

**THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION**

DE 10-195

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

**Petition for Approval of Power Purchase Agreement with
Laidlaw Berlin BioPower, LLC**

**MOTION TO RESCIND THE GRANT OF INTERVENOR STATUS
TO
CONCORD STEAM CORPORATION**

OR, IN THE ALTERNATIVE,

**MOTION TO STRIKE TESTIMONY SUBMITTED BY
CONCORD STEAM CORPORATION
AND
MOTION TO COMPEL DISCOVERY**

January 7, 2011

Pursuant to N.H. Code of Admin Rule Puc 203.07 and RSA 541-A:32, Public Service Company of New Hampshire (“PSNH”) hereby moves the Commission to rescind the grant of intervenor status to Concord Steam Corporation. In the alternative, PSNH moves to strike certain testimony filed by Concord Steam Corporation and/or to compel Concord Steam Corporation (“CSC”) to respond to its data requests pursuant to Rule Puc 203.09.

In support of this Motion, PSNH states:

1. On December 17, 2010, CSC filed the testimonies of Mssrs. Mark E. Saltsman, John Dalton, Robert J. Berti and James C. Dammann in this docket.

2. Pursuant to the November 17, 2010, procedural schedule governing this proceeding, PSNH timely submitted data requests to CSC.

3. On January 3, 2011, CSC notified PSNH that it objected to more than half of PSNH's data requests -- thirty-eight (38) out of PSNH's sixty-eight (68) data requests. CSC's "Objections to First Set of Data Requests by PSNH to Concord Steam Corporation" are attached hereto as Attachment 1. (Although the "Objections" are dated December 30, 2010, they were not sent to PSNH until January 3, 2011, as noted on the cover letter.)

4. Per the authority of RSA 541-A:32, V, PSNH moves the Commission to rescind the grant of intervenor status for Concord Steam Corporation, as it now appears that CSC is not the party whose "rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding." (RSA 541-A:32). RSA 541-A:32, V allows the Commission to modify its order granting a petition for intervention at any time.

CSC asserted that it has substantial interests in this proceeding and was granted intervention on that basis. However, it now objects to discovery questions on the basis that another entity, Concord Power and Steam, LLC, is really the relevant party.

In twenty-two (22) objections to PSNH's data requests, CSC admits that Concord Power and Steam, LLC is the party in interest, not Concord Steam Corporation, and states that Concord Steam Corporation does not have the legal authority to disclose Concord Power and Steam, LLC's confidential financial information. CSC objected to the twenty-two (22) data requests of PSNH 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 legal authority to disclose Concord Power and Steam, LLC's confidential financial information.

By these objections, and contrary to its Petition for Intervention in this proceeding, CSC repeatedly (twenty-two times) demonstrates that it is not the party whose "rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding." CSC

expressly states that it does not have the legal authority to provide information on behalf of Concord Power and Steam, LLC -- the legal entity that might have met the requirements of RSA 541-A:32 to qualify for intervenor status. Concord Steam Corporation's own pleadings now demonstrate that its Petition for Intervention did not accurately portray CSC's entitlement to intervenor status. Indeed, CSC's own objections demonstrate that it does not qualify to be an intervenor under the requirements of RSA 541-A:32.

CSC based its September 3, 2010, Petition for Intervention on the following allegations:

1. On July 26, 2010, Public Service Company of New Hampshire (PSNH) filed a petition for approval of a power purchase agreement (PPA) with Laidlaw Berlin BioPower, LLC (Laidlaw) for the purchase of energy, capacity and renewable energy certificates (RECs) pursuant to RSA 362-F:9. According to the petition, the proposed Laidlaw facility is a biomass fueled renewable energy source and purchases by PSNH will help it meet obligations to purchase renewable power as required by RSA 362-F provided that the Laidlaw facility qualifies to produce Class I (new renewable facility) RECs.
2. According to the filing, Laidlaw is developing a 70 MW name-plate electric power generating station in Berlin designed to use whole tree wood chips as its fuel.
3. 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.
4. 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.
5. As a result of the generous above-market pass-through provisions contained in the PPA with PSNH, 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 plant in Concord.
6. In addition, the renewable energy projects that get to deal with PSNH appear to be screened to make sure they fit PSNH's "business model." This state of affairs simply cannot be reconciled with the state law or public policy on renewable energy. PSNH does not seem to have consistent rules or formats with which to consider and evaluate renewable energy projects.

7. In view of the foregoing, Concord Steam has a substantial interest in the issues presented to the Commission in the proceeding.

Only three of the seven numbered paragraphs in CSC's Petition for Intervention address the RSA 541-A:32 requirement to show "facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding." Those are paragraphs 3, 4, and 5.

In paragraph 3 of its Petition for Intervention, Concord Steam Corporation stated, "Concord Steam is one of a few wood-fired district-heating plants in the world." However, when PSNH asked CSC for wood price projections dating back to 2008, CSC objected on the basis that such information related to Concord Power and Steam, LLC. (PSNH Question 35 to CSC).

In paragraph 4 of its Petition for Intervention, Concord Steam Corporation stated, "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." However, when PSNH asked CSC for information regarding that financing, CSC objected on the basis that such information related to Concord Power and Steam, LLC. (PSNH Question 1 to CSC).

In paragraph 5 of its Petition for Intervention, Concord Steam Corporation stated, "As a result of the generous above-market pass-through provisions contained in the PPA with PSNH, 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 plant in Concord." However, when PSNH asked CSC for information concerning these alleged wood price increases that Concord Steam will face, CSC objected on the basis that such information related to Concord Power and Steam, LLC. (PSNH Questions 29, 35, and 43 to CSC).

The statements made by CSC in its objections to PSNH's data requests contradict the facts contained in Concord Steam Corporation's Petition for Intervention filed pursuant to RSA 541-A:32 and demonstrate that Concord Steam Corporation's "rights, duties, privileges, immunities or other substantial interests" are not affected by the proceeding. CSC now asserts that the very

interests it alleged in its Petition for Intervention to demonstrate that “Concord Steam has a substantial interest in the issues presented to the Commission in the proceeding” in fact belong to Concord Power and Steam, LLC, an entity “not a party to this proceeding under Puc 203.09(b) and therefore not subject to discovery.” (*See* CSC Objection to PSNH Question 10.)in

Moreover, CSC’s revelation that Concord Power and Steam, LLC - - an entity “not a party to this proceeding under Puc 203.09(b) and therefore not subject to discovery” - - will undoubtedly “impair the orderly and prompt conduct of the proceedings” contrary to RSA 541-A:32. Rebuttal testimony is due in this proceeding on January 18; hearings begin on January 24. CSC’s reliance on the Concord Steam Corporation versus Concord Power and Steam, LLC “corporate shell game” as a basis to object to twenty-two of PSNH’s data requests will significantly and materially impair PSNH’s ability to present its case.

Therefore, pursuant to RSA 541-A:32, V, PSNH moves that the Commission rescind Concord Steam Corporation’s party-intervenor status in this proceeding, as by its own statements and conduct it is evident that the “rights, duties, privileges, immunities or other substantial interests” alleged and relied upon by Concord Steam Corporation in its Petition for Intervention are not affected by this proceeding as required by RSA 541-A:32. Such revocation of intervenor status would also result in the striking of the pre-filed testimony and all data request responses submitted by Concord Steam Corporation. (See, Order No. 25,171 issued in this docket on November 17, 2010, p. 6: “Because Laidlaw is no longer a party, we will grant Concord Steam’s motion to strike all evidence provided by Laidlaw to any party in this docket. Further, we instruct the parties to refrain from using such information as a basis for testimony or other evidence in this docket.”)

5. If, notwithstanding the fact that all bases set forth to support CSC’s intervenor status in its Petition for Intervention have been negated by CSC’s own statements, the Commission does not grant PSNH’s Motion to Rescind the Grant of Intervenor Status to CSC, PSNH respectfully requests the Commission to strike all CSC testimony relating to data requests that they refused to respond to based upon their assertion that Concord Power and Steam, LLC (and not CSC) was the relevant party. As CSC notes in its objections, “Concord Power and Steam, LLC is not a

party to this proceeding.” PSNH agrees with CSC – Concord Power and Steam, LLC is not a party to this proceeding. Pursuant to RSA 541-A:1, XII and Rule Puc 102.10, “‘Party’ means each person or agency named or admitted as a party, or properly seeking and entitled as a right to be admitted as a party.” Clearly, this definition does not include Concord Power and Steam, LLC. Hence, matters relating to Concord Power and Steam, LLC, are not relevant to this proceeding. Therefore, the subject matter of the twenty-two data request questions that CSC objected to based upon their assertion that Concord Power and Steam, LLC is the relevant party should all be stricken from the record.

6. CSC claims that the information sought by PSNH in some of the data requests is immaterial to this proceeding. As PSNH has based its questions on matters contained in CSC’s own pleadings and pre-filed testimony, if the objected-to matters are indeed deemed to be immaterial, then the underlying testimony upon which the question is based would be similarly immaterial to this proceeding. Therefore, in the alternative to compelling responses from CSC, if certain subject matter contained in PSNH’s data requests is deemed by the Commission to be immaterial or irrelevant to this proceeding, PSNH moves to strike the testimony underlying those requests.

7. In the alterative, PSNH moves the Commission to issue an order compelling CSC to respond to the data requests.

8. PSNH’s data request to which CSC has objected, CSC’s objections, and PSNH’s arguments in response thereto, follow. (The initial number is the PSNH data request number; PSNH’s responses are lettered to correspond to CSC’s objections.):

1. Ref. pg. 1, line 15, you stated that CSC has “secured financing commitments for the vast majority of the required investment capital.” What percentage of the required investment capital has been secured? Provide all documents related to the financing of the purchase or construction of CSC’s facility. Please provide details concerning the financing commitments that have been obtained, specifying the sources of the financing, any conditions that must be met for such financing to be provided, the dates that such financing commitments end.

OBJECTION: Concord Steam objects to this data request on the grounds that:

- A. 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 legal authority to disclose Concord Power and Steam, LLC’s confidential financial information.
- B. The “details concerning the financing commitments” of Concord Power and Steam, LLC and other information requested is confidential financial information that is not subject to disclosure under RSA 91-A:5, Puc 203.08, and Order No. 25,174.
- C. The information requested concerning Concord Power and Steam, LLC is not reasonably calculated to lead to the discovery of admissible evidence in this proceeding.
- D. The information requested concerning Concord Power and Steam, LLC is immaterial to this proceeding within the meaning of RSA 541-A:33, II.

PSNH’s argument in support of its motion:

A. CSC’s first objection to this question is that the information requested apparently relates to Concord Power and Steam, LLC and not to CSC. However, Mr. Dalton’s testimony submitted by CSC on its own behalf states:

I have prepared this testimony on behalf of the *Concord Steam Corporation* (Concord Steam), a wood-fired district-heating plant that serves the downtown area in Concord, New Hampshire. *Concord Steam* has been developing a wood-fired combined heat and power plant in Concord since 2007 (Concord Power and Steam). *Concord Steam* indicates that this project has secured all the necessary environmental permits and secured financing commitments for the vast majority of the required investment capital.

Dalton Testimony, p. 1, Lines 10-15, emphases added.

It is disingenuous that at this stage of the proceedings for Concord Steam Corporation to refuse to answer data request questions directly related to the testimony that it filed, based on the assertion that “Concord Power and Steam, LLC is not a party to this proceeding” and that CSC “does not have legal authority to disclose Concord Power and Steam, LLC’s confidential financial information.” This legal maneuvering is contrary to CSC’s own statements in its pleadings in this docket, as well as similar statements made in Docket No. DE 09-067.

For the first time, based upon its objections to twenty-two of PSNH’s data requests, CSC apparently claims that Concord Power and Steam, LLC is really the legal entity whose “rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding,” and not Concord Steam Corporation.

Throughout this and other proceedings, CSC has stated that it is the owner, operator and developer of the existing and proposed biomass-fired generating plants in Concord. Indeed, the Commission in reliance upon CSC’s September 3, 2010, Petition for Intervention in this proceeding, granted CSC intervenor status. In that Motion for Intervention, submitted and signed by CSC’s President, CSC stated:

3. *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.*

4. *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.*

5. *As a result of the generous above-market pass-through provisions contained in the PPA with PSNH, 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 plant in Concord.*

(Emphases added).

Similarly, in its July 14, 2009, letter to the Commission in Docket No. DE 09-067, CSC, again by its President, stated:

“*Concord Steam Corporation* 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. What the project does not have is a power purchase agreement. *Concord Steam* has approached the three major electrical utilities in NH; the NH Coop, Unitil and PSNH.”

“*Concord Steam* would hope to be treated fairly and have an opportunity to objectively discuss contracting with PSNH for purchase of in-state generated renewable power and RECs.”

(Emphases added).

In Docket No. DE 09-067, CSC also filed a Motion to Intervene. As in this proceeding, in Docket No. DE 09-067, in its Motion for Intervention dated July 23, 2009, CSC alleged:

1. *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.

2. *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. The New Hampshire Electric Cooperative has plans to purchase 40% of the plant’s electrical output.

3. Public Service of New Hampshire (PSNH) has been contacted three different times by *Concord Steam* regarding a potential purchase of the remaining output of the plant. During the last call on July 2, 2009, PSNH told *Concord Steam* that PSNH had many irons in the fire and that they had no interest right now, or in fact for many years to come, in renewable energy. PSNH would not even begin a discussion of price or terms.

(Emphases added).

If, indeed, CSC is not the party whose “rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding” (RSA 541-A:32), then the Commission’s grant of intervenor status to CSC may have been made in error. By its own objections to PSNH’s data requests, CSC admits that Concord Power and Steam, LLC is the

party in interest, not Concord Steam Corporation. CSC then hides behind that newly-disclosed corporate veil by its refusal to provide responses to twenty-two of PSNH's data requests. As CSC has repeatedly asserted via its twenty-two objections that it is not the party whose "rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding," PSNH moves that the Commission terminate CSC's party-intervenor status.

B. CSC itself is the party that raised the issue of its project financing commitment in this proceeding. It first raised it in its Petition for Intervention as a factor demonstrating its entitlement to intervenor status. It then expressly raised the financing issue in its pre-filed direct testimony of Mr. Dalton. After raising the financing commitment issue itself, CSC cannot now refuse to provide relevant information inquiring into that subject by claiming confidentiality.

If the information requested is indeed confidential, PSNH would agree to enter into a non-disclosure agreement with CSC. PSNH has provided CSC with confidential information in this proceeding pursuant to such a non-disclosure agreement entered into by and between PSNH and CSC.

C. and D. CSC's third and fourth objections to this question relate to admissibility and materiality of the information requested. CSC itself cited its receipt of necessary financings as a basis for its eligibility for intervenor status in its Petition for Intervention (at paragraph 4) where it alleged that it "has financing lined up." CSC also raised the issue of the financing commitments it has secured for its proposed project in its testimony. Those factors alone belie CSC's claim that the issue of its financing status are not relevant to this proceeding. On this basis alone, CSC's objection should be overruled, and they should be compelled to respond to the data request.

PSNH's data request specifically references Mr. Dalton's testimony, wherein he testifies that "*Concord Steam indicates that this project has secured all the necessary environmental permits and secured financing commitments for the vast majority of the required investment capital.*" (Emphasis added). Mr. Dalton's testimony is somewhat inconsistent with CSC's previous allegation contained in its Petition for Intervention. In the Petition for Intervention, CSC stated it

had “financing lined up.” Mr. Dalton testifies that CSC’s financing is not all lined up. These disparities in CSC’s own pleadings indicate the relevance of PSNH’s data request.

CSC now alleges that the testimony and other pleadings filed by CSC itself in this and other proceedings incorrectly identify “Concord Steam” as the intervenor, owner, and developer of the proposed new biomass facility. Based on CSC’s own erroneous pleadings, it now seeks to be shielded from responding to discovery questions.

PSNH asserts that the viability of CSC’s proposed biomass plant is indeed relevant to this proceeding, as the purpose of the Laidlaw PPA is to ensure PSNH’s ability to comply with the RPS statute requirements on a long-term basis. If CSC’s proposed plant does not have financing commitments necessary to make its plant a reality, that would have a significant impact on the viability of the proposals it made to PSNH. Discussion of and comparisons to CSC’s proposal have been incorporated in the testimony of both Commission Staff and OCA in this proceeding.

CSC now claims that its project financing is not material to this proceeding. On that basis, its reliance on that financing as a reason for approval of its intervention request should be eliminated, and all testimony regarding that matter should be stricken from the record. If information surrounding such a financing commitment would not lead to the discovery of admissible evidence, then the underlying testimony itself should be stricken based on lack of relevance. Similarly, in such an event, the testimony of Commission Staff and OCA referencing the CSC proposal should also be stricken.

2. Ref. pg. 2, line 9, you stated that your professional experience includes “Development and oversight of numerous electricity market price forecasts across North America, including forecasts for the Independent System Operator of New England (ISO-NE) market in which PSNH participates.” Please provide copies of all such market price forecasts you have developed since 2007 that include the New England market and/or ISO-NE.

OBJECTION: Concord Steam objects to this data request on the grounds that:

- A. The requested market price forecasts are confidential and proprietary information belonging to third parties that are not a party to this proceeding under Puc 203.09 (b) and therefore not subject to discovery.
- B. The market price forecasts belonging to third parties that have not been publicly disclosed are confidential financial information that is not subject to disclosure under RSA 91-A:5, Puc 203.08, and Order No. 25,174.
- C. Subject to the foregoing, Mr. Dalton will provide publicly disclosed market price forecasts developed since 2007 that include the New England market and/or ISO-NE.

PSNH’s argument in support of its motion:

A., B. and C: Mr. Dalton himself specified what the focus of his testimony is:

My testimony reviews the pricing for the different products provided by the Laidlaw Project (Project) relative to current and anticipated future market prices for these products and assesses whether the prices appear to be above market. I find that the pricing for the three separate electricity products sold to PSNH under the Laidlaw PPA are \$453 million above anticipated future market prices for these products on a cumulative basis.

(Dalton Testimony, p. 4, lines 12-17).

Mr. Dalton testified that he has developed “numerous electricity market price forecasts across North America, including forecasts for the Independent System Operator of New England (ISO-NE) market in which PSNH participates.” He uses the fact that he has developed forecasts as a basis demonstrating he’s qualified to testify. PSNH is certainly entitled to inquire into Mr. Dalton’s qualifications.

PSNH's data request question 2 narrowly requested copies of market price forecasts developed by Mr. Dalton for New England and/or ISO-NE since 2007. The requested market price forecasts were those developed by Mr. Dalton, and therefore are relevant to the issues of his expertise in this area and the reliability of his testimony. The requested price forecasts are extremely relevant to the substance of the proceeding and directly relevant to the "focus" of Mr. Dalton's testimony that he, himself, identified - - "the pricing for the different products provided by the Laidlaw Project (Project) relative to current and anticipated future market prices for these products and assesses whether the prices appear to be above market." CSC and Mr. Dalton should be compelled to provide the information requested.

If Mr. Dalton and/or CSC refuses to provide the information requested, the testimony of Mr. Dalton should be stricken. As noted in response to part B of CSC's objection to question 1, PSNH is amenable to entering into a non-disclosure agreement to protect any information deemed to be confidential.

The information requested is "reasonably calculated to lead to the discovery of admissible evidence" – the Commission's standard for discovery – as it would allow PSNH to both determine whether other regulatory bodies have accepted or rejected Mr. Dalton's work and would allow PSNH to rebut his substantive testimony.

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4. Ref. pg. 2, line 14, you stated, "have reviewed numerous electric utility avoided cost estimates and advised clients on the reasonableness of these estimates and the methodologies for developing them." Please identify the electric utilities and clients referenced in this statement.

OBJECTION: See Concord Steam's Objection to Request 2, above.

PSNH's argument in support of its motion:

PSNH incorporates its arguments set forth in response to question 2, above.

5. Ref. pg. 1, line 12, you stated you have developed “detailed financial pro formas for numerous generation projects.” Please identify the referenced generation projects.

OBJECTION: Concord Steam objects to this request on the grounds that it is overbroad and unduly burdensome. As noted in Mr. Dalton’s testimony, he has provided consulting services to the electric industry in the United States for over twenty five years.

See also Concord Steam’s Objection to Request 2, above.

PSNH’s argument in support of its motion:

PSNH incorporates its arguments set forth in response to question 2, above.

In addition, CSC fails to provide any specifics as to why this question is allegedly “overbroad and unduly burdensome.” Mr. Dalton relies on the requested information to bolster his expertise regarding his testimony; yet, when asked a simple question directly relevant to his testimony, CSC has objected. PSNH merely asked for an identification of the referenced generation projects, not for the individual detailed financial pro formas. A simple listing of such generation projects can hardly be deemed to be “overly broad and unduly burdensome.”

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6. Ref. pg. 3, line 1, you stated that you “have assisted clients in drafting long-term power purchase agreements.” Please identify all such clients.

OBJECTION: See Concord Steam’s Objection to Requests 2 & 5, above.

PSNH’s argument in support of its motion:

PSNH incorporates its arguments set forth in response to questions 2 and 5, above.

7. Ref. pg. 3, line 4, you stated that you “have led the negotiations of power purchase agreements.” Please identify the parties involved in all such negotiations.

OBJECTION: See Concord Steam’s Objection to Requests 2 & 5, above.

PSNH’s argument in support of its motion:

PSNH incorporates its arguments set forth in response to questions 2 and 5, above.

9. Ref. pg. 4, line 20. You refer to “a term sheet submitted by Concord Steam and Power to PSNH.” Would Concord Steam be supplying the energy, RECs and capacity under that term sheet from its existing generating facility, or from its proposed new generating facility? If any of the products to be supplied would be from the proposed new facility, please provide copies of all contracts, agreements, or other arrangements that Concord Steam Corporation has to sell energy, capacity or RECs from that proposed new facility.

OBJECTION: Concord Steam objects to this requests on the grounds that:

- A. 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 legal authority to disclose Concord Power and Steam, LLC’s confidential financial information.
- B. The information requested of Concord Power and Steam, LLC is confidential financial information that is not subject to disclosure under RSA 91-A:5, Puc 203.08, and Order No. 25,174.

PSNH’s argument in support of its motion:

PSNH incorporates its arguments set forth in response to question 1, above.

10. Ref. pg. 5 line 2. Using the same analytical model, what would the after tax return on equity be for the for the Concord Steam and Power proposal. Please prepare and provide a version of Exhibit JCD-4 that models the Concord Steam proposal.

OBJECTION: Concord Steam objects to this request on the grounds that:

- A. 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 legal authority to disclose Concord Power and Steam, LLC's confidential financial information.
- B. This request seeks confidential financial information that is not subject to disclosure under RSA 91-A:5, Puc 203.08, and Order No. 25,174.
- C. Concord Steam has already provided public documents responsive to this request

PSNH's argument in support of its motion:

A. and B. PSNH incorporates its arguments set forth in response to question 1, above.

C. CSC has not provided, and PSNH is unaware of, any "public documents responsive to this request." In fairness to the other parties, PSNH incorporated each party's own "Instructions" for responding to data requests in PSNH's data request submittal. CSC's own "Instructions" demanded:

2. When answering these data requests, furnish all information and documents in your possession or available to you, including that in the possession of your attorneys, investigators, employees, consultants, agents, representatives, guardians, or any other person acting on your behalf, and not merely such information or documents known or held by you personally.

CSC has ignored its own "Instruction" by its failure to "furnish all information and documents in your possession or available to you." CSC should be compelled to identify the responsive information that is publically available and to further provide all responsive

information or documents in its possession or available to it that are responsive to this data request.

PSNH notes that CSC refers back to its Objection to Request 10 nineteen additional times. The Commission should note that CSC's Objection to Request 10 is founded on the "corporate shell game" of Concord Power and Steam, LLC being the real party in interest versus Concord Steam Corporation and alleged confidentiality. CSC's Objection to Request 10 states no other legal bases; therefore, the Objection to Request 10 does not encompass issues such as admissibility, relevance, or materiality of the data request, and such matters need not be considered by the Commission. (Rule Puc 203.09 (h)).

12. Ref. pg. 7, line 18, you stated that "Schiller paid suppliers \$30/ton which was then more than 20% above the then market price for wood fuel." Please provide a listing of what all other biomass generators have paid for wood fuel since Schiller began operation to present.

OBJECTION: Concord Steam objects on the grounds that:

- A. The quotation is not contained in Mr. Dalton's testimony.
- B. The request is overly broad and unduly burdensome as he cannot produce a "listing of what all other biomass generators have paid for wood fuel since Schiller began operation to present."
- C. See Concord Steam's Objection to Request 2.

PSNH's argument in support of its motion:

A. CSC is correct that the quotation is not contained in Mr. Dalton's testimony. It is in fact contained in the direct testimony of "ROBERT J. BERTI and JAMES C. DAMMANN of NORTH COUNTRY PROCUREMENT, INC. ON BEHALF OF CONCORD STEAM CORPORATION" at page 7, line 18. In PSNH's submission of its data requests to CSC, PSNH noted that, "References to a particular witness are intended as a convenience, and not as a

limitation on the requirement to provide full and complete responses to all questions.” CSC’s objection to this question on the basis that the relevant quotation was not found in the testimony of Mr. Dalton is inconsistent with its duty to provide data request responses, and having to address this objection has clearly resulted in a waste of PSNH’s and the Commission’s time and resources. CSC should be compelled to respond to this data request.

B. Mssrs. Berti and Dammann testify extensively regarding the cost of wood fuel in New England. They testify that they “arrange for the purchase of wood fuel for major steam and/or power plants around New England which use wood as their primary fuel.” (Testimony, p. 1, lines 16-17. They further testify that, “Schiller almost always pays substantially more for its wood than the other existing wood burning facilities in NH.” (Testimony, p. 5, lines 7-9). They also testify that, “it is our opinion that Schiller has not been as aggressive as the existing plants in terms of paying wood suppliers the minimum necessary to fuel their plant.” (Testimony, p. 7, lines 16-17). Moreover, CSC relied upon its feared “substantial upward impact on the price of wood that Concord Steam will consume at its wood-fired combined heat and power plant in Concord” as a factor entitling it to intervenor status. (Petition for Intervention, paragraph 5.)

PSNH’s request for a listing of what all other biomass generators have paid for wood fuel since Schiller began operation to present is directly related to the testimony of Mssrs. Berti and Dammann filed by CSC and clearly material to this proceeding. CSC should be compelled to respond to this data request.

If CSC is not required to provide the requested information, its reliance on wood-price issues as a basis for approval of its intervention request should be eliminated, and all testimony regarding that matter should be stricken from the record.

C. PSNH incorporates its arguments set forth in response to question 2, above.

14. Ref. pg. 8 lines 9 through 18. Please list any currently operating renewable generation or renewable generation under construction that have PPAs resulting from a competitive RFP solicitation.

OBJECTION: Concord Steam objects on the grounds that this request is overly broad and unduly burdensome and to the extent it calls for information outside of Concord Steam's control.

PSNH's argument in support of its motion:

More than half a page of Mr. Dalton's testimony is dedicated to his opinion that use of a competitive bidding process is the most effective way to seek a PPA with a generator. His testimony says that the Laidlaw PPA is not an efficient and cost effective alternative which properly balances costs, value and project risks. PSNH has asked Mr. Dalton for a listing of "any currently operating renewable generation or renewable generation under construction that have PPAs resulting from a competitive RFP solicitation." CSC's objection that this question is "overly broad and unduly burdensome" is unsupported. Either Mr. Dalton knows of any such generation (and if so, he should be required to list them) or he does not. Such a response is clearly not burdensome to provide. Moreover, Mr. Dalton raised the efficacy of the RFP process in his own testimony. CSC's assertion that the information is "outside of Concord Steam's control" is not a proper objection to this data request. CSC should be compelled to respond to this data request.

18. Ref. JCD-4, please provide the same analysis using Concord Power and Steam's pricing structure and project assumptions and resulting IRR.

OBJECTION: See Concord Steam's Objection to Request 10.

29. Ref. pg. 6 line 16, you testify that “Concord Steam expects that the increase in fuel demand caused by Laidlaw will increase the cost of wood to Concord Steam by at least 50% and possibly as much as 100%.” Did CSC prepare, or have prepared on its behalf, any studies that support these expected price increases? If so, please supply copies of all such studies.

OBJECTION: See Concord Steam’s Objection to Request 10.

30. Please provide any and all wholesale market energy price projections and natural gas price projections in the possession of CSC that are not older than 1/1/2008.

OBJECTION: See Concord Steam’s Objection to Request 10.

31. Please provide any and all Forward Capacity Market (FCM) price projections in the possession of CSC that are not older than 1/1/2008.

OBJECTION: See Concord Steam’s Objection to Request 10.

32. Please provide any and all renewable energy certificate (REC) price projections in the possession of CSC that are not older than 1/1/2008.

OBJECTION: See Concord Steam’s Objection to Request 10.

33. Please provide copies of all offers, counter offers, proposals, bids, etc. that are not older than 1/1/2008 made by CSC for the sale of energy, capacity and RECs from its present facility, or from its proposed new facility.

OBJECTION: See Concord Steam’s Objection to Request 10.

35. Please provide any and all wood price projections in the possession of CSC that are not older than 1/1/2008.

OBJECTION: See Concord Steam’s Objection to Request 10.

36. Please provide any estimates or forecast prices of Massachusetts, Connecticut or Rhode Island Class I RECs in the possession of CSC that are not older than 1/1/2008.

OBJECTION: See Concord Steam’s Objection to Request 10.

37. Provide copies of the models or other analyses or studies and all documents utilized or relied upon by CSC in development of its offer to PSNH contained in the term sheet referenced and attached to Mr. Dalton's testimony, including but not limited to, models, forecasts and analyses of the electric, capacity, fuel and REC markets.

OBJECTION: See Concord Steam's Objection to Request 10.

PSNH's argument in support of motion for CSC's objection to questions 18, 29, 30, 31, 32, 33 35, 36 and 37:

PSNH incorporates its arguments set forth in response to question 10, above.

PSNH is not providing arguments regarding the admissibility, relevance, or materiality of the information requested, as CSC has not objected to these questions on any of those grounds and any such objections by CSC are now waived. (Rule Puc 203.09 (h)).

39. Ref. pg. 8, line 19. Please provide a list of the wood-fired IPPs in New Hampshire who have a power sale contract in place for 2011.

OBJECTION: Concord Steam objects to this request on the grounds that this request calls for documents or information beyond Concord Steam's knowledge or control.

PSNH's argument in support of its motion:

Mr. Saltsman's referenced testimony states that many wood-fired IPPs are operating without long term PPAs. His testimony refers to an RFP in Massachusetts where there were 52 bids for 35 projects. PSNH asks for a list of New Hampshire projects that have a PPA in place for 2011. PSNH asked a very simple question - - list the wood-fired IPPs that have such a power contract in place for 2011. If Mr. Saltsman does not know the answer to this question, then he should respond accordingly. CSC should be compelled to respond to this data request.

40. Ref. pg. 8, line 19. For the IPPs identified in response to question 4, please describe why those IPPs were able to find a buyer for their output, while others have not.

OBJECTION: See Concord Steam's Objection to Request 39.

PSNH's argument in support of its motion:

PSNH asked another simple question, "describe why those IPPs were able to find a buyer for their output, while others have not." If Mr. Saltsman does not know the answer to this question, then he should respond accordingly. CSC should be compelled to respond to this data request.

43. Ref. pg. 12, line 8, the testimony describes a price level in which it is uneconomical for Concord Steam to run on wood. What are the assumptions on future wood pricing used to assess the decision to expand the size of the current facility?

OBJECTION: See Concord Steam's Objection to Request 10.

52. Why does Concord Power and Steam seek a 20 year fixed price long-term PPA from PSNH?

OBJECTION: See Concord Steam's Objection to Request 10.

53. Referencing the Term Sheet for Purchase of Power for Concord Power & Steam provided in John Dalton's testimony, did Concord Power and Steam have any knowledge of the Laidlaw PPA at the time it submitted its proposal?

OBJECTION: See Concord Steam's Objection to Request 10.

54. Referencing the Term Sheet for Purchase of Power for Concord Power & Steam provided in John Dalton's testimony, did Concord Power and Steam have any knowledge of any other proposals being submitted to PSNH at the time it submitted its proposal? If so, what level of knowledge was known?

OBJECTION: See Concord Steam's Objection to Request 10.

55. Referencing the Term Sheet for Purchase of Power for Concord Power & Steam provided in John Dalton's testimony, please provide the names of companies that Concord Power and Steam provided bids to between 2008 and 2010 and the status of each of the bids.

OBJECTION: See Concord Steam's Objection to Request 10.

56. Referencing the Term Sheet for Purchase of Power for Concord Power & Steam provided in John Dalton's testimony, why does Concord Power and Steam seek a 20 year fixed price long-term PPA from PSNH?

OBJECTION: See Concord Steam's Objection to Request 10.

57. Referencing the Term Sheet for Purchase of Power for Concord Power & Steam provided in John Dalton's testimony, please provide the wood price forecast and assumptions used to develop the PPA proposal.

OBJECTION: See Concord Steam's Objection to Request 10.

58. Referencing the Term Sheet for Purchase of Power for Concord Power & Steam provided in John Dalton's testimony, please provide the Class I REC market forecast and assumptions used to develop the PPA proposal.

OBJECTION: See Concord Steam's Objection to Request 10.

59. Referencing the Term Sheet for Purchase of Power for Concord Power & Steam provided in John Dalton's testimony, please provide the Forward Capacity Market forecast and assumptions used to develop the PPA proposal.

OBJECTION: See Concord Steam's Objection to Request 10.

60. What level of return on equity and internal rate of return is acceptable to Concord Power and Steam?

OBJECTION: See Concord Steam's Objection to Request 10.

PSNH’s argument in support of its motion for CSC’s objection to questions 43 and 52 through 60:

PSNH incorporates its arguments set forth in response to question 10, above.

PSNH is not providing arguments regarding the admissibility, relevance, or materiality of the information requested, as CSC has not objected to these questions on any of those grounds and any such objections by CSC are now waived. (Rule Puc 203.09 (h)).

WHEREFORE, for the reasons set forth above, PSNH respectfully moves the Commission to withdraw the intervenor status of Concord Steam Corporation, as its objections clearly demonstrate that Concord Steam Corporation is not the entity whose “rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding” and Concord Steam Corporation’s actions will “impair the orderly and prompt conduct of the proceedings,” both contrary to the requirements set forth in RSA 541-A:32. Such withdrawal of intervenor status would also result in the striking of the pre-filed testimony and all data request responses submitted by Concord Steam Corporation. (*See*, Order No. 25,171 issued in this docket on November 17, 2010, p. 6: “Because Laidlaw is no longer a party, we will grant Concord Steam’s motion to strike all evidence provided by Laidlaw to any party in this docket. Further, we instruct the parties to refrain from using such information as a basis for testimony or other evidence in this docket.”)

Further, in the alternative, PSNH respectfully moves the Commission to strike the pre-filed testimony filed on behalf of Concord Steam Corporation for: i) all subject matter contained in the twenty-two data requests which CSC objected to based on the basis that such information related to Concord Power and Steam, LLC; ii) any additional matters that the Commission deems to be immaterial or irrelevant to this docket; and, iii) the testimony of Concord Steam Corporation’s witnesses who refuse to comply with the discovery process.

Finally, PSNH respectfully moves the Commission to compel Concord Steam Corporation to respond to all of PSNH's data requests if the Commission does not withdraw CSC's intervenor status.

Respectfully submitted this 7th day of January, 2011.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

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