

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

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

DE 10-195

MOTION TO CONTINUE

NOW COMES Concord Steam Corporation, Intervenor in the above entitled Docket and moves the Commission to continue the Procedural Schedule established in Order No. 25,158. In support of the Motion, Concord Steam says as follows:

1. In Order No. 25,158 the Commission, on Motion for Expedited Consideration, filed by Laidlaw Berlin BioPower, LLC (“Laidlaw”) approved an expedited procedural schedule for this Docket.
2. Expedited treatment was sought by Laidlaw to enable it to obtain the benefit of certain tax credits available to the project. (See Motion for Expedited Consideration, Paragraphs 8, 9, 10 and 11; Transcript, September 29, 2010 pages 19-30.)
3. Following the Commission’s approval of the expedited procedural schedule as requested by it and following its discovery responses to Staff, Laidlaw filed notice of its withdrawal from further participation in the Docket in an attempt to avoid discovery from Concord Steam and other Intervenors.
4. In Order No. 25,158, the Commission also denied, in part, a Motion for Confidential Treatment filed by Public Service Company of New Hampshire (“PSNH”). The Commission directed PSNH to “promptly provide” unredacted

copies of the “PPA as well as Mr. Labrecque’s testimony and Exhibits” to the parties to the proceeding and to file the same with the Commission.

5. Instead of immediately seeking rehearing of the Order on its Motion for Confidential Treatment, PSNH filed a letter with the Commission on October 19, 2010 stating it would not submit the information at issue under the terms of Order No 25,158 and that it would consult with Laidlaw to determine what course of action PSNH should take. PSNH also invoked the protections of NH Admin. Rule 203.08 (i).
6. On October 21, 2010, Concord Steam and the wood-fired IPP’s filed a joint Motion to Continue the Procedural Schedule, pointing out that PSNH’s actions had enabled it to delay disclosure of information central to their meaningful participation and noting that under the expedited procedural schedule they would have to prepare discovery and submit testimony without the pricing terms of the PPA, which they argued would be a denial of due process.
7. On October 22, 2010, PSNH filed its Motion for Rehearing of the Commission’s denial of its Motion for Confidential Treatment.
8. In a Secretarial Letter dated October 27, 2010, the Commission extended the deadline for Data Requests from all parties and Staff from November 1, 2010 with Responses due no later than November 9, 2010 but did not otherwise suspend or continue the procedural schedule. The Commission further indicated it would rule on the PSNH Motion for Rehearing once timely responses had been received and that if it required an unredacted version of the PPA to be distributed to the parties it would authorize additional discovery time.

9. The Commission has not yet ruled on the Motion for Rehearing.
10. Pursuant to the Procedural Schedule, Staff/Intervenor Testimony is due on November 23, 2010.
11. Without the pricing terms of the PPA, Concord Steam has been unable to engage an expert to examine and analyze the impact that the PPA will have on the rates of PSNH customers, on the rates of Concord Steam customers, on biomass fuel markets, on REC markets, on job markets, tax revenues and the economy of those communities in which the wood fired IPP's are located and on the New Hampshire Economy in general.
12. There is not adequate time remaining in the Procedural Schedule prior to November 23, 2010, even if the Commission denies PSNH's Motion for Rehearing, for Concord Steam and the other Intervenors to submit testimony on these matters and to require it to do so would be enormously prejudicial and a denial of due process.
13. In Appeal of Morin, 140 NH 515 (1995) the New Hampshire Supreme Court held that it was a denial of due process and an abuse of discretion for the Department of Labor Compensation Appeals Board to deny a motion to continue the hearing because the Petitioner's treating physician was unavailable, which is comparable to the position of Concord Steam . The Court noted that an agency "should not lose sight of its 'paramount objective' of rendering justice... An agency, like a trial court, must follow fair procedures and procedural process. Its discretion must be exercised in a manner to subserve and not to impede or defeat the ends of substantial justice... One element of this requirement is the opportunity to

present one's case-to attempt to meet one's burden of proof-in a fair manner before an impartial fact finder." 140 NH H at 518 (citations omitted).

14. If Concord Steam, either with or without the pricing terms made available to it, is required to submit its testimony on November 23, 2010, it will be unable to present its case in a fair manner. Its right of procedural due process will be subordinated to the opportunity of Laidlaw to obtain tax credits.

WHEREFORE, Concord Steam respectfully moves the Commission to:

- A. Continue the procedural schedule to permit an additional period of discovery of at least 15 days if it denies PSNH's Motion for Rehearing; and
- B. Continue the procedural schedule to permit Intervenor Testimony to be filed either 30 days after the Intervenors receive the pricing terms if it denies PSNH's Motion for Rehearing or if it grants the Motion for Rehearing, 30 days from the date of the Order; and
- C. Schedule a technical session following its decision on PSNH's Motion for Rehearing and this Motion to Continue to address the procedural schedule in light of the orders made; and
- D. Grant expedited treatment of this Motion; and
- E. Grant such other and further relief as justice may require.

Respectfully submitted,

CONCORD STEAM CORPORATION,

By its Attorneys,

UPTON & HATFIELD, LLP

Date: November 9, 2010



Robert Upton, II (NHBA #2599)

Justin C. Richardson (NHBA #12148)

23 Seavey Street

PO Box 2242

North Conway, NH 03860-2242

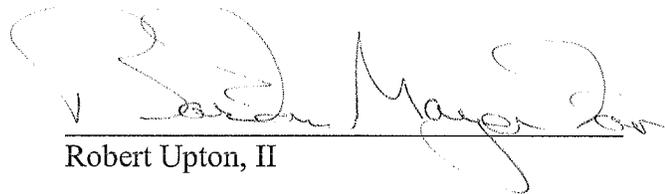
(603) 356-3332

rupton@upton-hatfield.com

jrichardson@upton-hatfield.com

CERTIFICATE OF SERVICE

I hereby certify that on this day, a copy of the foregoing *Motion to Continue* was forwarded to all counsel or parties of record for discovery in this proceeding by Electronic Mail.



Robert Upton, II