 million per year during Years 1 -20 vs. \$20 million per year in the Base Case).

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

Data Request STAFF-01

**Dated: 10/08/2010
Q-STAFF-015
Page 1 of 9**

**Witness: Terrance J. Large
Request from: New Hampshire Public Utilities Commission Staff**

Question:

Did PSNH or anyone working on its behalf estimate the IRR for the Laidlaw biomass project under the terms of any pricing schedule that was discussed, offered or proposed during negotiation of the PPA? If the answer is yes, please provide all such estimates along with the calculations, workpapers, assumptions and supporting documentation.

Response:

Pursuant to Rule Puc 203.08(d), PSNH has a good faith basis for seeking confidential treatment of the attachment to this response, and, intends to submit a motion for confidential treatment regarding such document at or before the commencement of the hearing in this proceeding.

The attached spreadsheet contains an analysis performed in July-2008 to estimate the IRR using internal assumptions available during the early stages of the Laidlaw PPA development. An alternate pricing scenario was also developed which ultimately became what was presented in the final PPA.

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

Data Request STAFF-01

**Dated: 10/08/2010
Q-STAFF-017
Page 1 of 22**

**Witness: Terrance J. Large
Request from: New Hampshire Public Utilities Commission Staff**

Question:

Please provide each and every offer, bid or proposal made by a renewable energy developer to sell renewable energy certificates, energy, or capacity to PSNH which was received after negotiations with Laidlaw began.

Response:

Pursuant to Rule Puc 203.08(d), PSNH has a good faith basis for seeking confidential treatment of the attachments to this response, and, intends to submit a motion for confidential treatment regarding such documents at or before the commencement of the hearing in this proceeding.

See the attached proposals.

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

Data Request STAFF-01

Dated: 10/08/2010
Q-STAFF-018
Page 1 of 41

Witness: Richard C. Labrecque
Request from: New Hampshire Public Utilities Commission Staff

Question:

Has PSNH issued a competitive solicitation to purchase renewable energy certificates, energy, or capacity from renewable energy developers since negotiations with Laidlaw began? If the answer is yes, please provide copies of the solicitations, the list of potential suppliers that received each solicitation, the responses to each solicitation, and the identity of the winning bidder for each solicitation.

Response:

Yes, PSNH has issued two solicitations to purchase renewable energy certificates from renewable energy developers since negotiations with Laidlaw began.

Solicitation 1:

On May 7, 2010 PSNH issued a solicitation to purchase 2010 Vintage Year Class IV NH RECs. Following is a copy of the solicitation, list of potential suppliers that received each solicitation. PSNH did not receive any bids on this solicitation.

"Public Service Company of New Hampshire (PSNH) is pleased to announce the issuance of a Request for Proposals ("RFP") soliciting offers to supply 2009 Class IV Renewable Energy Certificates ("RECs") that have been approved by the New Hampshire Public Utilities Commission.

Bids are due no later than:
12 pm EPT on Friday, May 14, 2010.
E-mail: bradwcl@nu.com
Attn: Christie Bradway
Must use enclosed bid form.

Solicitation 2:

On September 15, 2010 PSNH issued a solicitation to purchase 2010 and 2011 Vintage Year Class III and IV NH RECs. Following is a copy of the solicitation, list of potential suppliers that received each solicitation.

"Public Service Company of New Hampshire (PSNH) is pleased to announce the issuance of a Request for Proposals ("RFP") soliciting offers to supply 2010 and 2011 NH Class III and IV Renewable Energy Certificates ("RECs") that have been approved by the New Hampshire Public Utilities Commission."

Bids are due no later than:
12 pm EPT on Wednesday, October 6, 2010.
E-mail: bradwcl@nu.com
Attn: Christie Bradway
Must use enclosed bid form.

Bids were due October 6, 2010.

The bids received and the winning bidder(s) are provided in Attachment 7.

Pursuant to Rule Puc 203.08(d), PSNH has a good faith basis for seeking confidential treatment of the contents of Attachment 7, and, intends to submit a motion for confidential treatment regarding such documents at or before the commencement of the hearing in this proceeding.

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

Data Request STAFF-01

Dated: 10/08/2010
Q-STAFF-032
Page 1 of 9

Witness: Richard C. Labrecque
Request from: New Hampshire Public Utilities Commission Staff

Question:

Ref. Labrecque Testimony, page 3. Regarding NH RSA Chapter 362-F, identify all other long-term renewable resource options that PSNH considered for meeting its New Hampshire Class I REC obligations. Provide all evaluations, studies, reports, spreadsheets, correspondence, notes, presentation materials, and work papers related to these renewable resource options.

Response:

Pursuant to Rule Puc 203.08(d), PSNH has a good faith basis for seeking confidential treatment of the attachments to this response, and, intends to submit a motion for confidential treatment regarding such documents at or before the commencement of the hearing in this proceeding.

As is more fully detailed in Docket DE 09-067, PSNH received proposals from both Clean Power Development, LLC and Concord Steam Corporation in July 2009, several months after negotiations with Laidlaw were in progress. These proposals are attached to the response to Q-STAFF-017.

Attachment 1 to this response is a comparison of the two proposals (CPD, CSC) to the Laidlaw PPA using the forward market prices provided in response to Q-STAFF-003.
Attachment 2 is an additional comparison of the three proposals.

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Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:**
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- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.**
- c) Serve a written copy on each person on the service list not able to receive electronic mail.**