THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. _____

Appeal of
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

APPENDIX

APPEAL BY PETITION PURSUANT TO RSA 541:6 (NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION)

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DE10-195

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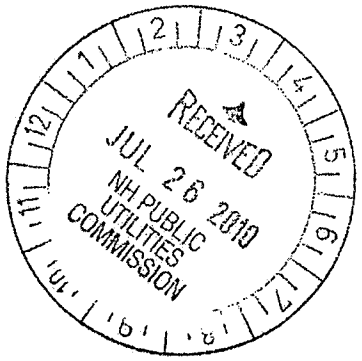
A Northeast Utilities Company

Robert A. Bersak
Assistant Secretary and
Assistant General Counsel

CONFIDENTIAL
MATERIAL
IN COMM FILE

July 26, 2010



Ms. Debra A. Howland
Executive Director and Secretary
New Hampshire Public Utilities Commission
21 Fruit Street, Suite 10
Concord, New Hampshire 03301

Re: ***Petition for Approval of Power Purchase Agreement between Public Service Company of New Hampshire and Laidlaw Berlin BioPower, LLC***

Dear Secretary Howland:

Under the provisions of RSA 362-F:9, Public Service Company of New Hampshire ("PSNH") hereby seeks approval of a multi-year purchase agreement with Laidlaw Berlin BioPower, LLC ("LBB"), a renewable energy source, for renewable energy certificates, in conjunction with a power purchase agreement from such source, to meet reasonably projected renewable portfolio requirements and default service (Energy Service) needs.

Filed herewith is a Petition seeking such approval, supporting testimonies of Messrs. Gary A. Long, Terrance J. Large, Richard C. Labrecque, and Dr. Lisa K. Shapiro, a Motion for Confidential Treatment, and a Power Purchase Agreement ("PPA").

Many terms of the PPA are the product of confidential negotiations and include confidential, commercial, financial information as set forth in RSA 91-A:5, IV. Copies of the PPA and the testimony of Mr. Labrecque are being filed in redacted form with this Petition. Unredacted copies of the PPA and that testimony are being filed separately along with a Motion for Confidential Treatment Pursuant to N.H. Code Admin. Rules Puc § 203.08.

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PSNH respectfully requests that the Commission open a proceeding for the review and approval of this PPA.

Sincerely,

Robert A. Bersak
Assistant Secretary and
Assistant General Counsel

cc: Office of Consumer Advocate

THE STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

Petition for Approval of Power Purchase Agreement
between
Public Service Company of New Hampshire
and
Laidlaw Berlin BioPower, LLC

Under the provisions of RSA 362-F:9, Public Service Company of New Hampshire ("PSNH") hereby seeks approval of a multi-year purchase agreement with Laidlaw Berlin BioPower, LLC ("LBB"), a renewable energy source, for renewable energy certificates, in conjunction with a power purchase agreement from such source, to meet reasonably projected renewable portfolio requirements and default service (Energy Service) needs.

In support of this Petition, PSNH says the following:

1. Pursuant to RSA Chapter 362-F, the Electric Renewable Portfolio Standard ("RPS"), PSNH must obtain and retire certificates ("RECs") sufficient in number and class type to meet or exceed specified annual percentages of total megawatt-hours of electricity supplied by it to its Energy Service customers. To partially comply with this statutory requirement, PSNH has entered into a Power Purchase Agreement ("PPA") with LLB regarding LLB's proposed 70 MW (gross) biomass fueled generating station in Berlin, New Hampshire (the "Project"), to purchase the RECs produced by the Project, as well as the energy and capacity produced from the Project .

2. The transactions call for purchases of these products starting from the In-Service Date of the Project and for a period of twenty years thereafter.

3. Per Rule Puc 203.06 (b), PSNH is filing herewith the following supporting testimony:
   a. Mr. Gary A. Long, its President and Chief Operating Officer
   b. Mr. Terrance J. Large, its Director of Business Planning and Customer Support Services
   c. Mr. Richard C. Labrecque, its Manager, Supplemental Energy Sources

d. Dr. Lisa K. Shapiro, Chief Economist for the Concord law firm of Gallagher, Callahan & Gartrell, P.C.

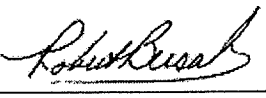
4. Many terms of the PPA are the product of confidential negotiations and include confidential, commercial, financial information as set forth in RSA 91-A:5, IV. Copies of the PPA and the testimony of Mr. Labrecque are being filed in redacted form with this Petition. Unredacted copies of the PPA and that testimony are being filed separately along with a Motion for Confidential Treatment Pursuant to RSA Chapter 91-A and N.H. Code Admin. Rules Puc § 203.08.

5. PSNH's obligation to begin the purchase of the Project's output under the PPA is contingent upon, *inter alia*, receipt from this Commission of a final, nonappealable decision approving and allowing for full cost recovery of the rates, terms and conditions of the PPA.

WHEREFORE, pursuant to RSA 362-F:9, PSNH respectfully requests the Commission to find that the Power Purchase Agreement is in the public interest, and order such further relief as may be just and equitable.

Respectfully submitted this 26th day of July, 2010,

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By: 

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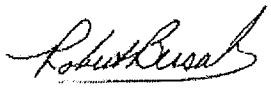
CERTIFICATE OF SERVICE

I hereby certify that I served an electronic copy of this filing with the office of the consumer advocate pursuant to Rule Puc 203.02 (a)(4).



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STATE OF NEW HAMPSHIRE

BEFORE THE

NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

Docket No. DE 10-____

DIRECT TESTIMONY OF

GARY A. LONG

Request for Approval of Power Purchase Agreement
Between
Public Service Company of New Hampshire
and
Laidlaw Berlin Biopower, LLC

July 26, 2010

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INTRODUCTION AND PURPOSE

Q. **Please state your name, position and business address.**

A. My name is Gary A. Long. I am the President and Chief Operating Officer of Public Service Company of New Hampshire.

Q. **Have you previously testified before this Commission?**

A. Yes, I have testified on many occasions in various regulatory proceedings on behalf of PSNH.

Q. **Please briefly state the purpose of this filing.**

A. The purpose of this filing is to request approval by this Commission of a long term Power Purchase Agreement (PPA) between PSNH and Laidlaw Berlin Biopower, LLC, under RSA 362-F:9. This PPA is for the purchase of electricity and various renewable attributes of the Laidlaw wood-fired energy project to be constructed in Berlin, New Hampshire (the "Project"). It is to support the fulfillment of the electricity needs of customers served by PSNH and the Renewable Portfolio Standards set by the State that PSNH must meet. The PPA is also intended to help meet the State's Climate Action Plan goals as set forth in the March 2009 New Hampshire Climate Action Plan. The PPA is set forth in Attachment GL-1.

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Q. **Are there other witnesses in this proceeding who are sponsoring pre-filed direct testimony in support of this request for approval of the PPA?**

A. Yes.

Terrance J. Large, Director – PSNH Business Planning and Customer Support Services is presenting testimony on the Project, on how the PPA fits in with PSNH's overall power portfolio and in particular our renewable energy resources needs. Mr. Large's testimony will also discuss cost recovery, environmental benefits and other matters set forth in RSA 362-F:9.

Richard C. Labrecque, Manager - PSNH Supplemental Energy Sources is presenting testimony on the PPA's terms and conditions and the unique features of the PPA which provide value to our customers.

Dr. Lisa K. Shapiro – Economist from the law firm of Gallagher, Callahan & Gartrell is presenting testimony concerning the positive impact the Laidlaw project will have on the New Hampshire economy in general, and the northern area of New Hampshire most directly.

PSNH'S APPROACH TO MEETING THE STATE'S RENEWABLE ENERGY REQUIREMENTS AND POLICY

Q. **Please provide a background on the State's policies that PSNH intends to further as a result of the PPA.**

A. The State's policies and objectives regarding environmental improvement, increased use of renewable energy resources, and reduction of greenhouse gas emissions are set forth in multiple statutes and policy directives of the State.

- For starters, RSA 374-F:3, in the electric restructuring statute, states "Continued environmental protection and long term environmental sustainability should be encouraged".
- The Renewable Portfolio Standard (RPS) statute, RSA Chapter 362-F sets forth specific quantitative (percentage) requirements for renewable resources within the portfolio of all electricity suppliers, including PSNH as a default energy service supplier.
- The Regional Greenhouse Gas (reduction) Initiative, RGGI, as set forth in RSA 125-O:19 established goals and a "cap and trade" approach to reducing greenhouse gas emissions.
- And more recently, "The New Hampshire Climate Action Plan" issued in March 2009 "recommends that New Hampshire strive to achieve a long-term reduction of greenhouse gas emissions of 80 percent below 1990 levels by 2050."

Collectively, and individually, these stated policies of New Hampshire effectively instruct PSNH, as a State regulated utility charged with

implementing much of the State's energy policy, to seriously and affirmatively take action to meet these aggressive renewable resource, environmental, and climate action objectives. These objectives are inherently long term, and thus PSNH must take long term actions.

Q. **Please provide an overview of PSNH's strategy in meeting the State's requirements regarding renewable resources and the State's goals to reduce greenhouse gas emissions.**

A. Our strategy is to pursue a combination of actions to meet these goals. While not all these actions will be subjects of this proceeding, these actions include, 1) improvement in the environmental characteristics of PSNH's owned generation, 2) entering into strategic renewable resource based power purchase agreements, 3) aggressive energy efficiency programs, and 4) advancement of small scale renewable resources under RSA 374-G. PSNH witness Terry Large discusses these strategies.

Q. **In addition to meeting the State's renewable resource, environmental improvement, and climate change goals, are there any other goals that PSNH is trying to meet with the PPA?**

A. Yes. PSNH's desire is, of course, to meet these goals in a cost competitive manner from a customer's viewpoint. The costs/benefits of the Project must be investigated together and broadly. PSNH witness Shapiro expands on how this PPA furthers economic goals.

OTHER POTENTIAL LONG TERM POWER PURCHASE AGREEMENTS

Q. **Please comment on the general interest level of developers to enter into a long term power purchase agreement with a credit worthy regulated utility?**

A. I believe the interest is very high given the current New England market structure and volatile market prices. The current market structure, in my opinion, is not designed well for entities that may require long term price signals. This creates uncertainty for unregulated entities looking for profitable investment opportunities in the energy sector. Since the market is inadequate for their needs, their interest turns to finding a purchaser of their output under an agreement that can provide long term revenue assurance.

Q. **How does this compare with PSNH's own interest in entering into additional long term power purchase agreement?**

A. At this time, PSNH's interest in entering into additional long term power purchase agreements is highly limited.

Q. **What are examples of matters that limit PSNH's interest in long term power purchase agreements?**

A. PSNH's primary energy role is as a Default Energy Service provider under New Hampshire law. Since the amount of load that PSNH is required to serve depends upon the choices that customers make to acquire their energy supply, the amount of renewable resource requirements PSNH must meet under the State's RPS also varies by the choices made by our customers.

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PSNH needs to limit its use of long term power purchase agreements to ensure flexibility to economically serve the varying Default Energy Service loads.

Additionally, PSNH looks for diversity within its portfolio of energy resources. As an example, PSNH would like to increase the amount of solar energy resources within our portfolio to meet solar RPS requirements.

Q. **So, if PSNH is limited in its need for renewable resources and/or long term power purchase agreements, what does PSNH consider before entering in to a long term power purchase agreement?**

A. In addition to considering state law, we look for uniqueness, feasibility, and added value in a project. There can sometimes be a plethora of concepts, developers, and ideas at a time when PSNH has a very limited need. Thus, we look for factors that can distinguish a project while adding value for our customers and shareholders.

Q. **Is the Laidlaw Project and associated PPA unique?**

A. Yes, it is. PSNH witness Richard Labrecque describes the unique features of the PPA. I would emphasize here however, that one very unique aspect of the Laidlaw Project is that a substantial portion of that Project already exists, since Laidlaw will modify an existing boiler, which they already own along with the property around the boiler.

CONCLUSION

Q. **Please summarize your recommendation on approval of this PPA.**

A. Considerable thought over more than two years went into developing this unique PPA and I truly believe it is in the best interests of PSNH and our customers over its term. PSNH requests that the Commission approve in the PPA in order to allow this project to move forward quickly and produce renewable energy while providing economic benefits for the State, and especially the North Country.

Q. **Does this complete your testimony?**

A. Yes, it does.

ATTACHMENT GL-1

POWER PURCHASE AGREEMENT

(Redacted Version)

POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (this "Agreement") is made as of June 8, 2010 (the "Effective Date") by and between Public Service Company of New Hampshire ("PSNH"), and Laidlaw Berlin Biopower, LLC ("Seller"). PSNH and Seller together are the "Parties" and each individually is a "Party" to this Agreement.

WHEREAS, Seller wishes to construct, operate and maintain a biomass-fueled electrical generation facility to be located in Berlin, New Hampshire (the "Facility"); and

WHEREAS, Seller wishes to sell to PSNH and PSNH wishes to purchase from Seller the Products (as defined below) to be produced by the Facility (as defined below) on and after the Effective Date on the terms specified herein.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the Parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

For the purposes of this Agreement, the following terms shall have the meanings set forth in this Article 1. Capitalized terms used but not defined in this Agreement shall have the meanings set forth in the ISO-NE Documents.

1.1 "Affiliate" of a Person means any other person controlling, controlled by or under common control with such first Person.

1.2 "Adjusted Base Price" is defined in Section 6.1.2(a)(ii).

1.3 "Ancillary Services" means any Product other than Energy, Capacity or Renewable Products that is recognized and compensated pursuant to the ISO-NE Documents from time to time.

1.4 "Base Price" means as defined in Section 6.1.2(a)(i).

1.5 "Biomass Fuel" means untreated, plant derived material including brush, stumps, lumber ends and trimmings, wood pallets, bark, wood chips or pellets, shavings, sawdust and slash, agricultural crops, and any other form of biomass eligible for use to generate a REC in New Hampshire under applicable law from time to time.

1.6 "Business Day" means means a day on which Federal Reserve member banks in New York, New York are open for business; and a Business Day shall start at 8:00 a.m. and end at 5:00 p.m. Eastern Prevailing Time. Notwithstanding the foregoing, with respect to notices only, a Business Day shall not include the Friday immediately following the U.S. Thanksgiving holiday.

1.7 "Capacity" means the MWs of capacity that (i) has obtained a capacity supply obligation as a result of participation and clearing in an ISO-NE administered forward capacity auction, reconfiguration capacity auction or any successor or other capacity supply auction, marketplace, or agreement and, (ii) as such, is receiving compensation pursuant to this capacity supply obligation by ISO-NE via the ISO-NE settlement process governed by the ISO-NE Documents.

1.8 "Change in Law" means that any applicable law, rule, or regulation is changed (whether directly or indirectly by pre-emption, displacement or substitution) or any new applicable law, rule, or regulation is enacted or promulgated subsequent to the Effective Date.

1.9 "Claim" has the meaning set forth in Section 13.3.

1.10 "Code" means Internal Revenue Code of 1954, as amended from time to time.

1.11 "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody's or any other rating agency agreed by the Parties.

1.12 "Cumulative Reduction" means as defined in Section 6.1.3.

1.13 "Delivery Point" means the Interconnection Point, as defined in the Interconnection Agreement.

1.14 "Effective Date" has the meaning set forth in the preamble.

1.15 "Energy" means electric energy, as such term is defined in the ISO-NE Documents, generated by the Facility which is delivered to PSNH at the Delivery Point.

1.16 "Environmental Attributes" means any and all generation attributes under any and all international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now or in the future, to the favorable generation or environmental attributes of the Facility or the Products produced by the Facility during the Term including: (a) any such credits, certificates, benefits, offsets and allowances computed on the basis of the Facility's generation using renewable technology or displacement of fossil-fuel derived or other conventional energy generation; (b) any GIS Certificates issued in connection with Energy generated by the Facility; and (c) any voluntary emission reduction credits obtained or obtainable by Seller in connection with the generation of Energy by the Facility; provided, however, that Environmental Attributes shall not include Tax/Grant Benefits.

1.17 "EPT" means Eastern Prevailing Time.

1.18 "Facility" means Seller's plant for generating electricity as described in Appendix A.

1.19 "FERC" means the Federal Energy Regulatory Commission.

1.20 "Force Majeure" has the meaning set forth in Section 14.1.

1.21 "GIS" means the New England Power Pool General Information System, which includes a generation information database and certificate system, operated by NEPOOL, its designee or successor entity, that identifies generation attributes of MWhs of energy accounted for in such system, and any successor to such system.

1.22 "GIS Certificate" means an electronic certificate created pursuant to the Operating Rules of the GIS or any successor thereto to represent the generation attributes of each MWh of Energy generated within the ISO-NE control area and the generation attributes of certain Energy imported into the ISO-NE control area.

1.23 "GIS Forward Certificate Transfer System" means the mechanism specified in the operating rules of the GIS system to effect transfers of GIS Certificates in advance of their creation.

1.24 "Good Industry Practices" means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric generation industry with respect to producing electricity from the Facility. Good Industry Practices shall also include any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been reasonably expected to accomplish the desired result at a reasonable cost. Such practices, methods and acts must comply fully with applicable laws and regulations, good business practices, economy, reliability, safety, environmental protection, and expedition, having due regard for current editions of the National Electrical Safety Code and other applicable electrical safety and maintenance codes and standards, and manufacturer's warranties and recommendations. Good Industry Practices are not intended to be the optimum practice, method, or act to the exclusion of all others, but rather to be a spectrum of acceptable practices, methods, or acts generally accepted in the electrical generation industry in the United States.

1.25 "In-Service Date" means the date on which Seller declares the Facility as in service for purposes of qualification for the Code and the Facility is capable of regular commercial operation with a predictable daily dispatch. Seller shall provide PSNH with notice of the actual In-Service Date within fifteen (15) days of such date.

1.26 "Interconnecting Utility" means Public Service Company of New Hampshire (or its successor in interest) in its capacity as a party to the Interconnection Agreement.

1.27 "Interconnection Agreement" means the Interconnection Agreement by and between Seller and the Interconnecting Utility and/or the ISO-NE as the same may be amended from time to time.

1.28 "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum

rate permitted by applicable law in transactions involving entities having the same characteristics as the Parties.

1.29 "Investment Grade Rating" means a Credit Rating of "Baa3" or better from Moody's, "BBB-" or better from S&P or Fitch, or an equivalent Credit Rating by another nationally recognized rating service reasonably acceptable to the Party accepting a guaranty of the obligations of the other Party. If there are split ratings, the lowest of the Credit Ratings will apply.

1.30 "ISO New England Inc." or "ISO-NE" means ISO New England Inc., its successor, or any other independent system operator or regional transmission organization for New England.

1.31 "ISO-NE Documents" means all tariffs, rules and procedures adopted by NEPOOL, ISO-NE, or the RTO, and governing wholesale power markets and transmission in New England, as such tariffs, rules and procedures may be amended from time to time, including but not limited to, the ISO-NE Tariff, the ISO-NE Operating Procedures (as defined in the ISO-NE Tariff), the ISO-NE Planning Procedures (as defined in the ISO-NE Tariff), the Transmission Operating Agreement (as defined in the ISO-NE Tariff), the Participants Agreement, the manuals, procedures and business process documents published by ISO-NE via its web site and/or by its e-mail distribution to appropriate NEPOOL participants and/or NEPOOL committees, as amended, superseded or restated from time to time.

1.32 "ISO-NE Energy Price" means the hourly Day-Ahead ISO-NE locational marginal price at the pricing location designated for the Facility within the ISO-NE settlement and billing systems of the ISO-NE market system, or such successor energy price or other prices in effect from time to time which include all equivalent price components as the current LMP.

1.33 "ISO-NE Tariff" means the ISO New England Inc. Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3, as may be amended from time, or any successor tariff accepted by FERC.

1.34 "kW" shall mean a kilowatt.

1.35 "kWh" means a kilowatt hour.

1.36 "LMP" means Locational Marginal Price.

1.37 "MW" means a megawatt.

1.38 "MWh" means a megawatt hour.

1.39 "Market Rule 1" means Section III of the ISO-NE Tariff, or any successor agreement accepted or approved by FERC.

1.40 "NEPOOL" means the New England Power Pool, the power pool created by and operated pursuant to the provisions of the RNA, or any successor or replacement organization(s).

1.41 "NHPUC" means the New Hampshire Public Utilities Commission or its successor.

1.42 "New England Control Area" means as defined in the ISO Tariff.

1.43 "New England Markets" means as defined in Section I of the ISO Tariff.

1.44 "NH Class I Renewable Energy Credits" or "NH Class I RECs" shall mean REC produced or, in the event of a Change of Law that would have been produced, by the Facility pursuant to its qualification as a renewable energy source as defined in the NH Class I Renewable Statutes at NH RSA § 362-F, as in effect on the Effective Date, and regardless of any subsequent Change in Law.

1.45 "Operating Year" means the twelve (12) consecutive calendar months starting on the first day of the calendar month following the In-Service Date and each subsequent twelve (12) consecutive calendar month period; provided that the first Operating Year shall also include the days in the prior month in which the In-Service Date occurred.

1.46 "Participants Agreement" means the "Participants Agreement among ISO New England Inc. as the Regional Transmission Organization for New England and the New England Power Pool and the entities that are from time to time parties hereto constituting the Individual Participants" dated as of February 1, 2005, as may be amended from time to time, or any successor thereto accepted by FERC.

1.47 "Person" means a natural person, a corporation, partnership, limited liability company, trust or any other organization or entity however organized.

1.48 "Pool Transmission Facility" or "PTF" means as defined in Section II of the ISO Tariff.

1.49 "Products" means (i) any electrical product or service that is recognized and compensated pursuant to the ISO-NE Tariff from time to time, including but not limited to Energy, Capacity, Ancillary Services, and (ii) any Renewable Products. Products do not include any Tax/Grant Benefits.

1.50 "Project Site" has the meaning set forth in Appendix A.

1.51 "Purchase Option Agreement" means the agreement described in Appendix B hereto.

1.52 "Qualified Institution" shall mean a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof, with (i) a Credit Rating of at least (a) "A" by S&P and "A2" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A" by S&P or "A2" by Moody's, if such entity is rated by either S&P or Moody's but not both, and (ii) having a capital surplus of at least Ten Billion Dollars ($10,000,000,000).

1.53 "RNA" means the New England Power Pool Second Restated NEPOOL Agreement dated as of September 1, 1971, as amended and restated from time to time, governing the relationship among the NEPOOL Participants, or any successor agreement.

1.54 "Renewable Energy Certificates" and "RECs" means any certificate, either paper, electronic, or any other form (including a NEPOOL GIS Certificate) that can be used to transfer rights to Environmental Attributes produced by the Facility under any Renewable Portfolio Standard.

1.55 "Renewable Portfolio Standard" means New Hampshire RSA Chapter 362-F, and any other statute, law, regulation or order promulgated by any legislative and/or regulatory authority pertaining to similar renewable energy source requirements.

1.56 "Renewable Products" means RECs and any other Environmental Attributes.

1.57 "Renewable Products Payment" means the alternative compliance payment schedule set forth under NH RSA § 362-F for RECs produced by NH Class I Renewables, as adjusted from time to time, *provided* that if there is a Change in Law with respect to NH RSA § 362-F and/or the New Hampshire statute is pre-empted by later federal law, Parties will use good faith efforts to revise the Renewable Products Payment to conform to the value of any replacement payment available following such Change in Law, consistent with the provisions of Section 23 of this Agreement; and *provided further*, that for the term hereof, the Renewable Products Payment shall not be less than the alternative compliance payment schedule (including future adjustments) set forth under NH RSA § 362-F for RECs produced by NH Class I Renewables as in effect on the date hereof.

1.58 "Scheduled Operation Date" means the date set forth in Section 5.2.

1.59 "Schiller Station" means as defined in Section 6.1.2(a)(ii).

1.60 "Seller Required Approvals" means approvals from (i) the NHPUC to the extent applicable to Seller's ability to operate within New Hampshire; (ii) approval of the New Hampshire Site Evaluation Committee, together with related New Hampshire agency permits and approvals.

1.61 "Site" means the real estate on which the Facility is located.

1.62 "Site Owner" means any entity holding fee interest title in or to any portion of the Site and improvements thereon.

1.63 "Tax" or "Taxes" means all taxes that are currently or may in the future be assessed on any products or services that are the subject of this Agreement.

1.64 "Tax/Grant Benefits" means any production tax credits, investment tax credits, grants in lieu of tax credits, fuel subsidies or other non-tax cash grants or subsidies, credits or benefits that may be available with respect to the Facility pursuant to the Code or other federal or state law, including but not limited to production tax credits pursuant to Section 45 of the Code, and investment tax credits or grants available under Section 48 of the Code; provided, however, that any marketable, recurring attribute resulting from Facility production that is not listed above shall not be deemed a Tax/Grant Benefit. For the avoidance of confusion, any marketable Environmental Attribute, known today or created in the future, resulting from production of the Facility (as opposed to any tax

benefit or a one-time credit or grant) is not and shall not be considered to be a Tax/Grant Benefit but instead is a Product.

1.65 "Term" means the period set forth in Section 2.1.

1.66 "Wood Price Adjustment" and "WPA" are defined in Section 6.1.2(a)(ii).

ARTICLE 2. TERM OF AGREEMENT

2.1 **Term.** This Agreement shall be binding as of the Effective Date and remain in effect thereafter through twenty (20) Operating Years from the In-Service Date ("Term").

2.2 **In-Service Date.** Seller shall provide to PSNH, subject to PSNH approval, a plan for testing and startup of the Facility at least thirty (30) days prior to the dates upon which Seller tests the Facility in order to establish the In-Service Date. PSNH shall have the right to be present at the Site during start-up and testing (subject to all safety procedures in effect at the Site), and/or to receive documentary evidence of the Facility's operation.

2.3 Following the end of the Term or otherwise upon termination of this Agreement, the Parties hereto shall have no further obligations hereunder, except as otherwise expressly provided herein or to the extent necessary to enforce the rights and obligations of the Parties arising under this Agreement before the end of the Term and except as provided below in Section 2.4 and in Article 7, Right of First Refusal and Purchase Option.

2.4 If ownership and/or operating control of the Facility is transferred to a third party, then Seller shall include or cause to be included as part of the transfer and sale agreement with the third party the obligation that the new owner and/or the new operator shall assume all of the rights and obligations of Seller set forth in this Agreement.

ARTICLE 3. FACILITY

3.1 **Description.** The Facility is as described in Exhibit A, Description of Facility.

3.2 **Primary Energy Source.** Seller shall ensure that the Facility shall use Biomass Fuel as its primary energy source.

3.3 **Qualifying Facility.** Facility shall acquire its status as a "qualifying facility" pursuant to 18 C.F.R. Part 292 prior to the In-Service Date and maintain such status throughout the Term.

ARTICLE 4. PREREQUISITES FOR PURCHASES

4.1 PSNH's obligation to begin the purchase of Products is contingent upon the satisfaction of all the following conditions:

4.1.1 Execution of an Interconnection Agreement by the applicable parties and, if required, FERC acceptance and approval of the Interconnection Agreement under Section 205 of the Federal Power Act;

4.1.2 PSNH has received evidence to its reasonable satisfaction that Seller has obtained all permits, licenses, approvals and other governmental authorizations needed to commence commercial generation of Products, including certification to produce NH Class I RECs;

4.1.3 PSNH has received from the NHPUC a final, nonappealable decision acceptable to PSNH in its sole discretion, approving and allowing for full cost recovery of the rates, terms and conditions of this Agreement;

4.1.4 The Parties shall execute as of the In-Service Date, a Purchase Option Agreement that is acceptable to PSNH in its sole discretion in the form as set forth in Appendix B hereto, to be recorded, and PSNH shall have been issued a title insurance policy insuring its rights under the Purchase Option Agreement. The Purchase Option Agreement will provide that the Site Owner (as defined therein) may terminate the Purchase Option Agreement if this Agreement is terminated by Seller by reason of a PSNH Event of Default under Section 12.1.1 hereunder. If the Purchase Option Agreement is terminated for any other reason, PSNH may immediately terminate this Agreement without further liability.

ARTICLE 5. PURCHASE AND SALE OF POWER

5.1 Subject to the terms and conditions of this Agreement, Seller shall sell and deliver and PSNH shall purchase and accept delivery of one hundred percent (100%) of the Products produced by the Facility.

5.2 The original "Scheduled Operation Date" of the Facility is June 1, 2014. Seller agrees to give notice to PSNH at the end of each calendar quarter of any change in this date and of progress in obtaining permits and constructing the Facility.

5.3 Seller shall deliver the Energy to PSNH at the Delivery Point.

5.4 Prior to the In-Service Date and satisfaction of the Prerequisites for Purchases listed in Article 4, but subsequent to the execution of an Interconnection Agreement, Seller shall sell and PSNH shall purchase one hundred percent (100%) of the Products generated during this period, including Products generated pursuant to such Facility testing, at the prices set forth in Section 6.1.1.

5.5 Following the In-Service Date and subject to the satisfaction of the Prerequisites for Purchases listed in Article 4, throughout the Term, Seller shall deliver to PSNH one hundred percent (100%) of the Products and PSNH shall purchase the Products at the prices set forth in Section 6.1.2.

ARTICLE 6. PRICING

6.1 The price to be paid by PSNH to Seller for the Products shall be as follows:

6.1.1 For Products purchased pursuant to Section 5.4:

(a) All Products except Capacity and NH Class I RECs: PSNH shall pay to Seller the product of the ISO-NE Energy Price and the hourly quantity (MWh) of delivered Energy for its receipt of all Products (including other Renewable Products) except Capacity and NH Class I RECs;

(b) Capacity: PSNH shall pay to Seller any capacity revenues assigned to the Facility and paid to PSNH by ISO-NE or other compensation realized by PSNH for Capacity from the Facility; and

(c) NH Class I RECs: PSNH will pay to Seller the product of thirty-five dollars ($35.00) and the hourly quantity (MWh) of delivered Energy that qualifies to receive NH Class I RECs or upon other mutually agreeable conditions that certify that NH Class I RECs have been delivered to PSNH.

6.1.2 For Products purchased pursuant to Section 5.5:

(a) All Products except Capacity and NH Class I RECs will be compensated for by multiplying the Adjusted Base Price in $/MWh by the hourly quantity (MWh) of delivered Energy:

(i) The base Energy purchase price (the "Base Price") shall be equal to $83/MWh.

(ii) Beginning with the start of the first full calendar quarter following the In-Service Date, and thereafter on the start of each calendar quarter, the Base Price will be adjusted up or down by the "Wood Price Adjustment" or "WPA". The WPA will reflect the difference between the actual average $/ton Biomass Fuel cost that PSNH paid for Biomass Fuel at its Schiller station facility ("Schiller Station") during the immediately preceding calendar quarter compared to $34/ton. This difference (whether positive or negative) in $/ton will be multiplied by a factor of 1.8 tons/MWh and added to the Base Price. If PSNH (i) materially changes the quality composition of its Biomass Fuel from that utilized by the Schiller Station in calendar year 2008 (by, for example, utilizing lower grade biomass, construction/demolition wastes or co-firing with fossil fuels), or (ii) effectively realizes a material discount or subsidy on its fuel purchases (whether directly or through reduced fuel prices reflecting upstream subsidies) and such discount or subsidy does not provide for similar savings to the Facility's cost of fuel, or (iii) PSNH ceases burning Biomass Fuel at Schiller Station or Schiller Station is not operational, then, for those periods during which either condition (i), (ii) or (iii) is in effect, the WPA shall be based on the difference between the actual average $/ ton cost of Biomass Fuel at the Facility and $34/ton, subject to PSNH's audit and independent review of the reasonableness of such actual costs. Thus, as of the start of each calendar quarter,

such adjustment (the "Adjusted Base Price") shall be computed as follows:

Wood Price Adjustment (WPA) = 1.8 x [actual average $/ton minus $34/ton]

Adjusted Base Price ($/MWh) = Base Price + WPA

(b) Capacity: PSNH shall pay for Capacity from the Facility as follows:

(i) For the first five (5) Operating Years: $4.25 per kW-month of Capacity.

(ii) For each subsequent Operating Year, the Capacity Price shall be increased by $0.15 per kW-month.

(iii) Notwithstanding (i) and (ii) above, any payments for Capacity prior to June 2014 shall be in accordance with the provisions of Section 6.1.1(b).

(c) NH Class I RECs:

PSNH shall pay to Seller the following amounts for NH Class I RECs upon delivery of NH Class I RECs into the PSNH NEPOOL GIS account or upon other mutually agreeable conditions that certify that NH Class I RECs have been delivered to PSNH:

(i) For NH Class I RECs that are generated pursuant to Facility operation during the first five (5) Operating Years of the Term, PSNH shall pay the product of (i) eighty percent (80%) of the Renewable Products Payment that is applicable to the period during which the NH Class I REC was generated and (ii) the quantity of NH Class I RECs delivered during that period.

(ii) For NH Class I RECs that are generated pursuant to Facility operation during Operating Years six (6) through ten (10) of the Term, PSNH shall pay the product of (i) 75% of the Renewable Products Payment that is applicable to the period during which the NH Class I REC was generated and (ii) the quantity of NH Class I RECs delivered during that period.

(iii) For NH Class I RECs that are generated pursuant to Facility operation during the third five (5) Operating Years eleven (11) through fifteen (15) of the Term, PSNH shall pay the product of (i) seventy percent (70%) of the

Renewable Products Payment that is applicable to the period during which the NH Class I REC was generated and (ii) the quantity of NH Class I RECs delivered during that period.

(iv) Thereafter for the balance of the Term, PSNH shall pay the product of (i) fifty percent 50% of the applicable Renewable Products Payment that is applicable to the period during which the NH Class I REC was generated and (ii) the quantity of NH Class I RECs delivered during that period.

6.1.3 Reduction of Facility Purchase Price for Over-Market Energy Payments. For each MWh of Energy delivered during the Term of this Agreement, a negative or positive adjustment shall be determined. When the Adjusted Base Price (in $/MWh) in effect during an hour exceeds the ISO-NE Energy Price in that hour, the hourly negative adjustment shall equal the delivered MWhs multiplied by the difference between the ISO-NE Energy Price and the Adjusted Base Price. When the Adjusted Base Price (in $/MWh) is less than the ISO-NE Energy Price, the hourly positive adjustment shall equal the delivered MWhs multiplied by the difference between the ISO-NE Energy Price and the Adjusted Base Price. These negative and positive adjustments will be continuously aggregated to determine the cumulative net negative adjustment (the "Cumulative Reduction") or net positive adjustment for the purpose of adjusting the price of any Facility purchase option by PSNH pursuant to Article 7 hereof, if exercised. A resulting net negative adjustment (the "Cumulative Reduction") will serve to reduce the purchase price of the Facility as provided in the Purchase Option Agreement. A resulting net positive adjustment will bestow no rights or obligations on either Party to this Agreement.

6.2 PSNH will have no claims to any Tax/Grant Benefits.

ARTICLE 7. RIGHT OF FIRST REFUSAL AND PURCHASE OPTION

7.1 Right of First Refusal.

7.1.1 If at any time Seller desires to sell for cash, cash equivalents or any other form of consideration all or any part of the Facility (except with respect to a sale/leaseback financing or similar project financing or re-financing) pursuant to a bona fide offer (or a proposed offer) of purchase to or from a third party (the "Proposed Transferee"), Seller shall submit a written offer (the "Offer") to sell all or such portion of the Facility, including any associated interests or rights in the Site, described in the Offer (the "Offered Assets") to PSNH or such Affiliate of PSNH designated by PSNH (collectively, "PSNH" for the purposes of this Article 7), on terms and conditions, including price, not less favorable to PSNH than those on which the Seller proposes to sell such Offered Assets to the Proposed Transferee. The Offer shall disclose the identity of the

Proposed Transferee, describe the Offered Assets proposed to be sold and any terms and conditions, including price, of the proposed sale. The Offer shall state that PSNH may acquire the Offered Assets, for the price and upon the other terms and conditions, including deferred payment (if applicable), set forth therein during the 180-day period after the delivery of the Offer by the Seller (the "Offer Period").

7.1.2 If PSNH does not purchase all or part of the Offered Assets, the unpurchased portion of the Offered Assets may be sold by Seller at any time within twelve (12) months after the date that PSNH declined the Offer or failed to close on the Offer. Any such sale shall be to the Proposed Transferee, at not less than the price and upon other terms and conditions, if any, not more favorable to the Proposed Transferee than those specified in the Offer. Any Offered Assets not sold within such twelve (12) month period shall continue to be subject to the requirements of a prior offer pursuant to this Article 7. Pursuant to the provisions of Section 2.4, the new owner of the purchased Offered Assets shall assume all rights and obligations of Seller as set forth in this Agreement, including those with respect to the Cumulative Reduction, including any prior balance thereof accumulated prior to such sale.

7.1.3 If PSNH determines during the Offer Period that it does not desire to acquire the Offered Assets, PSNH shall so notify the Seller. The Offered Assets may be sold by the Seller pursuant to Section 7.1.2 above.

7.2 Purchase Option Agreement.

7.2.1 PSNH shall have the exclusive right to purchase the Facility and all other real, personal and intangible property associated with the Facility and its operations in accordance with the Purchase Option Agreement. Seller shall cause the Site Owner and any successor(s) thereto, other entities that may hold ownership interests in the Facility, any financial lessor of the Offered Assets and any lender holding a security interest in the Facility to agree to the terms of the Purchase Option Agreement as a condition to any sale, financing, refinancing or financial sale/leaseback of the Facility. Further, upon notice to Seller, PSNH may transfer its rights under the Purchase Option Agreement to any PSNH Affiliate or other third party, inclusive of all PSNH rights under the Purchase Option Agreement. In connection with any sale made pursuant to the Purchase Option Agreement, Seller shall convey, or cause to be conveyed, the Facility and all related assets free of material financing liens.

ARTICLE 8. ADMINISTRATIVE COSTS; CHANGE IN REGULATION/LAW

8.1 **Administrative Costs.** Seller is responsible for all costs and administrative burdens of qualifying the Facility to participate in the ISO-NE markets and to participate in or qualify for any program(s) designed to document and/or provide for the sale and transfer of the Facility's Products established by any of the New England States and/or the federal

government from time to time. Seller also agrees, promptly following receipt by Seller of a written request from PSNH, to make commercially reasonable efforts to apply to other programs for the purpose of increasing the value of the Products to PSNH, in whole or in part, pursuant to the terms of this Agreement; *provided,* that such obligation does not require Seller to pursue or remain involved in litigation, assume new capital or operational obligations, or otherwise do more than make and pursue such qualification applications; *provided further,* that if a Change in Law (as hereinafter defined) occurs that would require Seller to make a capital expenditure, to incur any expense, to incur any liability, or to increase operating costs for the Facility in order to continue to produce Renewable Products or for Seller to transfer the Renewable Products to PSNH, at PSNH's sole option so long as PSNH, in a manner reasonably acceptable to Seller, agrees to compensate Seller for all such capital expenditures, costs, losses and expenses and agrees to bear such liabilities, Seller shall (a) take such actions, as reasonably requested by PSNH, and (b) execute such documents as necessary to convey to PSNH the Renewable Products, in a form reasonably acceptable to Seller. If a Change in Law occurs where Seller realizes the monetary value of any Renewable Products and Seller is unable to transfer such Renewable Products to PSNH notwithstanding PSNH's request to transfer such Renewable Products to PSNH and PSNH's willingness to bear any liabilities incurred by Seller or compensate Seller for any expenses, losses or costs as provided above, Seller shall, within thirty (30) days of actual receipt, pay to PSNH the amount that Seller actually receives (net of any costs, taxes or expenses Seller incurs to receive such amounts) as a result of its ownership of the Renewable Products within a reasonable time after such amounts are paid to Seller. Subject to the reimbursement obligations of PSNH with respect to such efforts, Seller shall use commercially reasonable efforts to realize any such monetary value.

ARTICLE 9. CONSTRUCTION, OPERATION AND MAINTENANCE OF THE FACILITY: THE OPERATOR

9.1 Seller shall construct, operate and maintain the Facility using Good Industry Practices.

9.2 Seller shall construct, operate and maintain the Facility so that it obtains and retains its eligibility to produce NH Class I RECs, subject to the provisions of Section 8.1.

9.3 PSNH and Seller will be jointly responsible for administrative actions required to obtain the recognition of Capacity for the Facility within the ISO-NE market. Seller shall not be required to participate in any FCM auction process, nor will Seller be compensated for any Capacity until such Capacity is recognized by ISO-NE per Section 1.7. For the avoidance of doubt, neither Party will hold the other Party liable for any damages related to the degree to which the Facility's capability is recognized as Capacity by ISO-NE. PSNH will have no obligation to make any Capacity payments to Seller unless and until the Facility's capability satisfies the definition of Capacity in Section 1.7.

9.4 Every day (including weekends and holidays) by 9:00 a.m. EPT, Seller must provide to PSNH an estimated hourly schedule of deliverables for the following day, *except that* Seller may provide such schedule for weekends and holidays on the preceding Business Day.

9.5 Prior to October 1 of each year, Seller shall submit to PSNH for review and comment by PSNH an initial schedule of expected electricity delivery levels for the twelve (12) month period beginning with January of the following year. The schedule shall state the estimated times of operation, amounts of electricity production, number of anticipated shutdowns and reductions of output and the reasons therefore, and the dates and durations of scheduled maintenance, including a specification of maintenance requiring shutdown or reduction in output of the Facility. Subject to the requirements of Good Industry Practices, Seller shall not schedule routine maintenance of the Facility during the months of January, February, June, July or August, and shall consult with PSNH at least thirty (30) days prior to removing the Facility from service for routine maintenance. Seller is required at all times to comply with any outage scheduling procedures or requirements of ISO-NE or successor organization. Seller shall:

9.5.1 Consider requests by PSNH for revisions to the schedule within sixty (60) days from PSNH's receipt of the initial schedule, and subsequently advise PSNH of any changes in plan for conducting maintenance that would require an outage expected to be of greater than one (1) week's duration; and

9.5.2 Make all reasonable efforts, consistent with Good Industry Practices, to accommodate any additional changes in the initial schedule requested by PSNH; *provided, however*, that any such changes shall not be expected to reduce the total expected deliveries from the Facility.

9.6 Seller shall provide to any relevant person any information that may be required about the Facility's operations from time to time by NEPOOL or ISO-NE.

9.7 For the purpose of any bidding and administrative actions associated with NEPOOL or ISO-NE, PSNH shall be considered the Lead Participant as such term is defined by those organizations. The Parties will cooperate and work in good faith to establish mutually acceptable bidding procedures.

9.8 If the Facility is required to curtail deliveries of any Products pursuant to the Interconnection Agreement or ISO-NE notifications, Seller shall be entitled to effect such curtailment and PSNH shall have no obligation to pay for any Products that would have been delivered by Seller during such periods for which Seller has curtailed deliveries. PSNH shall have no obligation to accept or pay for any Products associated with energy deliveries in excess of the level to which Seller curtailed its deliveries during such periods, but PSNH shall pay Seller for any Products delivered up to the level to which Seller curtailed during such periods.

9.9 Subject only to Good Industry Practices, during any period in which ISO-NE or NEPOOL notifies or causes Seller to be notified that the Facility should operate in a manner to mitigate other operational or electrical problems (such as maintenance, voltage deficiency, or transmission or distribution line loading problems) on ISO-NE's or NEPOOL's electrical system, Seller shall use all reasonable efforts (including, but not limited to, delaying routine maintenance, curtailing output, or increasing output) to comply with ISO-NE or NEPOOL requests to mitigate such operational or electrical

problem. PSNH shall have no obligation to pay for any Products associated with energy deliveries in excess of the level to which Seller was requested to curtail its deliveries pursuant to this Section 9.8. Seller shall also be liable to pay any and all penalties, fines, sanctions, etc. imposed by ISO-NE, NEPOOL, NERC, FERC or any similar or successor organization related to any Facility-related non-compliance with the rules and requirements or such organizations. To the extent any of these penalties, fines, or sanctions are initially assessed to PSNH pursuant to PSNH's role as the purchaser of Products from the Facility or as the Lead Participant for the Facility (as defined in the ISO-NE Documents), PSNH will reduce the Seller's next monthly invoice by the amount of such penalties, fines or sanction or shall otherwise transfer the monetary obligation to Seller.

ARTICLE 10. BILLING AND PAYMENT

10.1 PSNH or Interconnecting Utility, as applicable, shall be the designated meter reader by ISO-NE and read Seller's meters.

10.2 Not later than five (5) Business Days following the end of each calendar month, PSNH shall read the Seller's meters installed as described in the Interconnection Agreement, calculate a monthly invoice for the applicable Products, and provide this information to Seller within ten (10) days of such reading. Seller shall then return to PSNH the approved invoice for payment and PSNH shall make payments to Seller electronically in immediately available funds for the total amount due within twenty-three (23) days of the meter reading date or ten (10) days of Seller's return to PSNH of the approved invoice, whichever is later; *provided, however*, that payments for NH Class I RECs will occur upon delivery into the PSNH NEPOOL GIS account, or upon other mutually agreeable conditions that certify that any and all NH Class I RECs have been delivered to PSNH. To the extent that PSNH is not satified that delivery of any Products has occurred, including but not limited to the satisfactory delivery of Renewable Products, PSNH shall reduce payments in an amount equal to the value of the non-delivered Products.

10.3 The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing under this Agreement and the Interconnection Agreement to each other on the same date, in which case all amounts owed by each Party to the other Party during the monthly billing period under this Agreement and/or the Interconnection Agreement, including any related damages, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts, interest, and payments or credits, that Party shall pay such sum in full when due, subject to the provisions addressing disputed amounts set forth in Section 10.5. Except as set forth above in this Section 10.4, all payments hereunder shall be made without set-off or deduction.

10.4 Any payment not made by the date required by this Agreement shall bear interest from the date on which such payment was required to have been made through and including the date such payment is actually received at an annual rate equal to the Interest Rate.

10.5 If either Party disputes the amount of any bill, it shall so notify the other Party in writing. Each Party receiving a bill shall pay to the other Party any undisputed amount of the bill or charges when due. The disputed amount may, at the discretion of the paying Party, be held by that Party until the dispute has been resolved; provided that the paying Party shall be responsible to pay interest at the Interest Rate on any withheld amounts that are determined to have been properly billed. The disputed amount may be held by the paying Party provided that the paying Party or its guarantor, if applicable, has an Investment Grade Rating, or by a Qualified Institution if the paying Party or its guarantor, if applicable, does not have such a rating. Neither Party shall have the right to challenge any monthly bill or to bring any court or administrative action of any kind questioning the propriety of any bill after a period of twenty four (24) months from the date the bill was delivered to the Party required to make payment thereunder; provided, however, that in the case of a bill based on estimates, such twenty-four month period shall run from the due date of the final adjusted bill.

ARTICLE 11. INTERCONNECTION AND DELIVERY

11.1 This Agreement does not provide for any electric service by PSNH to Seller. If Seller requires any electric services from PSNH and is legally entitled to such service from PSNH, Seller shall receive such service in accordance with PSNH's applicable electric tariffs or, if no currently existing tariff is applicable, by special contract subject to the approval of the NHPUC.

11.2 Seller shall be responsible for any and all costs, charges and expenses associated with the Facility in connection with transmission and distribution interconnection, service and delivery charges, including all related ISO-NE administrative fees.

11.3 In addition to the provisions of Section 12.2.1, for any period during which PSNH does not fulfill its purchase obligations hereunder for any reason, Seller may freely sell (subject to all applicable laws and regulations) any or all of the Facility's Products produced during such period to one or more third parties until such time as PSNH resumes purchases hereunder.

ARTICLE 12. EVENTS OF DEFAULT; REMEDIES

12.1 **Events of Default.** An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

12.1.1 such Party fails to pay an amount due by the due date, and such failure is not remedied within seven (7) Business Days after notice by the other Party; *provided, however*, is such Party fails to remedy payment and such failure is caused not (even in part) by the unavailability of funds but is caused solely by a technical or administrative error, then such Party shall have an additional three (3) Business Days to pay the amount due after notice of failure to remedy by the other Party.

12.1.2 any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or

repeated and the effect of such misrepresentation is not remedied within thirty (30) days after notice by the other Party; provided that, if any such representation or warranty cannot be made true or cured by the Defaulting Party within such 30-day period with exercise of reasonable due diligence, and if the Defaulting Party within such period submits for the Non-Defaulting Party's approval a plan reasonably designed to correct the default within a reasonable additional period of time, then, unless the Non-Defaulting Party reasonably refuses to approve such plan, an Event of Default shall not exist unless and until the Defaulting Party fails to diligently pursue such cure or fails to cure such default within the additional period of time specified by the plan; provided further that, if the Non-Defaulting Party reasonably refuses to approve such plan, the Defaulting Party shall have at least, but no more than, one hundred eighty (180) days after the date of initial notice from the Non-Defaulting Party to cure the default;

12.1.3 the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within thirty (30) Business Days after notice by the other Party; provided that, if any such default cannot be cured by the Defaulting Party within such 30-day period with exercise of reasonable due diligence, and if the Defaulting Party within such period submits for the Non-Defaulting Party's approval a plan reasonably designed to correct the default within a reasonable additional period of time, then, unless the non-Defaulting Party reasonably refuses to approve such plan, an Event of Default shall not exist unless and until the Defaulting Party fails to diligently pursue such cure or fails to cure such default within the additional period of time specified by the plan; provided further that, if the Non-Defaulting Party reasonably refuses to approve such plan, the Defaulting Party shall have at least, but no more than, one hundred eighty (180) days after the date of initial notice from the Non-Defaulting Party to cure the default;

12.1.4 such Party becomes or is made subject to a reorganization or liquidation proceeding administered pursuant to the U.S. Bankruptcy Code, whether pursuant to a voluntary or involuntary petition; or

12.1.5 such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party.

12.2 Rights of Non-Defaulting Party

12.2.1 If an Event of Default as set forth in this Article 12 with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right to notify the Defaulting Party and (i) designate a day, no earlier than the day such notice is effective and no later

than twenty (20) days after such notice is effective as an early termination date of this Agreement, and/or (ii) withhold any payments due to the Defaulting Party under this Agreement, and/or (iii) suspend performance.

12.2.2 Upon an Event of Default, the Non-Defaulting Party, in addition to the rights described in specific sections of this Agreement, and except to the extent specifically limited by this Agreement, may exercise, at its election, any rights or remedies it may have at law or in equity, including but not limited to monetary compensation for damages, injunctive relief and specific performance.

12.3 **Other Termination Rights**

12.3.1 **Seller's Right to Terminate.** This Agreement may be terminated by Seller at any time prior to the In-Service Date in the event that Seller decides to cancel the Project because Seller is unable to procure and have delivered to the Project Site all of the equipment and materials required to construct and operate the Facility at a total installed cost consistent with Seller's budgeted costs on an economically feasible basis with a return on its total investment in the Facility satisfactory to Seller in Seller's sole discretion; *provided, however,* that in such event, Seller shall notify PSNH that Seller is irrevocably terminating Facility development and/or construction, whereupon this Agreement shall terminate without further obligation of either Party except with respect to any PSNH purchase option or right set forth in Article 7; *provided further, however,* that if Seller or an Affiliate of or successor to Seller recommences development and/or construction of the Facility within a twelve-month period from the date of such notice to PSNH, then this Agreement may be reinstated at PSNH's sole option and shall be in full force and effect upon such reinstatement.

12.3.2 **PSNH's Right to Terminate.** PSNH may, at its sole option and discretion, terminate this Agreement if (i) Seller announces its plans to permanently shut down the Facility, or (ii) if the In-Service Date is not achieved by December 31, 2014, unless otherwise ordered by the NHPUC or unless the Parties otherwise agree in writing; provided that if the In-Service Date is not achieved by June 1, 2014, then Seller shall pay to PSNH damages equal to $500 per day for each day after June 1, 2014 that the In-Service date is not achieved; and *provided further*, that the June 1, 2014 and December 31, 2014 dates shall be extended day for day for any delays in obtaining any PSNH approvals under Sections 4.1.3 or 4.1.4 above and beyond the date that is the 180th day following the date hereof, but in no event shall any such extension be beyond December 31, 2015, or (iii) Seller fails after the In-Service Date to deliver any Products to the Delivery Point that are required to be delivered hereunder for a period of twelve (12) consecutive months; *provided* that in each case PSNH shall give Seller notice of such termination within ten (10) Business Days after such date; and *further provided* that the twelve (12) month period referred to in subsection (iii) shall be extended for any period that Seller was unable to deliver Products to PSNH in whole or in part as a result of the occurrence of a

Force Majeure event; *and further provided* that any PSNH purchase option or right set forth in Article 7 shall survive such termination.

12.4 **Termination Liability**

12.4.1 If, prior to the In-Service Date, PSNH terminates this Agreement pursuant to Section 12.3.2 or Seller terminates this Agreement pursuant to Section 12.3.1, then neither Party shall have any liability to the other Party pursuant to this Agreement and the Parties shall be released and discharged from any obligations arising or accruing hereunder from and after the date of such termination and shall not incur any additional liability to each other as a result of such termination; provided that such termination shall not discharge or relieve either Party from any obligation that has accrued prior to such termination or from its obligations under certain other provisions of this Agreement as provided in Section 26.5.

12.4.2 Further, if Seller terminates this Agreement pursuant to Section 12.3.1 before the In-Service Date or if PSNH terminates this Agreement pursuant to Section 12.3.2 then, for a period of two (2) years following delivery of notice by Seller to PSNH of the termination of this Agreement neither Seller, its Affiliates, successors nor assigns shall: (i) seek to sell, or to sell, any electricity from an electric generating facility on the Project Site to a third person without PSNH's consent; or (ii) be entitled to enter into a long term power sales agreement for the sale of any Products and/or Renewable Energy Certificates from an electric generating facility on the Project Site with any entity other than PSNH; provided, that the foregoing restrictions shall terminate if Seller has offered in writing to PSNH during such period to reinstate this Agreement or enter into a new agreement on the same terms and conditions as this Agreement and PSNH has not agreed in writing to reinstate this Agreement or enter into such a new agreement within ninety (90) days following the receipt by PSNH of such offer.

12.4.3 If, following the In-Service Date, either Party terminates this Agreement pursuant to Section 12.2, both Parties shall be discharged from all further obligation under the terms of this Agreement, except (i) any liability which may have been incurred before the date of such termination and any liability on account of such termination, including without limitation the obligation to pay for Products delivered prior to any such termination and/or for all direct damages incurred by the Non-Defaulting Party on account of any termination for default, which obligations shall survive the termination of this Agreement (ii) any PSNH purchase option set forth in Article 7, Right of First Refusal and Purchase Option, and (iii) any liability which survives termination of this Agreement.

ARTICLE 13. TITLE AND RISK OF LOSS; TAXES; INDEMNIFICATION

13.1 **Title and Risk of Loss.** Title to and risk of loss related to the Products delivered hereunder shall transfer from Seller to PSNH at the Delivery Point. Seller warrants that it

will deliver to PSNH the Products free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

13.2 **Taxes.** With the exception of any sales or gross receipts Taxes that are required by applicable law to be paid by PSNH, Seller shall pay or cause to be paid all present and future Taxes, fees and levies on or with respect to the sale of the Products prior to the Delivery Point. PSNH shall pay or cause to be paid all present and future Taxes, fees and levies on or with respect to the purchase of the Products at, from and after the Delivery Point, other than ad valorem, franchise or income taxes which are related to the sale of the Products and are, therefore, the responsibility of Seller. Each Party shall use reasonable efforts to administer this Agreement and implement its provisions in accordance with the intent of the Parties to minimize the imposition of Taxes, fees and levies.

13.3 **Indemnification.** On and after the Effective Date, Seller and PSNH shall each, to the extent permitted by law, indemnify, defend and hold the other, its members, officers, employees and agents (including but not limited to affiliates and contractors and their employees), harmless from and against all liabilities, damages, losses, penalties, claims, demands, suits and proceedings of any nature whatsoever for personal injury (including death) or property damage or otherwise asserted by a third party (a "Claim") that arises from or out of any event or circumstance first occurring or existing during the period when control and title to the Products is vested in such Party or which is in any manner connected with the performance of this Agreement by such Party, except to the extent that such Claim may be attributable to the gross negligence or willful misconduct of the Party seeking to be indemnified.

13.4 Either Party may be involved in an action and intend to seek indemnity under this Article 13 from the other Party. If so, the Party seeking indemnity must give prompt notice of the pendency of the action to the other Party. Whether or not notice is given, any Party from whom indemnity might be sought may, but need not, participate in the action for which the indemnity is requested with separate counsel and may assert all defenses available to it.

ARTICLE 14. FORCE MAJEURE

14.1 Each Party shall conform to Good Industry Practice in performing its obligations hereunder. Neither Party shall be considered to be in default with respect to any obligation hereunder if prevented or delayed in a material respect from fulfilling such obligation by fire, strikes or other labor difficulties, casualties, civil or military authority, civil disturbance or riot, war, acts of God, acts of public enemy, drought, earthquake, flood, explosion, hurricane, lightning, landslide, or similar cataclysmic occurrence, or if NEPOOL or ISO-NE experiences unplanned-for emergency system conditions, including but not limited to a shortage of available electric generating capacity or an insufficiency of transmission or distribution facilities required for the delivery of Products, such that NEPOOL or ISO-NE either must suspend the supply of one or more of the Products or must curtail or interrupt all or a portion of the Products, or other event beyond the reasonable control of the Party affected ("Force Majeure"); *provided, however*, that the

price or pricing structure of any Product or any applicable fuel or energy source shall not be considered a Force Majeure event.

14.2 If either Party is rendered wholly or partly unable to perform its obligations under this Agreement because of Force Majeure, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected; *provided, that* payments due hereunder from either Party to the other when due shall not be excused by Force Majeure (unless the Party's inability to pay arises from a Force Majeure event affecting such Party's payment mechanism or the banking system as a whole); *and provided, further*, that:

(a) The non-performing Party promptly, but in no case later than five (5) Business Days after the occurrence of the Force Majeure, gives the other Party notice describing the particulars of the occurrence describing, in detail, the nature, extent and expected duration of the Force Majeure;

(b) The suspension of performance shall be of no greater scope, and of no longer duration, than is reasonably required by the Force Majeure; and

(c) The non-performing Party uses commercially reasonable efforts to remedy its inability to perform.

14.3 Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, is contrary to its interest, it being understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party having such difficulty.

ARTICLE 15. LIMITATION OF LIABILITIES

15.1 Neither Party shall be liable to the other Party in connection with this Agreement for any special, indirect, incidental, consequential, punitive or exemplary damages of any kind, including but not limited to loss of use, and lost profits (past or future), by statute, in tort or contract, under any indemnity provision, or otherwise.

ARTICLE 16. REPRESENTATIONS AND WARRANTIES

16.1 Seller hereby represents and warrants to PSNH as follows:

16.1.1 Seller has full power and authority to execute and deliver this Agreement, and Seller shall continue to have full power and authority to perform its obligations hereunder, and to consummate the transactions contemplated hereby during the Term of this Agreement. The execution and delivery of this Agreement by Seller and the consummation by it of the transactions contemplated hereby have been duly and validly authorized by all necessary action required on its part and this Agreement has been duly and validly executed and delivered by Seller. For the Term of this Agreement, Seller agrees that this Agreement shall constitute Seller's legal, valid and binding agreement, enforceable against

Seller in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally and general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity).

16.1.2 Neither the execution and delivery of this Agreement by Seller nor the consummation by Seller of the transactions contemplated hereby during the Term of this Agreement will (i) conflict with or result in any breach or violation of any provision of the enabling legislation, bylaws, certificate of formation, LLC agreement, and any other applicable governing or formation documents of Seller, (ii) result in a default (or give rise to any right of termination, consent, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which Seller is a party or by which it may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained; or (iii) constitute violations of any law, regulation, order, judgment or decree applicable to Seller.

16.1.3 Except for the Seller Required Approvals, which Approvals Seller agrees to obtain in order to satisfy the Prerequisites for Purchases set forth in Article 4, no consent or approval of, filing with, or notice to, any governmental authority by or for Seller is necessary for the execution and delivery of this Agreement by it, or the consummation by it of the transactions contemplated hereby.

16.1.4 Seller agrees that during the Term of this Agreement, Seller shall comply with any and all filing and notice requirements, conditions or orders made part of, included with or subsequently added to Seller Required Approvals. Seller further agrees, during the Term of this Agreement, to fully comply with its organizational and governing documents and determinations of any governmental instrumentality applicable to Seller.

16.2 PSNH hereby represents and warrants to Seller as follows:

16.2.1 PSNH is a corporation organized and validly existing under the laws of the State of New Hampshire.

16.2.2 PSNH has full corporate power and authority to execute and deliver this Agreement, and PSNH shall continue to have full power and authority, to perform its obligations hereunder and to consummate the transactions contemplated hereby during the Term of this Agreement. Upon the fulfillment of all of the prerequisites for purchases set forth in Article 4, the execution and delivery of this Agreement by PSNH and the consummation by it of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action required on its part and this Agreement has been duly and validly executed and delivered by PSNH. For the Term of this

Agreement, PSNH agrees that this Agreement shall constitute PSNH's legal, valid and binding agreement of PSNH, enforceable against PSNH in accordance with its respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally and general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity).

16.2.3 Subject to any required FERC acceptance and approval of the Interconnection Agreement under the Federal Power Act and FERC's Rules of Practice and Procedure, neither the execution and delivery of this Agreement by PSNH, nor the consummation by PSNH of the transactions contemplated hereby during the Term of this Agreement will (i) conflict with or result in any breach or violation of any provision of the certificate of incorporation or bylaws of PSNH, (ii) result in a default (or give rise to any right of termination, consent, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which PSNH is a party or by which it may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained; or (iii)constitute violations of any law, regulation, order, judgment or decree applicable to PSNH.

16.2.4 Except for any required FERC acceptance and approval of the Interconnection Agreement under the Federal Power Act and FERC's Rules of Practice and Procedure and except for the NHPUC final decision referenced in Section 4.1.3, no consent or approval of, filing with, or notice to, any governmental authority by or for PSNH is necessary for the execution and delivery of this Agreement by it, or the consummation by it of the transactions contemplated hereby.

ARTICLE 17. ASSIGNMENT

17.1 This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns. Except as specified below and in Article 7, the rights and obligations of the Parties to this Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, conditioned, delayed or denied; provided, however, that no assignment authorized pursuant to this Article 17 shall release the Assigning Party from any of its obligations under this Agreement unless a written release is executed by the non-assigning Party in the non-assigning Party's sole discretion.. As a condition of its consent, any person to whom an assignment is made shall be required to demonstrate, to the reasonable satisfaction of the non-assigning Party, that it is capable of fulfilling the assigning Party's obligations hereunder.

17.2 Notwithstanding Section 17.1, PSNH shall have the right to assign, without the consent of Seller and without recourse to PSNH, all or any part of PSNH's interest and

obligations hereunder to any regulated affiliated New Hampshire electricity distribution company of equivalent or better creditworthiness.

17.3 Notwithstanding Section 17.1, Seller shall have the right to assign, without the consent of PSNH, its rights and interests hereunder, including any right to receive payments under this Agreement, to any bank, insurance company, capital fund or similar financial institution or entity providing financing to Seller (including a sale/leaseback financing), *provided that* no such assignment shall relieve Seller of responsibility or liability for the due performance of this Agreement. PSNH agrees, upon receipt of a written request from Seller, to execute a commercially reasonable consent to any such collateral assignment by Seller providing for, among other things, simultaneous notices to Facility capital providers, a right (but not obligation) of such capital providers to cure any Seller default hereunder, and the directing of payments due Seller hereunder directly to such capital providers.

17.4 Any purported assignment not in compliance with this Article 17 shall be null and void.

ARTICLE 18. TRANSFER OF OWNERSHIP

18.1 Except in connection with a sale/leaseback financing in which Seller remains in control of Facility operations, during the Term hereof, Seller shall not sell or transfer ownership of the Facility without prior written approval of PSNH, which approval shall not be unreasonably withheld or delayed so long as the purchasing entity agrees to assume and be bound by the terms of this Agreement.

ARTICLE 19. AUDIT RIGHTS

19.1 PSNH and Seller shall each have the right throughout the Term and for a period of three (3) years following the end of the Term, upon reasonable prior notice, to audit copies of relevant portions of the books and records of the other Party to the limited extent necessary to verify the basis for any claim by a Party for payment from the other Party or to determine a Party's compliance with the terms of this Agreement. The Party requesting the audit shall pay the other Party's reasonable costs allocable to such audit.

ARTICLE 20. GOVERNMENT ACTIONS

20.1 Seller and PSNH shall at all times comply with all valid and applicable federal, state and local laws, rules, regulations and orders in connection with the performance of their respective obligations under this Agreement.

20.2 Seller shall use commercially reasonable efforts to obtain and retain any permits, licenses, approvals or other governmental authorizations required for the construction and operation of the Facility and Seller's performance pursuant to this Agreement for the Term. PSNH shall cooperate with Seller to obtain and retain such permits, licenses, approvals and authorizations to the extent reasonably requested by Seller, but only to the extent that PSNH does not incur any unreasonable costs in connection with that cooperation.

ARTICLE 21. NOTICES

21.1 All notices, including communications and statements which are required or permitted under the terms of this Agreement, shall be in writing, except as otherwise provided or as reasonable under the circumstances. Service of a notice may be accomplished and will be deemed to have been received by the recipient Party on the day of delivery if delivered by personal service, on the day of confirmed receipt if delivered by telegram, registered or certified commercial overnight courier, or registered or certified mail or on the day of transmission if sent by telecopy or email with evidence of receipt obtained, to each Party at the following addresses:

To PSNH:
Public Service of New Hampshire
Public Service Company of New Hampshire
PSNH - Energy Park
780 N. Commercial Street
P. O. Box 330
Manchester, NH 03105-0330
Attn.: Manager, Supplemental Energy Sources Department
Phone: (603) 634-2312
Fax: (603) 634-2449
Email: psnhsesd@psnh.com

With an additional notice to Buyer of an Event of Default to:

Public Service Company of New Hampshire
PSNH - Energy Park
780 N. Commercial Street
Manchester, New Hampshire 03101
Attention: Assistant General Counsel
Fax: (603) 634-2438
Phone: (603) 634-3355

To Seller:
Laidlaw Berlin Biopower, LLC
c/o Laidlaw Energy Group, Inc.
90 John Street, Suite 401
New York, NY 10038
Facsimile: 212-480-8448

21.2 The designation of such persons and/or address may be changed at any time by either Party upon notice given pursuant to the requirements of this Section.

ARTICLE 22. GOVERNING LAW; VENUE

22.1 **Governing Law.** Interpretation and performance of this Agreement shall be in accordance with, and shall be controlled by, (i) the laws of the State of New Hampshire other than any conflicts of law provision, the effect of which would be to apply the

substantive law of a state other than the State of New Hampshire to the governance and construction of this Agreement; (ii) Part II of the Federal Power Act, 16 U.S.C. §§824d *et seq.*; (iii) Part 35 of Title 18 of the Code of Federal Regulations, 18 C.F.R. §§ 35 *et seq.*; and (iv) present and future laws and present and future regulations or orders properly issued by local, state, or federal bodies having jurisdiction over the matters set forth herein.

22.2 Venue. Subject to Article 25, Dispute Resolution, any dispute arising out of this Agreement shall be brought in a court of competent jurisdiction located in Manchester in the State of New Hampshire. Each Party irrevocably waives any objection which it may have to the venue of any proceeding brought in any such court and waives any claim that such proceedings have been brought in an inconvenient forum.

ARTICLE 23. CHANGE IN LAW

23.1 Change in Law. If, during the Term, a Change in Law occurs or any of the ISO-NE Documents are changed, resulting in elimination of or a material adverse affect upon a material right or obligation of a Party, then unless such Change in Law is otherwise specifically addressed herein, the Parties will negotiate in good faith in an attempt to amend this Agreement to incorporate such changes as they mutually deem necessary to reflect the Change in Law or the change in any ISO-NE Documents. The intent of the Parties is that any such amendment reflects, as closely as possible, the intent and substance of the economic bargain before the Change in Law or the change in any ISO-NE Documents. If the Parties are unable to reach agreement on such an amendment, the Parties agree to resolve the matter pursuant to the terms of Article 25 of this Agreement.

ARTICLE 24. FERC AND NHPUC REVIEW; CERTAIN COVENANTS AND WAIVERS

24.1 It is the intention of the Parties that neither Seller nor PSNH shall have the unilateral right to make a filing with FERC under any section of the Federal Power Act, or with the NHPUC, seeking to change the charges or any other terms or conditions set forth in this Agreement for any reason. The preceding sentence shall not prevent either Party from participating in or initiating any proceeding at FERC concerning a change to the ISO-NE Documents that impact this Agreement.

24.2 It is the intention of the Parties that any authority of FERC or the NHPUC to change this Agreement shall be strictly limited to that authority which applies when the Parties have irrevocably waived their right to seek to have FERC or the NHPUC change any term of this Agreement.

24.3 FERC Standard of Review; Certain Covenants and Waivers.

24.1.1 Absent the agreement of all Parties to a proposed change, the standard of review for changes to any section of this Agreement specifying the pricing or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*,

350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 128 S.Ct. 2733 (June 26, 2008) (the "*Mobile-Sierra*" doctrine).

24.1.2 The Parties, for themselves and their successors and assigns, (i) agree that the "public interest" standard of review shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement, and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the "just and reasonable" standard.

24.1.3 Notwithstanding the foregoing Sections 24.3.1 and 24.3.2, to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC, or to support another in obtaining, by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, or support another in obtaining, an order from FERC changing any section of this Agreement specifying the pricing, charges, classifications or other economic terms and conditions agreed to by the Parties. It is the express intent of the Parties that, to the fullest extent permitted by applicable law, the "sanctity of contract" principles acknowledged by FERC in its Notice of Proposed Policy Statement (issued August 1, 2002) in Docket No. PL02-7-000, Standard of Review for Proposed Changes to Market-Based Rate Contracts for Wholesale Sales of Electric Energy by Public Utilities, shall prevail, notwithstanding any changes in applicable law or markets that may occur. In the event it were to be finally determined that applicable law precludes one or both Parties from waiving its rights to seek changes from FERC to its market-based power sales contracts (including entering into covenants not to do so) then this Section 24.3.3 shall not apply, *provided that*, consistent with Section 24.3.1, neither Party shall seek any such changes except under the "public interest" standard of review and otherwise as set forth in Section 24.3.1.

24.1.4 The Parties agree that in the event that any portion of this Section 24.3 is determined to be invalid, illegal or unenforceable for any reason, the remaining provisions of Section 24.3 shall be unaffected and unimpaired thereby, and shall remain in full force and effect, to the fullest extent permitted by applicable law.

ARTICLE 25. DISPUTE RESOLUTION

25.1 **Negotiation Between Executives.** The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this

Agreement. Any Party may give the other Party notice of any dispute not resolved in the normal course of business. Such notice shall include: (a) a statement of that Party's position and a summary of arguments supporting that position; and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive ("Initial Notice"). Within five (5) Business Days after delivery of the Initial Notice, the receiving Party shall respond with: (a) a statement of that Party's position and a summary of arguments supporting that position; and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within ten (10) Business Days after delivery of the Initial Notice, the executives of both Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one Party to the other will be honored. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

25.2 Mediation. If the dispute has not been resolved by negotiation within twenty (20) Business Days of the disputing Party's Initial Notice, or if the Parties failed to meet within five (5) Business Days of the delivery of the Initial Notice, the Parties shall endeavor to settle the dispute by mediation under the then-current CPR Mediation Procedure. Unless otherwise agreed, the Parties will select a mediator from the CPR Panels of Distinguished Neutrals.

25.3 Arbitration. Except in cases where the dispute is subject to NHPUC and/or FERC jurisdiction, any dispute arising out of or relating to this Agreement, including the breach, termination or validity thereof, which has not been resolved by one of the non-binding procedures set forth in Sections 25.1 and 25.2 within thirty (30) Business Days of the delivery of Initial Notice, shall be finally resolved by binding arbitration in accordance with the then-current CPR Rules for Non-Administered Arbitration (the "CPR Rules") by a sole arbitrator, for disputes involving amounts in the aggregate under three million dollars ($3,000,000), or three arbitrators, for disputes involving amounts in the aggregate equal to or greater than three million dollars ($3,000,000), of whom each Party shall designate one in accordance with the "screened" appointment procedure provided in Rule 5.4 of the CPR Rules; *provided, however,* that if either Party will not participate in a non-binding procedure, the other may initiate arbitration before expiration of the above period. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16, with appeals limited to the grounds expressed therein, and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be Manchester, New Hampshire. The arbitrator(s) are not empowered to award damages in excess of compensatory damages and each Party expressly waives and forgoes any right to punitive, exemplary or similar damages unless a statute requires that compensatory damages be increased in a specified manner.

25.4 The fees and expenses associated with mediation and arbitration, including the costs of arbitrators, shall be divided equally between the Parties. Each Party shall be responsible for its own legal fees, including but not limited to attorney fees. The Parties may, by written agreement signed by both Parties, alter any time deadline, location(s) for meeting(s), or procedure outlined herein or in the CPR Rules. The procedure specified herein shall be the sole and exclusive procedure for the resolution of disputes arising out

of or related to this Agreement. To the fullest extent permitted by law, any resolution, mediation or arbitration proceeding and the settlement or arbitrator's award shall be maintained in confidence by the Parties.

25.5 WAIVER OF JURY TRIAL. EACH PARTY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF, RESULTING FROM OR IN ANY WAY RELATING TO THIS AGREEMENT.

ARTICLE 26. MISCELLANEOUS

26.1 **Confidentiality.** The terms of this Agreement, and any other information exchanged by PSNH and Seller relating to this Agreement, shall not be disclosed to any person not employed or retained by the PSNH or Seller or their Affiliates, except to the extent disclosure is (1) required by law, required to be made to any governmental authority for obtaining any approval, permits and licenses, or making any filing in connection therewith, required by the Interconnection Agreement or delivered by Seller to ISO-NE or to any Person exercising authority over Seller or the Facility for the purpose of maintaining the safety or reliability of the electric system into which the Energy output is delivered, (2) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of any litigation or dispute, or any financing related to the Facility, (3) otherwise permitted by consent of the other Party, which consent shall not be unreasonably withheld, (4) required to be made in connection with regulatory proceedings (including proceedings relating to FERC, the United States Securities and Exchange Commission or any other federal, state or provincial regulatory agency) or pursuant to the rules or regulations of any stock exchange to which a Party or any of its Affiliates are bound. In the event disclosure is made pursuant to this provision, the Parties shall use reasonable efforts to minimize the scope of any disclosure and have the recipients maintain the confidentiality of any documents or confidential information covered by this provision, including, if appropriate, seeking a protective order or similar mechanism in connection with any disclosure. This provision shall not apply to any information that was or is hereafter in the public domain (except as a result of a breach of this provision). The Parties specifically agree that any press release or other public statement that addresses specific commercial terms of this Agreement shall be mutually agreed upon and the text thereof approved by the Parties.

26.2 **Project Financial Information.** Seller agrees to provide project financial information related to the Facility as reasonably requested from time to time by PSNH in order to meet PSNH's FASB, SEC and FERC accounting and reporting requirements.

26.3 **Severability.** The provisions of this Agreement are severable. To the extent that any provision hereof is determined to be invalid pursuant to any applicable statute or rule of law, such invalidity shall not affect any other provision hereof, and this Agreement shall be interpreted as if such invalid provision were not a part hereof.

26.4 **Waiver.** No waiver by either Party of the performance of any obligation under this Agreement or with respect to any default or any other matter arising in connection with this Agreement shall be deemed a waiver with respect to any subsequent performance, default or matter.

26.5 **Survivability.** This Agreement shall survive termination, expiration, cancellation, suspension, or completion of the agreements set forth herein to the extent necessary to allow for final accounting, final billing, billing adjustments, resolution of any billing dispute, resolution of any court or administrative proceeding and final payments. All billing verification rights and confidentiality obligations shall survive for two (2) years beyond the applicable terms, and indemnification provisions shall survive for the full statutory period allowable by applicable law.

26.6 **No Duty to Third Parties.** Nothing in this Agreement nor any action taken hereunder is intended to or shall be construed to create any duty, liability or standard of care to or from any person not a Party to this Agreement. However, lenders to the Seller or to the Facility may have the option to perform certain Seller obligations as defined more fully under the terms of the financing documents related to the Facility.

26.7 **Amendment.** No amendment of all or any part of this Agreement shall be valid unless it is reduced to writing and signed by both Parties and, in the case of a material amendment, approved by the NHPUC.

26.8 **Complete and Full Agreement.** This Agreement sets forth the entire agreement of the Parties with respect to the subject matter herein, and takes precedence over all prior understandings between the Parties, and binds and inures to the benefit of the Parties, their successors and assigns.

26.9 **Counterparts.** Any number of counterparts of this Agreement may be executed and each shall have the same force and effect as the original.

IN WITNESS WHEREOF, PSNH and Seller have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By: Gary A Long

Name: Gary A. Long

Title: President + COO

LAIDLAW BERLIN BIOPOWER, LLC

By: Michael Bartoszek

Name: Michael B. Bartoszek

Title: President + CEO

APPENDIX A

DESCRIPTION OF FACILITY

The Facility will be located at the former Fraser Paper Mill located at Commercial Street in Berlin, NH (the "Project Site"). The Facility will be designed to have a net electric output at standard conditions of approximately 64 MW (winter) and 61 MW (summer). The Facility is expected to utilize Biomass Fuel as its primary fuel. The Facility will be designed and operated as a NH Class I renewable energy source. The Facility is associated with queue position #251 in the ISO-NE Study Request Database.

APPENDIX B

FORM OF PURCHASE OPTION AGREEMENT

This PURCHASE OPTION AGREEMENT (this "Option Agreement") is made as of _____, 20__ (the "Effective Date") by and between **Public Service Company of New Hampshire**, a New Hampshire corporation ("PSNH"), **PJPD Holdings, LLC**, a Delaware limited liability company ("Site Owner"), and **Laidlaw Berlin Biopower, LLC**, a Delaware limited liability company ("LBB"). PSNH, Site Owner and LBB (together with their respective successors and assigns) are the "Parties" and each individually is a "Party" to this Option Agreement.

RECITALS:

A. Site Owner and LBB are developing a biomass fueled electric generating facility having a gross generating capacity output of approximately 70 megawatts (the "Facility") located on an approximately sixty two (62)-acre site in Berlin, New Hampshire, as more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Facility Site"). For purposes of this Option Agreement, the Facility Site includes all land described in Exhibit "A" and all easements, rights and other real estate interests appurtenant thereto, whether now owned or hereafter acquired by Site Owner, for the use or benefit of the Facility Site and the Facility, and the Facility includes all equipment, generators, boilers, transformers, switching equipment, transmission lines, and other fixtures, trade fixtures, together with articles of personal property necessary to or convenient for the operation of the Facility.

B. Site Owner is the sole owner in fee simple of the Facility Site and the Facility under the deed or deeds recorded in the Coos County Registry of Deeds at Book 1265, Page 1025. The Facility Site is a separate tax and zoning lot (or lots) on the zoning and tax assessment records of the City of Berlin, designated as Tax Map: 129, Parcel: 54.01, 54.001.

C. LBB and Site Owner anticipate that subsequent to the execution and recording of this Option Agreement, Site Owner will continue to be the sole owner in fee simple of, and will lease the Facility and Facility Site to LBB under a sale/leaseback financing arrangement, with all such arrangements being expressly made subject and subordinate to PSNH's rights hereunder.

D. PSNH and LBB have entered into a certain Power Purchase Agreement dated as of _____, 2010 (the "PPA") under which PSNH has agreed to purchase the Facility output conditioned upon, among other things, the execution and recording of this Option Agreement.

NOW THEREFORE, in consideration of PSNH's promises to purchase the "Products" (as defined in the PPA) of the Facility at the prices and under the terms of the PPA, and other good and valuable consideration, the Parties agree as follows:

1. **Grant of Option.** Site Owner hereby grants to PSNH, and its successors and assigns, for the fixed period co-extensive with the fixed period of the twenty (20) "Operating Years" from the "In-Service Date" (as defined under the PPA), an exclusive, irrevocable option (the "Option") to purchase the Facility and the Facility Site (together, the "Facility Assets") within the Option Exercise Period hereafter stated and subject to the purchase conditions and terms hereafter stated. Upon the exercise of the Option by PSNH, this Option Agreement shall constitute the agreement of sale and purchase between the Parties with respect to the Facility Assets. LBB hereby takes and confirms notice of the Option as an interest in the Facility and Facility Site that is prior in right to any leasehold or other estate granted to LBB by Site Owner.

2. **Option Exercise Period and Termination.**

(a) Except as otherwise provided herein, the "Option Exercise Period" shall commence on the date that is the day after the 20th anniversary date of the designated "In-Service Date" under the PPA and shall extend for one hundred and twenty (120) days. This Option Agreement shall terminate upon the expiration or termination of the Option Exercise Period; provided that if the Option is exercised as provided herein within the Option Exercise Period, then this Option Agreement shall remain in effect to the extent necessary to complete the transactions contemplated hereunder.

(b) Notwithstanding the forgoing, Site Owner may terminate this Option Agreement and the Option without further obligation of any Party at any time subsequent to a valid termination of the PPA by LBB pursuant to Section 12.1.1 of the PPA. This Option Agreement shall otherwise remain in full force and effect as set forth in Section 2(a) above.

3. **Exercise of Option.** In order to exercise the Option, PSNH shall provide a written notice to the Site Owner (or any successor thereof of record) within the Option Exercise Period, which notice shall include a statement of the value of the Cumulative Reduction (as defined in the PPA) existing as of the date of expiration or termination of the PPA. PSNH shall provide such information as Site Owner shall reasonably request supporting the calculation of the Cumulative Reduction. Any disagreement between the Parties as to the calculation of such Cumulative Reduction Value will be resolved as per Section 13 below, but no such request for supporting information or dispute shall negate the effectiveness of PSNH's notice of the exercise of the Option. If PSNH exercises the Option within the Option Exercise Period, then the Parties will use diligent and good faith efforts to close on the transfer of the Facility Assets to PSNH as soon as reasonably practicable, and in no case later than one hundred eighty (180) days from PSNH's notice exercising the Option.

4. **Purchase Price.**

(a) The "Purchase Price" for the Facility Assets pursuant to the Option shall equal (i) the fair market value of the Facility Assets as of commencement of the Option Exercise Period (assuming the Facility Assets are sold free of all financing liens and encumbrances) *less* (ii) any positive Cumulative Reduction value, provided that the Purchase Price shall not be less than zero.

(b) If the Parties are unable to establish a mutually-agreeable fair market valuation for the Facility Assets within the first twenty (20) days after the exercise of the Option, then PSNH and Site Owner shall each select two (2) qualified independent commercial appraisers to provide a fair market valuation of such Facility Assets. The highest and lowest of the resulting four (4) appraisal valuations shall be discarded, and the remaining two (2) valuations shall be averaged to arrive at a binding fair market value for the Facility Assets as soon as practicable (and no later than 70 days after the exercise of the Option). Any disputed and unresolved issues, other than establishment of the Purchase Price, shall be submitted for dispute resolution in accordance with Section 13 below. The appraisals shall be based on the value of the highest and best use of the Facility Assets for their then existing use as an electric generating facility (whether as an operational facility or otherwise), and will not take into account the existence of this Option Agreement, the status or value of the PPA, or the Cumulative Reduction.

6. **Due Diligence, Inspection and Investigation.**

(a) At any time during the Option Exercise Period, at the request of PSNH, or its duly authorized agents, contractors or consultants, Site Owner and LBB will promptly provide PSNH with access to all documents and records in their possession regarding the Facility Assets and their operation, including (but not limited to) permits, licenses, contracts, leases, project documents, material warranties, operational reports, invoices, financial statements, operational books and records, maintenance and repair records, property tax bills, surveys, agreements with governmental agencies, environmental site assessments, engineering studies or reports, plans, and other documents or reports of whatever nature or description and relating to the Facility Assets and reasonably required by PSNH to evaluate the condition of, title to, and operational economics of the Facility Assets.

(b) At any time during the Option Exercise Period, PSNH, or its duly authorized agents, contractors or consultants, at its own expense may enter and inspect, examine, test and assess the Facility Assets, including, but not limited to, the soil, subsoil, topography, existing fill, drainage, surface and groundwater quality, air and water rights, availability of utilities, zoning, legal compliance, access, suitability, assessments, encroachments, environmental matters, flood plain analysis, wetland requirements, title matters, taxes and all other inspections deemed necessary, desirable or appropriate by PSNH, and Site Owner and LBB shall fully cooperate with PSNH in promptly providing access to the Facility Assets for such purposes.

(c) In making any entry pursuant to paragraph (b) above, PSNH and its agents, employees, contractors and representatives shall: (i) enter upon the Facility and the Facility Site at their own risk; (ii) conduct all activities on the Facility and the Facility Site in such a way as to minimize damage to the Facility Assets or disruption of Facility operations, indemnify Site Owner and LBB for any actual damages caused by entry activities and remedy the effects of such entry on the Facility and Facility Site; and (iii) conduct all activities on the Facility and the Facility Site under commercially appropriate liability insurance and at the sole cost and expense of PSNH. Each of LBB and Site Owner shall cause its officers, employees and any other person operating or otherwise

in possession of the Facility Assets to provide entry to the Facility and the Facility Site to PSNH and its duly authorized agents, contractors and consultants, for the purposes described in this Option Agreement.

(d) Notwithstanding anything to the contrary contained in this Option Agreement, PSNH reserves the right to review and consider the results of its due diligence inspections and investigations of the Facility Assets, and to determine whether and to what extent the results of same are satisfactory to PSNH, or not, in its sole and absolute discretion.

7. **Title and Title Insurance.**

(a) Concurrently with the execution of this Option Agreement and a recording of a memorandum thereof, Site Owner and LBB, at their sole cost and expense, shall be required to obtain and provide to PSNH a policy of title insurance issued by a nationally recognized title insurance company, in form and content acceptable to PSNH insuring PSNH's interest in and under this Option Agreement as of the Effective Date, free of all secured lending arrangements, mortgages, leaseholds and other liens and encumbrances upon the Facility and Facility Site as of the Effective Date, and subject only to those existing easements, covenants and restrictions of record as PSNH shall determine after suitable review and in its sole discretion are acceptable as necessary or appropriate to operate or maintain the Facility on the Facility Site, will not materially interfere with or restrict such operation or maintenance, or are otherwise acceptable (the "Permitted Encumbrances"). The amount of such title insurance shall be Forty Seven Million Dollars ($47,000,000), and shall include an endorsement to coverage affirmatively insuring the Option Agreement and PSNH's interest thereunder against unenforceability or other loss due to or resulting from violation of the New Hampshire Rule Against Perpetuities. A Commitment of Title Insurance shall be provided to PSNH prior to execution of this Option Agreement and the recording of a memorandum thereof, to allow for PSNH's suitable review to determine compliance with this provision.

(b) All secured lending arrangements, mortgages, leaseholds and other liens and encumbrances upon the Facility Site and other Facility Assets as of the Effective Date shall be discharged or fully subordinated to PSNH's rights under this Option Agreement. Subsequent to the Effective Date, Site Owner may grant or allow, without PSNH's consent but with notice to PSNH, any mortgage, security interest, leasehold, or other lien, encumbrance, or conveyance of or upon the Facility Assets that it determines necessary or appropriate in connection with the financing and operations of the Facility Assets (the "Subsequent Encumbrances"); *provided*, that all such Subsequent Encumbrances shall remain subject and subordinate to the prior Option rights of PSNH hereunder. PSNH may require that the holder of any Subsequent Encumbrance confirm PSNH's prior rights hereunder. PSNH will not unreasonably withhold its consent to the subordination of its rights hereunder to a Subsequent Encumbrance that is not a mortgage, grant of any security interest, leasehold or other similar lien, and is necessary or appropriate to operate or maintain the Facility Assets, such as third party utility or service easements. Nothing in this Option Agreement shall act as a restraint on the sale or transfer of the Facility Assets; *provided,* that any such sale or transfer

shall remain expressly subject to PSNH's rights hereunder, which rights shall be binding on any subsequent owner of any Facility Asset.

(c) During the Option Exercise Period, PSNH shall be entitled, at its sole cost and expense, to examine the title to the Facility Assets and to obtain a commitment from a title insurance company acceptable to PSNH evidencing satisfactory title vested in the Site Owner as of the effective date thereof, and pursuant to which such title insurance company agrees to issue to PSNH, in form and content acceptable to PSNH, an owner's policy of title insurance, for an amount not less than the Purchase Price to be determined hereunder, at standard premium rates, and subject only to the standard policy coverage terms, conditions, exceptions and exclusions, but excepting the Permitted Encumbrances and those new or additional existing easements, covenants and restrictions of record, if any, as PSNH shall determine after suitable review in its sole discretion are acceptable as necessary or appropriate to operate or maintain the Facility on the Facility Site, will not materially interfere with or restrict such operation or maintenance, or are otherwise acceptable (the "Additional Permitted Encumbrances").

8. **Conveyance of Title.** At closing on transfer of the Facility Assets pursuant to an exercise of the Option, Site Owner shall cause to be executed and delivered to PSNH or its successor or assignee a quitclaim deed or deeds, and such assignments, bills of sale and other customary conveyance documents, all in form and content acceptable to PSNH and its title insurer, as are necessary for conveying good and insurable title to the Facility Assets free from all defects, liens, security interests, easements, restrictions, covenants, encroachments, and any other encumbrances, except: (i) real estate taxes and assessments not yet due and payable; (ii) the Permitted Encumbrances and the Additional Permitted Encumbrances, if any; and (iii) such other matters as may be consented to or waived in writing by PSNH at any time prior to such closing. In connection with any such closing, Site Owner and/or LBB shall cause to be transferred to PSNH (to the extent assignable or transferable) by such transfer instruments as shall in form and content be acceptable to PSNH all other personal and intangible property held or controlled by either of them with respect to the Facility or Facility Site, including but not limited to permits, authorizations, exemptions, agreements, vehicles, tools, inventory and spare parts. All Facility Assets will be transferred on an "as is" basis without warranties as to physical condition.

9. **Closing Expenses and Apportionments.**

(a) All real estate and personal property taxes and assessments, including all unpaid portions of any general or special assessments, levied or assessed against the Facility and the Facility Site ("Taxes"), shall be apportioned between the Parties as of the closing in accordance with closing practice in Coos County, New Hampshire.

(b) Unless otherwise specified herein, all Taxes that are the subject of a statutory lien on the Facility or the Facility Site as of the closing shall be paid by the Site Owner.

(c) Site Owner shall pay for (i) costs to discharge or clear any unpermitted liens or encumbrances, (ii) the costs of any appraisals it is required to provide under

Section 5(b); (iii) the costs of its own legal and accounting fees; (iv) one half of the NH Real Estate Transfer Tax; and (v) all fees and costs associated with the transfer or assignment of all permits, licenses and approvals then in effect with respect to the Facility and its operations ("Facility Authorizations").

(d) PSNH shall pay for (i) one half of the NH Real Estate Transfer Tax, (ii) closing title searches and title insurance premium for any Owner's Policy, (iii) the costs of any appraisals it is required to provide under Section 5(b); (iv) the costs of its own legal and accounting fees; and (v) the cost of obtaining any authorization required for PSNH to exercise the Option and take assignment of the Facility Assets, including any assigned Facility Authorizations.

10. **Representations, Warranties, and Covenants of the Parties.** Each Party hereby represents and warrants to the other Parties as follows as of the Effective Date:

(a) Such Party is not a party to any contract or agreement of any kind whatsoever, written or verbal, which would materially impair its ability to comply with the terms of this Option Agreement.

(b) The Party is a duly formed legal entity, validly existing under the laws of the state of its formation, is qualified to do business in the state of New Hampshire, and has all requisite power and authority to enter into this Option Agreement and to render the performance contemplated hereby.

(c) This Option Agreement is the valid and binding obligation of the Party, enforceable in accordance with its terms.

11. **Binding Effect, Assignments.** The terms, covenants and conditions of this Option Agreement shall be binding upon and enforceable by the successors and assigns of the Parties. PSNH may assign its rights hereunder to any third party at any time upon prior written notice to Site Owner and LBB, such written notice to include a written confirmation of acceptance by the assignee. PSNH may record a memorandum evidencing any such assignment.

12. **Governing Law.** This Option Agreement shall be governed in all respects by the laws of the State of New Hampshire. Any rule against perpetuities under New Hampshire law shall not apply to this Option Agreement.

13. **Dispute Resolution.**

(a) **Negotiation Between Executives.** The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Option Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any Party may give the other Party notice of any dispute not resolved in the normal course of business. Such notice shall include: (a) a statement of that Party's position and a summary of arguments supporting that position;

and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive ("Initial Notice"). Within seven (7) days after delivery of the Initial Notice, the receiving Party shall respond with: (a) a statement of that Party's position and a summary of arguments supporting that position; and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within fifteen (15) days after delivery of the Initial Notice, the executives of both Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one Party to the other will be honored. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

(b) Mediation. If the dispute has not been resolved by negotiation within thirty (30) days of the disputing Party's Initial Notice, or if the Parties failed to meet within seven (7) days of the delivery of the Initial Notice, the Parties shall endeavor to settle the dispute by mediation under the then-current CPR Mediation Procedure. Unless otherwise agreed, the Parties will select a mediator from the CPR Panels of Distinguished Neutrals.

(c) Arbitration. Any dispute arising out of or relating to this Option Agreement, including the breach, termination or validity thereof, which has not been resolved by one of the non-binding procedures set forth above within forty five (45) days of the delivery of Initial Notice, shall be finally resolved by binding arbitration in accordance with the then-current CPR Rules for Non-Administered Arbitration (the "CPR Rules") by a sole arbitrator, for disputes involving amounts in the aggregate under three million dollars ($3,000,000), or three arbitrators, for disputes involving amounts in the aggregate equal to or greater than three million dollars ($3,000,000), of whom each Party shall designate one in accordance with the "screened" appointment procedure provided in Rule 5.4 of the CPR Rules; *provided, however,* that if either Party will not participate in a non-binding procedure, the other may initiate arbitration before expiration of the above period. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16, with appeals limited to the grounds expressed therein, and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be Manchester, New Hampshire. The arbitrator(s) are not empowered to award damages in excess of compensatory damages and each Party expressly waives and forgoes any right to punitive, exemplary or similar damages unless a statute requires that compensatory damages be increased in a specified manner.

The fees and expenses associated with mediation and arbitration, including the costs of arbitrators, shall be divided equally between the Parties. Each Party shall be responsible for its own legal fees, including but not limited to attorney fees. The Parties may, by written agreement signed by all Parties, alter any time deadline, location(s) for meeting(s), or procedure outlined herein or in the CPR Rules. The procedure specified herein shall be the sole and exclusive procedure for the resolution of disputes arising out of or related to this Option Agreement. To the fullest extent permitted by law, any

resolution, mediation or arbitration proceeding and the settlement or arbitrator's award shall be maintained in confidence by the Parties.

(d) WAIVER OF JURY TRIAL. **EACH PARTY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF, RESULTING FROM OR IN ANY WAY RELATING TO THIS AGREEMENT.**

14. **Notices.** Any and all notices required to be delivered hereunder shall be deemed properly given if delivered personally, sent by overnight courier or mailed by registered or certified mail, return receipt requested,

To Site Owner:

PJPD Holdings, LLC (Delaware LLC)
Attention: Richard Cyr
130 Clinton Street
Portsmouth, NH 03801
Fax: (603) 584-1315

with a copy to:

Murray Plumb & Murray
Attention: Christopher Branson
75 Pearl Street
Portland, ME 04104
Fax: (207) 773-8023

To PSNH:

PSNH - Energy Park
780 N. Commercial Street
P. O. Box 330
Manchester, NH 03105-0330
Attn.: Manager, Supplemental Energy Sources Department
Phone: (603) 634-2312
Fax: (603) 634-2449
Email: psnhsesd@psnh.com

with an additional notice to Buyer of an Event of Default to:

Public Service Company of New Hampshire
PSNH - Energy Park
780 N. Commercial Street
Manchester, New Hampshire 03101
Attention: Assistant General Counsel

Fax: (603) 634-2438
Phone: (603) 634-3355

To LBB:

Laidlaw Berlin Biopower, LLC
c/o Laidlaw Energy Group, Inc.
90 John Street, Suite 401
New York, NY 10038
Facsimile: 212-480-8448

or to a Party at such address as may be given by notice in accordance with this Section.

15. **Recorded Memorandum.** The Parties agree to execute and record in the Coos County Registry of Deeds a Memorandum of this Option Agreement in the form attached hereto as Exhibit "B".

16. **Termination and Release.** If the Option Term expires or is terminated without PSNH exercising the Option, PSNH agrees to execute and deliver to LBB and Site Owner an instrument in recordable form confirming the expiration of the Option.

17. **Confirmations.** Each Party hereto will provide the other with such written confirmations as the requesting Party may reasonably request from time to time, including but not limited to the status of title, counterparties to any Subsequent Encumbrances, and the value of any Cumulative Reduction.

18. **Preservation of Facility Assets.** LBB and Site Owner agree that on and after the Effective Date of this Option Agreement and continuing to either the termination of the Option Exercise Period if the Option is not exercised by PSNH, or to date of closing if so exercised, (i) to keep and maintain the Facility Assets in a functioning operating condition and in a good state of maintenance and repair, subject to reasonable and normal usage and necessary or required maintenance or repair outages,(ii) not to commit or allow waste or other deterioration of the Facility Assets, (iii) not to suffer or allow the creation or existence of any liens or other encumbrance upon the Facility Assets for mechanics lien claims or any unpaid real property taxes or municipal assessments or charges of any kind, and (iv) and to promptly cause the removal or discharge of any such liens or other encumbrances at any time they may arise.

IN WITNESS WHEREOF, PSNH, LBB, and Site Owner have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By: _____

Name: _____

Title: _____

LAIDLAW BERLIN BIOPOWER, LLC

By: _____

Name: _____

Title: _____

PJPD HOLDINGS, LLC

By: _____

Name: _____

Title: _____

Exhibit "A"
Legal Description of Facility Site

PARCEL ONE

A certain tract or parcel of land with buildings and improvements thereon located on the east side of the Androscoggin River, on the west side of Hutchins Street and on the north sides of Coos Street and Community Street in Berlin, Coos County, State of New Hampshire, being shown as **Tax Map 129, Parcel 54.001** on a plan of land entitled "Survey Plat Lands of North American Dismantling Corp. Tax Map 129, Parcel 54.001 and White Mountain Energy, LLC Tax Map 129, Parcel 54.01 Berlin, New Hampshire", dated December 12, 2008 as prepared by York Land Services, LLC, Plan No, 08-045A and recorded as Plan No. 3217, (the "Plan"), being bounded and described as follows:

Beginning at an iron pin marking the most northerly corner of land conveyed to White Mountain Energy, LLC as described in Coos County Registry of Deeds, Volume 1064, Page 249, being near the easterly bank of the Androscoggin River, 119.82 feet northerly of Community Street; thence

Along Public Service Company of New Hampshire the following two courses:

1. N40°33'28"E a distance of 232.47 feet to an iron pin.
2. N35°25'38"W a distance of 32 feet to a point on the east shore of the Androscoggin River; thence

Easterly along the east shore of the Androscoggin River a distance of approximately 2380 feet to a point; thence

S 60°57'44"E along other land of North American Dismantling Corporation a distance of 50 feet to an iron pin; thence continuing

S 60°57'44"E along other land of North American Dismantling Corporation a distance of 1071.24 feet to a point on the westerly sideline of Hutchins Street witnessed by an iron pin with YLS cap, found flush lying S60°57'44"E 0.11 feet distant; thence

Southerly along the westerly sideline of Hutchins Street the following nine courses:

1. Arc of a curve to the right having a length of 37.64 feet to a point; said curve having a radius of 460.00 feet and a long chord of S45°00'49"W, 37.63 feet.

2. S47°21'29"W a distance of 357.82 feet to a point.

3. Arc of a curve to the left having a length of 306.71 feet to a point; said curve having a radius of 2030.11 feet and a long chord of S43°01'47"W, 306.42 feet.

4. S38°42'06"W a distance of 164.40 feet to a point.

5. Arc of a curve to the right having a length of 402.00 feet to a point; said curve having a radius of 594.99 feet and a long chord of S58°03'24"W, 394.40 feet.

6. S77°24'43"W a distance of 374.08 feet to a point.

7. Arc of a curve to the left having a length of 318.73 feet to a point; said curve having a radius of 2030.00 feet and a long chord of S72°54'51"W, 318.40 feet.

8. S68°24'58"W, a distance of 204.80 feet to a point.

9. Arc of a curve to the right having a length of 185.16 feet to a point; said curve having a radius of 270.00 feet and a long chord of S88°03'43"W, 181.55 feet; thence

N72°17'31"W along the northerly sideline of Coos Street a distance of 635.75 feet to a point; thence

Northerly, along the arc of a curve to the right having a length of 37.96 feet to a point; said curve having a radius of 20.00 feet and a long chord of N17°55'12"W, 32.51 feet; thence

N36°27'07"E along the easterly sideline of Community Street and the westerly sideline of the former B&M Railroad a distance of 193.50 feet to an iron pin; thence

N30°58'35"W a distance of 224.19 feet to an iron pin; thence

N80°26'37"W along the northerly sideline of Community Street a distance of 150.30 feet to an iron pin; thence

Along White Mountain Energy property the following three courses:

1. N12°18'02"E a distance of 128.05 feet to a point.
2. N77° 41'58"W a distance of 229.83 feet to an iron pin.
3. N49° 28'23"W a distance of 85.21 feet, to the point of beginning.

PARCEL TWO

A certain tract or parcel of land with buildings and improvements thereon located on the east side of the Androscoggin River, on the west side of Hutchins Street and on the north sides of Coos Street and Community Street in Berlin, Coos County, State of New Hampshire, being shown as **Tax Map 129, Parcel 54.01** on a plan of land entitled "Survey Plat Lands of North American Dismantling Corp. Tax Map 129, Parcel 54.001 and White Mountain Energy, LLC Tax Map 129, Parcel 54.01 Berlin, New Hampshire", dated December 12, 2008 as prepared by York Land Services, LLC, Plan No, 08-045A and recorded as Plan No. 3217, (the "Plan"), being bounded and described as follows:

Commencing at the southwesterly corner of the lot on the northerly side of Community Street on the easterly side of the Androscoggin River; thence

N 40°33'28"E along land of Public Service Company of New Hampshire for 119.82 feet to an iron pin, said pin also marks the beginning point of Parcel One described above; thence

Along North American Dismantling Corporation property the following three courses:

1. S 49°28'23"E a distance of 85.21 feet, to a point.
2. S 77°41'58"E a distance of 229.83 feet to an iron pin.
3. S 12°18'02"W a distance of 128.05 feet to an iron pin on the northerly sideline of Community Street; thence

Westerly along the northerly sideline of Community Street the following nine courses:

1. N 80°26'37"W a distance of 45.46 feet to a point
2. N 40°52'51"E a distance of 17.33 feet to a point
3. N 80°50'40"W a distance of 53.50 feet to a point
4. N 80°31'58"W a distance of 69.28 feet to a point
5. N 80°27'54"W a distance of 47.42 feet to a point
6. N 72°30'00"W a distance of 41.75 feet to a point
7. N 59°33'54"W a distance of 28.05 feet to a point
8. N 50°09'33"W a distance of 58.82 feet to a point
9. N 48°55'11"W a distance of 38.96 feet to a point of beginning.

Shown to contain 0.96 acre, more or less. See also "Site Plan, Cluster Rule/Energy Project, White Mountain Energy, LLC, Community Street, Berlin, New Hampshire" prepared by York Land Service, LLC recorded at the Coos County Registry of Deeds as Plan #1960 (the "Site Plan").

Parcels One and Two combined, contain a total of 62.0 acres, more or less, TOGETHER WITH the rights and benefits granted under an Easement Agreement for Railroad Spur Track from North American Dismantling Corp. to PJPD Holdings, LLC dated December 23, 2008 and recorded with the Coos County Registry of Deeds at Book 1265, Page 1016, and being depicted on Plan No. 3218.

TOGETHER WITH AND SUBJECT TO the rights and benefits granted under the Amendment and Restatement of Easement and Shared Use Agreement for Water Distribution System and Filtration Plant between North American Dismantling Corp., PJPD Holdings, LLC, and Fraser N.H., LLC dated December 23, 2008 and recorded with the Coos County Registry of Deeds at Book 1265, Page 981.

Meaning and intending to describe a portion of the premises described in the deed of Fraser N.H., LLC to North American Dismantling Corp., dated October 3, 2006 and recorded with the Coos County Registry of Deeds at Book 1190, Page 932; and the same premises conveyed to White Mountain Energy, LLC by deed of Fraser N.H., LLC dated December 19, 2003 and recorded with the Coos County Registry of Deeds at Book 1064, Page 249.

Reference is also made to the plan of land entitled, "Minor Lot Line Adjustment between properties of North American Dismantling Corp., Tax Map 129, Parcel 54.001 and White Mountain Energy, LLC, Tax Map 129, Parcel 54.01, Berlin, New Hampshire", dated October 1, 2007, revised March 12, 2008, and recorded at Coos County Registry of Deeds as Plan No. 3101.

Further meaning and intended to describe the same premises conveyed by North American Dismantling Corporation and White Mountain Energy, LLC to PJPD Holdings, LLC by Quitclaim Deed dated December 23, 2008 and recorded with the Coos County Registry of Deeds at Book 1265, Page 1025, subject to the reservations contained in said Deed.

Exhibit "B"
Form of Memorandum of Purchase Option

MEMORANDUM OF PURCHASE OPTION

This MEMORANDUM OF PURCHASE OPTION (this "Memorandum") is made as of the ___ day of _____, 20__, by and between **PJPD Holdings, LLC,**, a Delaware limited liability company ("Site Owner") having an office and mailing address at _____,_____ and **Laidlaw Berlin Biopower, LLC**, a Delaware limited liability company ("LBB") having an office and mailing address at _____, _____, and **Public Service Company of New Hampshire**, a New Hampshire corporation ("Option Holder") having a mailing address at

_____,_____.

W I T N E S S E T H:

WHEREAS, Site Owner is the owner of certain real property located in the City of Berlin, Coos County, New Hampshire located on Cumberland Street and more particularly described in Exhibit A attached hereto and made a part hereof (the "Option Property"); and

WHEREAS, Site Owner is the owner of a biomass powered electrical generation facility including buildings, improvements, fixtures, and other property interests located on or at the Option Property (the "Option Facilities"); and

WHEREAS, Site Owner and LBB have granted to Option Holder the exclusive right and option (the "Option") to purchase the Option Property and the Option Facilities and associated personal and intangible property on the terms and conditions stated in a Purchase Option Agreement dated _____, 20__, (the "Option Agreement"); and

NOW, THEREFORE, the parties hereto agree that subject to the complete terms and conditions of the Option Agreement, they wish to give notice as a matter of public record of the following matters regarding the Option Agreement:

1. **Option Property.** The Option Property is a parcel of approximately 62 acres in the City of Berlin, Coos County, New Hampshire as more particularly described in Exhibit A hereto, which parcel constitutes Parcel No. _____on the City of Berlin property tax records. The Option Facilities include the electric generation plant located on the Option Property, together with all associated real, personal and intangible property.

2. **Option Term.** The Option Agreement became effective on _____, 20__. The Option may be exercised at any time beginning on _____, and ending on _____, 20__ ("Option Exercise Period"). If the Option is not exercised by PSNH or its assignee within the Option Exercise Period, the Option expires.

3. **Complete Terms of Option.** This Memorandum is not intended to set forth all of the terms of the Option Agreement, and reference is hereby made thereto for all of the terms. In the event of conflict between the terms of the Option Agreement and this Memorandum, the terms of the Option Agreement shall control. All provisions of the Option Agreement are incorporated herein by this reference as though fully set forth.

4. **Execution in Counterparts.** This Memorandum may be executed in any number of counterparts, all of which together shall constitute a single instrument, and it shall not be necessary that any counterpart be signed by all the parties hereto.

IN WITNESS WHEREOF, the parties have caused this Memorandum to be executed by their respective duly authorized officers or representatives as of the date above first written.

PJPD Holdings, LLC
a Delaware limited liability company

By: _____
Name: _____
Title: Its _____

Laidlaw Berlin Biopower, LLC
a Delaware limited liability company

By: _____
Name: _____
Title: Its _____

Public Service Company of New Hampshire
a New Hampshire corporation

By: _____
Name: _____
Title: Its _____

[ACKNOWLEDGEMENTS]

EXHIBIT A
"Option Property"

PARCEL ONE

A certain tract or parcel of land with buildings and improvements thereon located on the east side of the Androscoggin River, on the west side of Hutchins Street and on the north sides of Coos Street and Community Street in Berlin, Coos County, State of New Hampshire, being shown as **Tax Map 129, Parcel 54.001** on a plan of land entitled "Survey Plat Lands of North American Dismantling Corp. Tax Map 129, Parcel 54.001 and White Mountain Energy, LLC Tax Map 129, Parcel 54.01 Berlin, New Hampshire", dated December 12, 2008 as prepared by York Land Services, LLC, Plan No, 08-045A and recorded as Plan No. 3217, (the "Plan"), being bounded and described as follows:

Beginning at an iron pin marking the most northerly corner of land conveyed to White Mountain Energy, LLC as described in Coos County Registry of Deeds, Volume 1064, Page 249, being near the easterly bank of the Androscoggin River, 119.82 feet northerly of Community Street; thence

Along Public Service Company of New Hampshire the following two courses:

3. N40°33'28"E a distance of 232.47 feet to an iron pin.
4. N35°25'38"W a distance of 32 feet to a point on the east shore of the Androscoggin River; thence

Easterly along the east shore of the Androscoggin River a distance of approximately 2380 feet to a point; thence

S 60°57'44"E along other land of North American Dismantling Corporation a distance of 50 feet to an iron pin; thence continuing

S 60°57'44"E along other land of North American Dismantling Corporation a distance of 1071.24 feet to a point on the westerly sideline of Hutchins Street witnessed by an iron pin with YLS cap, found flush lying S60°57'44"E 0.11 feet distant; thence

Southerly along the westerly sideline of Hutchins Street the following nine courses:

10. Arc of a curve to the right having a length of 37.64 feet to a point; said curve having a radius of 460.00 feet and a long chord of S45°00'49"W, 37.63 feet.

11. S47°21'29"W a distance of 357.82 feet to a point.

12. Arc of a curve to the left having a length of 306.71 feet to a point; said curve having a radius of 2030.11 feet and a long chord of S43°01'47"W, 306.42 feet.

13. S38°42'06"W a distance of 164.40 feet to a point.

14. Arc of a curve to the right having a length of 402.00 feet to a point; said curve having a radius of 594.99 feet and a long chord of S58°03'24"W, 394.40 feet.

15. S77°24'43"W a distance of 374.08 feet to a point.

16. Arc of a curve to the left having a length of 318.73 feet to a point; said curve having a radius of 2030.00 feet and a long chord of S72°54'51"W, 318.40 feet.

17. S68°24'58"W, a distance of 204.80 feet to a point.

18. Arc of a curve to the right having a length of 185.16 feet to a point; said curve having a radius of 270.00 feet and a long chord of S88°03'43"W, 181.55 feet; thence

N72°17'31"W along the northerly sideline of Coos Street a distance of 635.75 feet to a point; thence

Northerly, along the arc of a curve to the right having a length of 37.96 feet to a point; said curve having a radius of 20.00 feet and a long chord of N17°55'12"W, 32.51 feet; thence

N36°27'07"E along the easterly sideline of Community Street and the westerly sideline of the former B&M Railroad a distance of 193.50 feet to an iron pin; thence

N30°58'35"W a distance of 224.19 feet to an iron pin; thence

N80°26'37"W along the northerly sideline of Community Street a distance of 150.30 feet to an iron pin; thence

Along White Mountain Energy property the following three courses:

4. N12°18'02"E a distance of 128.05 feet to a point.
5. N77° 41'58"W a distance of 229.83 feet to an iron pin.
6. N49° 28'23"W a distance of 85.21 feet, to the point of beginning.

PARCEL TWO

A certain tract or parcel of land with buildings and improvements thereon located on the east side of the Androscoggin River, on the west side of Hutchins Street and on the north sides of Coos Street and Community Street in Berlin, Coos County, State of New Hampshire, being shown as **Tax Map 129, Parcel 54.01** on a plan of land entitled "Survey Plat Lands of North American Dismantling Corp. Tax Map 129, Parcel 54.001 and White Mountain Energy, LLC Tax Map 129, Parcel 54.01 Berlin, New Hampshire", dated December 12, 2008 as prepared by York Land Services, LLC, Plan No, 08-045A and recorded as Plan No. 3217, (the "Plan"), being bounded and described as follows:

Commencing at the southwesterly corner of the lot on the northerly side of Community Street on the easterly side of the Androscoggin River; thence

N 40°33'28"E along land of Public Service Company of New Hampshire for 119.82 feet to an iron pin, said pin also marks the beginning point of Parcel One described above; thence

Along North American Dismantling Corporation property the following three courses:

4. S 49°28'23"E a distance of 85.21 feet, to a point.
5. S 77°41'58"E a distance of 229.83 feet to an iron pin.
6. S 12°18'02"W a distance of 128.05 feet to an iron pin on the northerly sideline of Community Street; thence

Westerly along the northerly sideline of Community Street the following nine courses:

10. N 80°26'37"W a distance of 45.46 feet to a point
11. N 40°52'51"E a distance of 17.33 feet to a point
12. N 80°50'40"W a distance of 53.50 feet to a point
13. N 80°31'58"W a distance of 69.28 feet to a point
14. N 80°27'54"W a distance of 47.42 feet to a point
15. N 72°30'00"W a distance of 41.75 feet to a point
16. N 59°33'54"W a distance of 28.05 feet to a point
17. N 50°09'33"W a distance of 58.82 feet to a point
18. N 48°55'11"W a distance of 38.96 feet to a point of beginning.

Shown to contain 0.96 acre, more or less. See also "Site Plan, Cluster Rule/Energy Project, White Mountain Energy, LLC, Community Street, Berlin, New Hampshire" prepared by York Land Service, LLC recorded at the Coos County Registry of Deeds as Plan #1960 (the "Site Plan").

Parcels One and Two combined, contain a total of 62.0 acres, more or less, TOGETHER WITH the rights and benefits granted under an Easement Agreement for Railroad Spur Track from North American Dismantling Corp. to PJPD Holdings, LLC dated December 23, 2008 and recorded with the Coos County Registry of Deeds at Book 1265, Page 1016, and being depicted on Plan No. 3218.

TOGETHER WITH AND SUBJECT TO the rights and benefits granted under the Amendment and Restatement of Easement and Shared Use Agreement for Water Distribution System and Filtration Plant between North American Dismantling Corp., PJPD Holdings, LLC, and Fraser N.H., LLC dated December 23, 2008 and recorded with the Coos County Registry of Deeds at Book 1265, Page 981.

Meaning and intending to describe a portion of the premises described in the deed of Fraser N.H., LLC to North American Dismantling Corp., dated October 3, 2006 and recorded with the Coos County Registry of Deeds at Book 1190, Page 932; and the same premises conveyed to White Mountain Energy, LLC by deed of Fraser N.H., LLC dated December 19, 2003 and recorded with the Coos County Registry of Deeds at Book 1064, Page 249.

Reference is also made to the plan of land entitled, "Minor Lot Line Adjustment between properties of North American Dismantling Corp., Tax Map 129, Parcel 54.001 and White Mountain Energy, LLC, Tax Map 129, Parcel 54.01, Berlin, New Hampshire", dated October 1, 2007, revised March 12, 2008, and recorded at Coos County Registry of Deeds as Plan No. 3101.

Further meaning and intended to describe the same premises conveyed by North American Dismantling Corporation and White Mountain Energy, LLC to PJPD Holdings, LLC by Quitclaim Deed dated December 23, 2008 and recorded with the Coos County Registry of Deeds at Book 1265, Page 1025, subject to the reservations contained in said Deed.

STATE OF NEW HAMPSHIRE

BEFORE THE

NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

Docket No. DE 10-____

DIRECT TESTIMONY OF

TERRANCE J. LARGE

Request for Approval of Power Purchase Agreement
Between
Public Service Company of New Hampshire
and
Laidlaw Berlin BioPower, LLC

July 26, 2010

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INTRODUCTION AND PURPOSE

Q. Please state your name, position and business address.

A. My name is Terrance J. Large. I am the Director of Business Planning and Customer Support Services for Public Service Company of New Hampshire.

Q. Have you previously testified before this Commission?

A. Yes, I have testified on a number of occasions in various regulatory proceedings on behalf of PSNH.

Q. Please briefly state the purpose of this filing.

A. The purpose of this filing is to request approval of the Power Purchase Agreement ("PPA") between PSNH and Laidlaw Berlin BioPower, LLC, ("LBB") under RSA 362-F:9. The PPA is for the purchase of electricity and renewable attributes of the Laidlaw project (the "Project") and will help support the electricity needs of PSNH's retail customers, as well as the Renewable Portfolio Standards ("RPS") enacted by the State (RSA Chapter 362-F). The PPA is also intended to help meet the State's Climate Action Plan goals as set forth in the March 2009 New Hampshire Climate Action Plan.

Q. What is the purpose of your testimony in this proceeding?

A. The purpose of my testimony is to demonstrate how the PPA fits in with PSNH's overall power portfolio and, in particular, our renewable energy resource needs. I will also discuss cost recovery, environmental benefits, and

other matters set forth in RSA Chapter 362-F:9. In addition, I will provide some background on the Laidlaw Berlin BioPower Project and how its expected operation will impact regional renewable power supply.

BACKGROUND ON THE LAIDLAW BERLIN BIOPOWER, LLC FACILITY

Q. Please provide a brief description of the Laidlaw Berlin BioPower facility.

A. Laidlaw Berlin BioPower ("Laidlaw" or "LBB") is developing a 70 MW (gross) electric power generating station which will primarily utilize whole tree wood chips as its fuel. The Project is located in Berlin, New Hampshire, on the site of the former Fraser Paper Pulp mill, which closed in 2006. While most of the building and equipment from the pulp mill operation have been removed from the site, a "Black Liquor Recovery Boiler" and its associated facilities were retained. This Recovery Boiler will be converted to a bubbling fluidized bed boiler as a part of the Project, and will supply steam to a newly installed turbine generator to produce electric power. This Project will supply a source of clean, carbon neutral renewable energy that will help support New Hampshire's goal of supplying 25% of the state's energy needs via renewable sources by 2025.

The fuel for the Project is projected to come from an 11 million acre wood basket that is within a 100 mile radius of the facility. When operating at full capacity the facility will utilize approximately 750,000 tons of wood biomass fuel per year.

The facility will be interconnected to PSNH's East Side substation in Berlin, New Hampshire, via a new interconnection line from the step-up transformer at the LBB site. The interconnection application is currently under review by ISO-NE in accordance with Schedule 22 of the ISO New England Open Access Transmission Tariff (OATT). The resulting interconnection agreement will be filed with FERC and is not a subject of this petition.

Laidlaw has made application for its project permits to the New Hampshire Site Evaluation Committee. Laidlaw expects to start construction in late 2010, upon approval of the Site Evaluation Committee and the awarding of the necessary permits. It is anticipated that the facility will begin construction in the fourth quarter of 2010 and achieve initial operation during the second quarter of 2013. Comprehensive details concerning the Project can be found in Laidlaw's Site Evaluation Committee application docketed as SEC Docket No. 2009-02.

PSNH'S NEED FOR A PPA TO ACQUIRE ENERGY AND CLASS I RENEWABLE ENERGY CERTIFICATES (RECS)

Q. Please describe PSNH's needs for energy and Class I New Hampshire RECs.

A. PSNH has a legal obligation to provide default energy service to our customers who are unable or do not elect to take energy service from competitive energy suppliers. PSNH is required by law to utilize its owned generation assets to provide this energy service to customers. In addition to

its owned assets, PSNH also purchases the output from a number of Independent Power Producer ("IPP") facilities operating in New Hampshire. However, the output of PSNH's assets in conjunction with purchases from IPP's does not fully satisfy the projected energy requirements of customers. In addition to energy, PSNH provides for the capacity, ancillary services, and Renewable Portfolio Standard (RPS) requirements associated with those customers taking Energy Service from PSNH.

In the Least Cost Plan filed in Docket DE 07-108, PSNH forecasted that it would need to purchase between 4-5 million MWh of energy annually, between 900 and 1,000 MW of capacity, and more than 250,000 Class I RECs from qualified resources. In that Least Cost Plan filing, PSNH proposed to add at least one 50 MW biomass plant to its portfolio of assets as one means to close the gap between anticipated need and supply.

As a result of the downturn in the economy, PSNH's sales have not met forecasted levels. In addition, in recent months, PSNH has seen an increase in the number of customers that have elected to take energy service from a competitive supplier. This number of customers has increased substantially from the low levels experienced at the time of the 2007 Least Cost Plan filing. Currently about 30% of PSNH's distribution service load (total load) is being supplied by competitive suppliers. These factors have reduced PSNH's near-term need to obtain energy, capacity, and RECs from the market; however a gap still exists. For 2014, the energy gap between resources and supply is projected to range from 1,100,000 to 3,746,000 MWh per year and the

capacity gap is projected to range from 401 to 1073 MWs (the range is associated with varying forecasts of customer sales and migration to competitive retail suppliers). For 2014, PSNH is projecting a need for an additional 224,000 to 355,000 Class I RECs. The projected range of RECs needed increases to between 942,000 and 1,397,000 by 2025. The contract with LBB would fulfill a portion of PSNH's anticipated need for energy, capacity, and RECs once the unit becomes operational in 2013. Annually, the Project is expected to produce over 474,000 MWh of energy and associated RECs and to provide approximately 65 MWs of capacity.

Execution of the contract with LBB is consistent with the planning concept put forward by PSNH in Docket No. DE 07-108 to add at least 50 MW of Class I renewable biomass power to PSNH's supply portfolio.

RPS AND PPA ALIGNMENT WITH PROCUREMENT PRINCIPLES IN RSA CHAPTER 362-F

Q. Please describe your understanding of the requirements of RSA Chapter 362-F.

A. Simply put, RSA Chapter 362-F requires PSNH and other retail electricity suppliers to produce or purchase enough renewable energy, or the environmental attributes thereof, to meet the minimum needs under RSA 362-F:3. Furthermore, the statute outlines the criteria that entities can use to establish purchase agreements with renewable generation resources. Given this statutory mandate, PSNH believes that the proposed PPA with

LLB is entirely consistent with RSA Chapter 362-F and will help PSNH to comply with the requirements of the statute.

Q. Do you believe that LLB will qualify as a Class I renewable resource for compliance with the RPS?

A. Yes. According to the materials submitted to the New Hampshire Site Evaluation Committee by Laidlaw, and their representations made to PSNH during our negotiations, I believe that the LLB Project will qualify to receive Class I RECs in New Hampshire. PSNH's obligations under the PPA are conditioned upon the Project receiving certification to produce NH Class I RECs.

Q. Can you describe how the PPA complies with the procurement principles outlined in Section 362-F:9?

A. Certainly. Section I of RSA 362:F-9 allows the Commission to approve the request of an electric distribution company to enter into multi-year purchase agreements with renewable energy sources for certificates, in conjunction with or independent of purchased power agreements from such sources, to meet reasonably projected renewable portfolio requirements and default service needs if it finds the agreements to be in the public interest.

As discussed earlier, PSNH projects that it will have a limited, identifiable need for RECs, energy, and capacity in order to fulfill its RPS and default service needs. In this case, PSNH is asking the Commission for approval of a

20-year PPA with LLB for the provision of energy, capacity, and RECs to be produced at the Project.

Q. Please discuss Section II of RSA 362:F-9.

A. Section II outlines five factors for the Commission to utilize in determining if the PPA is in the public interest. Those factors are:

(a) The efficient and cost-effective realization of the purposes and goals of this chapter;

(b) The restructuring policy principles of RSA 374-F:3;

(c) The extent to which such multi-year procurements are likely to create a reasonable mix of resources, in combination with the company's overall energy and capacity portfolio, in light of the energy policy set forth in RSA 378:37 and either the distribution company's integrated least cost resource plan pursuant to RSA 378:37-41, if applicable, or a portfolio management strategy for default service procurement that balances potential benefits and risks to default service customers;

(d) The extent to which such procurement is conducted in a manner that is administratively efficient and promotes market-driven competitive innovations and solutions; and

(e) Economic development and environmental benefits for New Hampshire.

<u>First Factor</u>

To meet the first factor (efficient and cost-effective realization of the purposes and goals of the RPS law) PSNH has employed a direct negotiation process

with Laidlaw in order to bring this PPA to the Commission for approval in a timely manner. Mr. Labrecque will provide further detail concerning the cost effectiveness of this PPA in his testimony.

One purpose of RSA Chapter 362-F is to provide fuel diversity to the state and New England through the use of local renewable resources that lowers regional dependence on fossil fuels. The statute further states that this has the potential to lower and stabilize future energy costs by reducing exposure to rising and volatile fossil fuel prices. It states that the use of renewable technologies can help keep investment dollars in the state to benefit New Hampshire's economy and reduce emissions, thus improving air quality and public health.

The PPA with LLB is a long-term contract which clearly is consistent with the purpose of RSA Chapter 362-F. A 65 MW (net) wood-fired base load facility will reduce the need for reliance on 65 MW of fossil fueled resources. The 20-year term will assist in providing for price stability, especially since the pricing is not dependent on the cost of fossil fuel. Finally, LLB will make a significant investment in New Hampshire during construction, and will provide jobs once the unit is operational.

Second Factor

The second factor is the PPA's adherence to the restructuring policy principles of RSA 374-F:3. In my opinion, approval of this PPA is consistent with the principles outlined in RSA 374-F:3.

Subsection V,(f) of the restructuring policy principles calls for utilities to offer a Renewable Energy Source default service option. PSNH was the first utility in New Hampshire to obtain Commission approval for a "Green Energy Rate" in Docket DE 09-186. This PPA supports efforts that develop the market for renewable power, which is consistent with this policy principle.

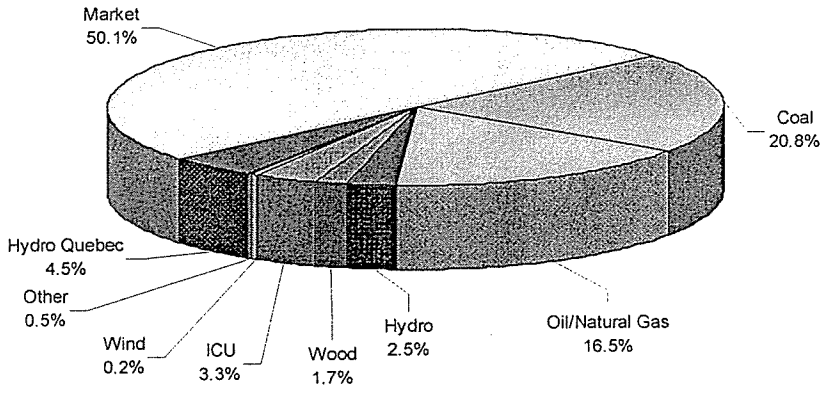
Subsection IX of the restructuring policies states, among other things, that "over the long term, increased use of cost effective renewable energy technologies can have significant environmental, economic and security benefits." The Project and the PPA will adhere to this principle. Similarly, Subsection VIII of the restructuring policy principles calls for encouragement of environmental protection and long term environmental sustainability. When completed, the LLB facility will have virtually no emissions of sulfur dioxide and low emissions levels of NOx and mercury. It is expected that the LLB facility will not be required to obtain CO_2 allowances under the RGGI program. (This assumption is consistent with PSNH's operation of the Northern Wood power facility in Portsmouth.) Therefore, the LLB facility will provide significant environmental benefit because it will emit very little or none of the four pollutants that are the subject of the New Hampshire Clean Power Act.

Third Factor

The third factor is the extent to which such multi-year procurements are likely to create a reasonable mix of resources, in combination with the company's overall energy and capacity portfolio.

The charts below show PSNH's forecast of capacity resources and energy supply by resource type for calendar year 2014, the first full year of operation of LLB. The charts illustrate the positive impact of the Project on the diversification of PSNH's resource portfolio.

PSNH's 2014 Capacity Resources without Laidlaw



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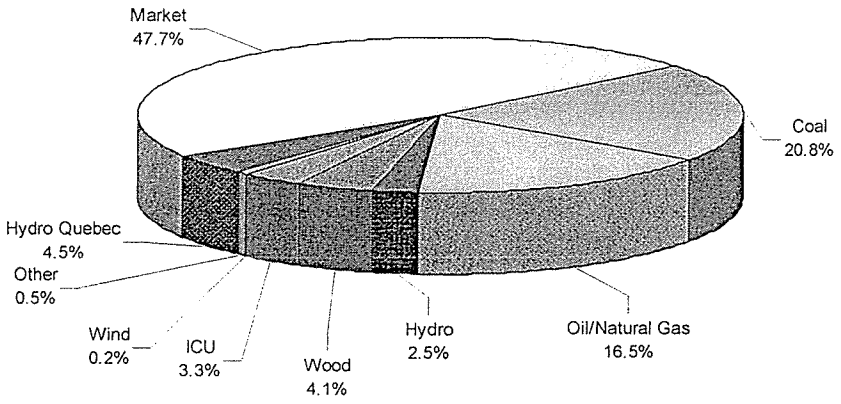
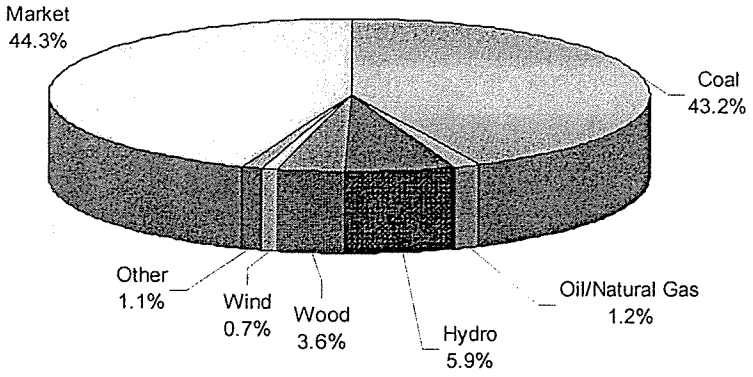
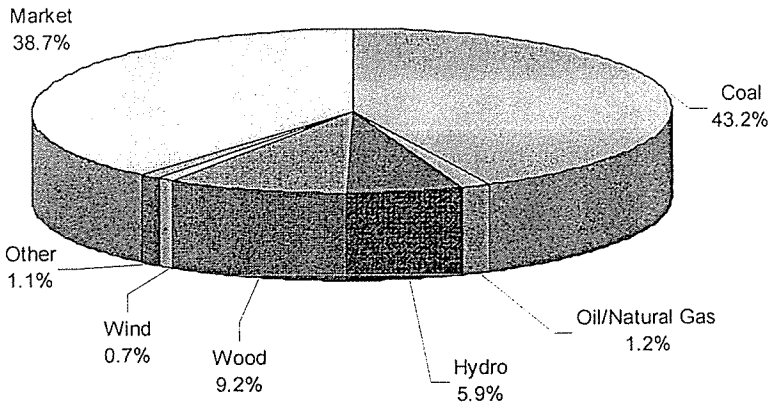
PSNH's 2014 Capacity Resources with Laidlaw



2014 Energy Supply Resources without Laidlaw



2014 Energy Supply Resources with Laidlaw

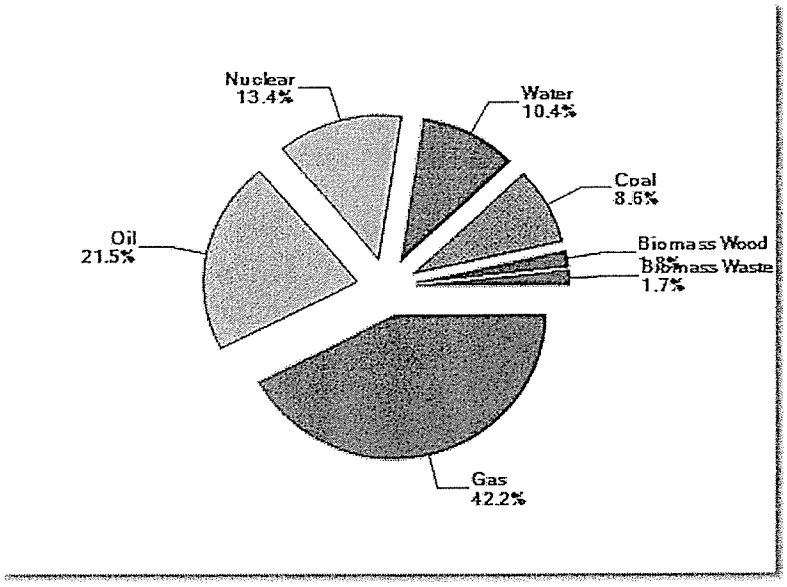


The LLB Project will add fuel diversity to the State's and New England's generation supply through use of local renewable fuels and resources. In addition, LLB will be employing low emission forms of such technologies that will reduce the amount of greenhouse gases, nitrogen oxides, and particulate matter emissions in the State, which will improve air quality, public health, and lessen the risks of climate change.

The addition of the LLB Project will positively impact fuel diversity and energy security and independence in the region, supporting the policy set forth in RSA 378:37.

In 2008, in the ISO-NE region, approximately 34,000 MW of Capacity Supply Obligations existed. Of that amount, 1,193 MW or 3.5% were classified as bio-mass fueled resources (see chart below). The addition of 65 MW (net) from the LLB facility will increase biomass capacity in the region by 0.2%.

2008 ISO-NE Operating Plant Capacity by Fuel Type



Source: SNL Interactive

Furthermore, today about 4,354 MW or 12.6% of the capacity in the region is from renewable or CO_2 neutral sources. The addition of 65 MW (Net) from the LLB facility will increase the amount of these resources to 12.8%. In each instance, the addition of LLB will have a positive, though small impact on the region's fuel diversity and CO_2 portfolio.

As for energy security and independence, the approximately 474,000 MWH per year that are expected to be produced at the LLB facility will use wood produced local to the facility, mainly in New Hampshire and Maine. These states are two of the most heavily forested states in the nation, which suggests that wood resources are more prevalent here than in comparison to other areas in the country. If LLB manages this resource in a sustainable way, it will further enhance our region's energy independence. With LLB operational less energy in the region will be produced by fuels that are not

native to New England. Again, while the improvement may be small, the addition of LLB to the ISO-NE system will make positive movement toward fuel diversity and energy security in the region.

Fourth Factor

The fourth factor is the extent to which such procurement is conducted in a manner that is administratively efficient and promotes market-driven competitive innovations and solutions.

Laidlaw's use of an existing power boiler and its infrastructure, in an area of the State long known for employing biomass resources for industrial use, in combination with newer emission controlling technologies, certainly qualifies as a solution to a market-driven need for renewable energy. Over the long-term LLB may further allow the development of local community combined heat and power installations, such as has been considered by the City of Berlin, or the supply of process steam or hot water to the existing paper mills, still in operation in the region.

Furthermore, PSNH engaged in a direct negotiating process with Laidlaw in order to bring this proposed PPA to the Commission in a timely manner.

Fifth Factor

The fifth factor pertains to economic development and environmental benefits for New Hampshire. PSNH witness Dr. Shapiro will address the regional economic benefits to be derived from this Project in her testimony. It is clear

from her analysis and testimony that significant economic benefits will accrue to the region, as a result of LLB becoming operational.

Q. Mr. Large, is it your opinion that each of the factors outlined in RSA 362-F:9, II have been met?

A. Yes. As described above, I believe that each of the factors defined in 362-F:9, II are met, and that this Power Purchase Agreement should be found to be in the public interest.

RATEMAKING ISSUES

Q. Mr. Large, how does PSNH propose to recover the costs associated with this PPA with LLB?

A. PSNH proposes that the costs associated with the PPA be recovered in the Default Energy Service rate. This approach is consistent with the method approved by the commission for the Lempster Wind transaction in Docket No. DE 08-077.

CONCLUSION

Q. Please summarize your recommendation concerning approval of this PPA.

A. Considerable thought and deliberation went into developing this unique power purchase agreement. I truly believe approval of this PPA to be in the public interest. We respectfully ask the Commission to approve the PPA and

authorize this Project to move forward quickly for the economic benefit of the region.

Q. **Does this complete your testimony?**

A. Yes, it does.

STATE OF NEW HAMPSHIRE

BEFORE THE

NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

Docket No. DE 10- ____

DIRECT TESTIMONY OF

RICHARD C. LABRECQUE

Request for Approval of Power Purchase Agreement
Between
Public Service Company of New Hampshire
and
Laidlaw Berlin BioPower, LLC

July 26, 2010

INTRODUCTION AND PURPOSE

Q. Please state your name, position and business address.

A. My name is Richard C. Labrecque. I am Supplemental Energy Sources Manager for PSNH. My business address is Public Service Company of New Hampshire ("PSNH"), Energy Park, 780 North Commercial Street, Manchester, New Hampshire.

Q. What are your duties and responsibilities in your position of Supplemental Energy Sources Manager?

A. My duties include the administration of interconnection agreements and purchase contracts with non-utility generators.

Q. Have you previously testified before the Commission?

A. Yes. I have testified on several occasions before the Commission.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to explain the key terms and conditions of the Power Purchase Agreement ("PPA") between PSNH and Laidlaw Berlin BioPower, LLC ("LBB").

Q. Please provide a general description of the PPA.

A. PSNH (the "Buyer") and LBB (the "Seller") reached agreement on June 8, 2010 on the final terms and conditions of the PPA concerning LBB's plans to construct, operate and maintain a 70 MW (gross) biomass-fueled generation Project in Berlin,

New Hampshire (the "Project"). Under the terms of the PPA, PSNH will purchase 100% of the output of the Project for a term of twenty (20) years. The PPA includes separate pricing terms related to the purchase of: i) the energy output of the Project, ii) the capacity of the Project, and iii) the Renewable Energy Certificates (RECs) and other environmental attributes of the Project. The PPA also includes a "Right of First Refusal" by which PSNH has a limited right to purchase the Project during the twenty year term and a "Purchase Option Agreement" that provides PSNH, its successors and assigns with the right, but not the obligation, to purchase the Project at the conclusion of the PPA term.

Q. Can you further describe the products that PSNH will purchase via the PPA?

A. Yes. The PPA includes specific definitions of the "Products" that will be purchased by PSNH. To summarize, the products are any electrical products or services that are created by the Project and earn compensation via the ISO-NE markets, including but not limited to energy, capacity, and ancillary services. In addition, the Products include any "Renewable Products", but exclude any "Tax/Grant Benefits" as each of these is defined in ARTICLE 1 of the PPA.

Q. Please explain the meaning of "Renewable Products" in the PPA.

A. Renewable Products are the New Hampshire Class I Renewable Energy Certificates (RECs) for which the Project must qualify under the terms of the PPA. However, the Buyer of the Renewable Products (PSNH) is also entitled to any other environmental attribute, applicable now or in the future, related to the Project; including certain credits, certificates, benefits, emission offsets, allowances, etc.

Q. Why is it important for PSNH to be entitled to the other environmental attributes?

A. Programs designed to incent renewable forms of generation, or generation with particular emission characteristics, are subject to change. Currently, PSNH is obligated to comply with NH RSA Chapter 362-F, the New Hampshire Renewable Portfolio Standard ("RPS"). The PPA terms include flexibility such that, should RSA 362-F be revised, replaced, or superseded by new legislation, including a Federal RPS program, PSNH's customers would continue to receive the benefits associated with purchases from the Project. In addition, if a totally new program was enacted that operates in concert with RSA 362-F, for example, a program designed to incent zero carbon generation, the PPA would entitle PSNH's customers to also receive these benefits related to purchases from the Project.

Q. What are the "Tax/Grants Benefits" that have been specifically excluded from the products being purchased?

A. These refer to any and all tax credits, investment tax credits, grants in lieu of tax credits, fuel subsidies or other non-tax cash grants or subsidies, credits or benefits that may be available to the owner of a facility.

Q. Can you describe the pricing terms in the PPA?

A. Yes. As described in ARTICLE 6, the PPA provides for three separate payments to be made via each monthly invoice: an energy payment, a capacity payment, and a REC payment. The energy and REC payments are determined each month by multiplying a $/MWH price by the actual Project production (MWH) during the

invoice period. The capacity payment is a $/KW-month price multiplied by the specific capacity of the Project (in KW) recognized by ISO-NE in that month.

Q. Please describe the energy pricing.

A. The energy base price is $83 per MWH and applies to the first calendar quarter of commercial operation. In each subsequent calendar quarter, the energy base price will be revised to incorporate a "Wood Price Adjustment" ("WPA") which is described in ARTICLE 6.1.2(a)(ii). The WPA will reflect the difference between the actual average price per ton that PSNH paid for biomass fuel at the Northern Wood Power Plant (Schiller Station) in the immediately preceding quarter and the base wood price of $34 per ton. The difference (in $/ton), whether positive or negative, will be converted into a $/MWH adjustment using a multiplier of 1.8 tons per MWH. The final energy price payable in the invoice period will be the base price, as adjusted by the WPA.

Q. What is the purpose of the WPA?

A. The parties to the PPA were concerned that the cost of biomass fuel delivered to the Project could vary over the twenty year term of the PPA. Without the WPA, LBB could be faced with increasing fuel costs and declining operating margins or even losses, perhaps to the extent that production would have to cease. This risk could pose an insurmountable barrier to LBB obtaining financing for the Project. PSNH was also concerned that biomass fuel prices could decline during the twenty year term of the deal. This would result in PSNH's customers being asked to pay higher prices for purchases from the Project and thus contributing to a higher profit margin

for LBB. By negotiating the WPA, a solution was obtained to protect both parties from undue risk during the term of the PPA.

Q. Why is the WPA indexed to the cost of biomass fuel at Schiller Station rather than the LBB site?

A. PSNH negotiated this condition to provide assurance that the WPA would be linked to an index under the full procurement control of PSNH and regulated by the New Hampshire Public Utilities Commission. In this way, PSNH's customers will not be adversely affected by sub-optimal wood procurement conditions or procedures at the LBB site. This is an important price protection feature of this PPA.

Q. How was the 1.8 tons per MWH conversion factor determined?

A. This conversion factor, which is fixed for the term of the PPA, is considered indicative of the fuel conversion efficiency of the LBB Project. The actual conversion efficiency may be slightly higher or lower and can fluctuate over time based on plant conditions and fuel characteristics. The conversion factor gives LBB the incentive to operate as efficiently as possible while protecting PSNH's customers from inefficient operation.

Q. Please describe the capacity pricing.

A. During the first five years of commercial operation the capacity price is $4.25 per KW-month of "Capacity" (as defined in ARTICLE 6.1.2(b) of the PPA). That price is increased by $0.15 per KW-month in each of the final fifteen years of the term.

Q. How is "Capacity" defined in the PPA?

A. Capacity is the output of the Project as measured in megawatts for which the Project has obtained a capacity supply obligation as a result of participation and clearing in an ISO-NE administered Forward Capacity Market ("FCM") auction and is receiving compensation pursuant to that obligation via the ISO-NE market settlement process.

Q. Why is the definition of Capacity an important protection for PSNH's customers?

A. ISO-NE has established a FCM to obtain the generation capacity required to reliably operate the New England electric system. The FCM is a relatively new and complex market that has very specific methods of qualifying capacity for participation. Simply put, just building a generating Project does not necessarily mean that the Project will earn capacity compensation. PSNH included this definition of capacity as a way to protect PSNH's customers from paying for non-qualified capacity with no real value within the FCM structure.

Q. What price will PSNH pay for RECs?

A. The price for RECs is indexed to amounts defined in RSA Section 362-F:10 (Renewable Energy Fund) for Class I which may be paid into the fund by electricity

providers in "lieu of meeting the portfolio requirements of RSA 362-F:3 for a given year if, and to the extent sufficient certificates are not otherwise available at a price below the amounts specified" in Section 10 (hereinafter referred to as "Alternative Compliance Payments" or "ACP").

During the first five years of the PPA, the REC price is 80% of the ACP. During the second five years the REC price is 75% of the ACP. The price decreases to 70% during the next five years and to 50% of the ACP during the final five years of the PPA. This declining price is designed to produce increasing value to PSNH's customers over time while providing the developer with a predictable revenue stream.

Q. Has PSNH prepared an exhibit that projects the prices payable during the term of the PPA?

A. Yes. Attachment RCL-1 is a table that shows the projected prices to be paid for energy, capacity, and RECs during the twenty year term.

Q. Does the PPA contain any provisions designed to protect PSNH's customers from paying contract prices that exceed the market price?

A. Yes. The PPA includes a mechanism referred to as the "Cumulative Reduction" as described in ARTICLE 6.1.3 which is designed to calculate and track any energy payments made that exceed the ISO-NE spot market energy price.

Q. Please describe the Cumulative Reduction.

A. For each MWH of Energy delivered under this Agreement, a negative or positive adjustment shall be determined. When the contract energy payment rate set forth above ($/MWH) exceeds the ISO-NE Day-Ahead hourly Locational Marginal Price (LMP) at the delivery point, the hourly negative adjustment shall equal the delivered MWH multiplied by the difference between the LMP and the contract energy rate. When the contract energy payment rate ($/MWH) is less than the LMP, the hourly positive adjustment shall equal the delivered MWH multiplied by the difference between the LMP minus the contract Energy rate. These negative and positive adjustments shall be continuously aggregated over the twenty year term of the PPA. If, at the termination of the PPA, the aggregate balance is negative, that quantity shall be the "Cumulative Reduction" for the purposes of reducing the purchase price of the Project as provided in the Purchase Option Agreement (and described below). If the aggregate balance is positive (that is, over the term of the PPA customers did not pay over-market prices), it shall have no further bearing on the administration of the PPA.

Q. What is the ultimate purpose of the Cumulative Reduction?

A. The Cumulative Reduction is a unique and important feature of this PPA that was essential to PSNH in order to protect customers from unknown future market energy prices. PSNH included this feature to protect PSNH's customers from the potential of paying over-market energy prices over the term of the PPA. In the event actual hourly ISO-NE energy prices during the term of the PPA are, on average, less than the contract energy prices, a fund of dollars will accrue (the Cumulative Reduction) that can be used as a credit to reduce the purchase price of the Project.

This will provide PSNH's customers with the opportunity to recapture the over market payments, if any, made during the PPA term over a subsequent time frame.

Q. In what way does the Cumulative Reduction make the LBB PPA different from the dozens of 1980's and 1990's era PURPA-mandated contracts and Rate Orders that PSNH was subject to?

A. PURPA required PSNH to purchase the output of "qualifying facilities" from developers at a price known as "avoided cost". Many developers elected to use a long-term *forecasted* avoided cost as the basis for their payments under rate orders issued by the Commission. In most all instances, these forecasted avoided costs far exceeded PSNH's actual avoided costs. Thus, most PURPA rate orders resulted in significant over-market payments to the developers. At the termination of the PURPA rate orders, there was no opportunity for PSNH's customers to recapture those over-market payments; i.e., the over-market payments went solely to the benefit of the QF owner. In the LBB PPA, any cumulative over-market energy payment will result in a dollar-for-dollar price reduction in a Project purchase option right that PSNH has negotiated (described below). This provides PSNH's customers with the opportunity to receive value to offset any over-market payments following the termination of the PPA.

Q. Please describe the Purchase Option Agreement (POA)?

A. For a period of one-hundred and twenty (120) days following the conclusion of the twenty year term of the PPA, the POA grants PSNH, and its successors and assigns, an exclusive, irrevocable option to purchase the Project and the Project Site (together the "Project Assets"). The purchase price for the Project Assets shall equal

i) the fair market value of the assets (as if sold free of all financing liens and encumbrances) minus ii) the Cumulative Reduction value, provided the purchase price shall not be less than zero.

Q. Are the purchase rights granted by the POA transferrable to another entity?

A. Yes. PSNH may transfer its purchase option rights to any PSNH affiliate or unaffiliated third party.

Q. How will the fair market value of the Project Assets be determined?

A. If the parties are unable to mutually agree on the fair market value, then each party shall select two qualified independent commercial appraisers to provide a fair market value estimation of the Project. The highest and lowest valuation shall be removed and the remaining two shall be averaged to determine the fair market value.

Q. Under what conditions might PSNH consider exercising the option to purchase the Project?

A. The Project, assuming normal operating and maintenance practices, should have a useful life well in excess of the twenty year term of the PPA. At the conclusion of the twenty years, it is possible that the status of the ISO-NE power and fuel markets will be such that the Project has significant projected value as a provider of economic, renewable, low-emission baseload energy and capacity. If that is the case, the Project will be assessed with a commensurate fair market value that will be based on the present value of expected future cash flows obtained by selling the

Project products (energy, capacity, RECs, etc.) into the applicable power and environmental markets. The POA provides PSNH with the ability to purchase the Project Assets either at the assessed fair market value or at a discount when considering the Cumulative Reduction. The value obtained through exercising this option could then be passed on to PSNH's customers. PSNH's ability to transfer this right to an assignee ensures that this benefit will be available regardless of PSNH's own ability to purchase the Project at that time.

Q. How might the Purchase Option Agreement provide value to PSNH's customers?

A. PSNH could either operate the Project as part of a portfolio of regulated generation assets (similar to today) in order to provide Energy Service to its customers, or it could market the output of the Project into the ISO-NE power and environmental markets (i.e. operate as a merchant plant) with the net value going to PSNH's customers. The choice would likely depend on the future regulatory structure of the New Hampshire electric utility industry as it relates to PSNH. One other way to create value from the option would be to transfer the option, for a price, to an affiliate or third party. In any scenario, PSNH envisions some form of regulatory settlement proceeding would be required to ensure that the net economic benefits associated with the POA would be provided to customers.

Q. Is it typical for PPAs to include a Purchase Option Agreement at the conclusion of the PPA term?

A. No. PSNH believes the POA, in concert with the Cumulative Reduction value, to be a first of a kind structure. As noted earlier, PURPA-mandated contracts and rate orders did not provide for any such customer benefits at their conclusion.

Q. What is the "Right of First Refusal" in the PPA?

A. If at any time LBB desires to sell the Project to a third party pursuant to a bona fide purchase offer, the Right of First Refusal provides PSNH the ability to match that offer and, thus, to purchase the Project on similar terms. The right is also transferrable to a PSNH affiliate. This right is another example of the creative and non-standard elements that PSNH negotiated into the final PPA to provide value to PSNH's customers.

Q. How might the Right of First Refusal provide value to PSNH's customers?

A. The right allows PSNH to review the terms and conditions of any potential purchase and sale agreement between LBB and a third party. PSNH is granted a period of one-hundred and eighty (180) days to consider the terms. This period provides PSNH the opportunity to evaluate the terms and determine if the purchase would likely create economic value for its customers. For example, if LBB and the third party have agreed to transfer ownership of the Project at a purchase price that PSNH believes is significantly below the fair market value of the assets, then PSNH, with Commission approval, could decide to purchase the Project. At that point, PSNH could elect to create value using methods similar to those discussed above regarding the Purchase Option Agreement; i.e. PSNH could either operate the

Project as part of a portfolio of regulated generation assets (similar to today) in order to provide Energy Service to its customers, or it could market the output of the Project into the ISO-NE power and environmental markets (i.e. operate as a merchant plant), or it could attempt to resell the entire Project for a price closer to PSNH's estimate of the fair market value.

Q. Can you comment on how the terms and conditions of this PPA compare to other long-term contracts between electric utilities and renewable Project developers?

A. As mentioned above, this PPA includes a number of unique features to either protect customers or to create potential future value for customers, including: the Wood Price Adjustment mechanism, the strict definition of Capacity, the expanded definition of Renewable Products, the Cumulative Reduction and Purchase Option Agreement, and the Right of First Refusal.

Regarding the pricing terms of the PPA, PSNH has conducted research to discover the pricing terms included in other, recently announced and publically available long-term contracts for renewable generation facilities. PSNH has prepared a brief summary of the readily available information in Attachment RCL-2.

Q. Does this conclude your testimony?

A. Yes.

Attachment RCL-1 Laidlaw Berlin Biopower PPA Price Forecast

		Total Payment ($/MWH)	Energy ($/MWH)	Capacity ($/kw-mo)	Capacity ($/MWH)	REC ($/MWH)
Year 1	2014	$144.08	$83.00	$4.25	$7.28	$53.80
Year 2	2015	$146.96	$84.53	$4.25	$7.28	$55.15
Year 3	2016	$149.90	$86.10	$4.25	$7.28	$56.53
Year 4	2017	$152.92	$87.71	$4.25	$7.28	$57.94
Year 5	2018	$156.02	$89.35	$4.25	$7.28	$59.39
Year 6	2019	$155.65	$91.04	$4.40	$7.53	$57.07
Year 7	2020	$159.06	$92.77	$4.55	$7.79	$58.50
Year 8	2021	$162.55	$94.55	$4.70	$8.05	$59.96
Year 9	2022	$166.13	$96.37	$4.85	$8.30	$61.46
Year 10	2023	$169.79	$98.23	$5.00	$8.56	$62.99
Year 11	2024	$169.22	$100.14	$5.15	$8.82	$60.26
Year 12	2025	$172.95	$102.10	$5.30	$9.08	$61.77
Year 13	2026	$176.76	$104.11	$5.45	$9.33	$63.32
Year 14	2027	$180.65	$106.16	$5.60	$9.59	$64.90
Year 15	2028	$184.64	$108.27	$5.75	$9.85	$66.52
Year 16	2029	$169.24	$110.44	$5.90	$10.10	$48.70
Year 17	2030	$172.93	$112.65	$6.05	$10.36	$49.92
Year 18	2031	$176.71	$114.92	$6.20	$10.62	$51.17
Year 19	2032	$180.57	$117.25	$6.35	$10.87	$52.45
Year 20	2033	$184.53	$119.64	$6.50	$11.13	$53.76

Notes:
1) Assumes biomass fuel price of $34/ton in 2014, escalating at 2.5% annually
2) Capacity payment ($/MWH) assumes a facility capacity factor of 80%
3) REC prices assume the 2010 ACP price escalates at 2.5% annually
4) Energy price is exclusive of the PPA "Cumulative Reduction" provision

Attachment RCL-2 Summary of Long-Term Contracts with Renewable Energy Resources in New England

Seller / Facility	Buyer	State	Size (MW)	Resource Type	Pricing ($/MWH)	Source(s)	Note(s)
Plainfield Renewable Energy	CL&P / UI	CT	30	Biomass	$130 - $150	1	
Clearview Renewable Energy	CL&P / UI	CT	31	Biomass	$123	1, 2	1
Watertown Renewable Power	CL&P / UI	CT	15	Biomass	ISO-NE Spot Energy price plus $45 - $55	3, 4	2, 3
Clearview East Canaan	CL&P / UI	CT	3	Anaerobic Digestor	$125	1	1
Various Fuel Cell facilities	CL&P / UI	CT		Fuel Cell	$180 - $200	1	
Rhode Island LFG Genco	NGRID	RI	20	Landfill Gas	$120	5	4
Deepwater Wind Block Island, LLC	NGRID	RI	30	Offshore Wind	$236	6	5
Evergreen Wind Power III, LLC (Rollins Wind)	CMP & BHE	ME	60	Wind	See notes	7	6
New England Wind, LLC (Hoosac)	NSTAR	MA	30	Wind	Not disclosed	8	
Pioneer Valley Wind, LLC	NSTAR	MA	22.5	Wind	Not disclosed	8	
American Pro Wind, LLC	NSTAR	MA	Not Avail	Wind	Not disclosed	8	
Cape Wind Associates, LLC	NGRID	MA	468	Offshore Wind	$207	9	7
First Wind Holdings (Sheffield)	Various	VT	40	Wind	Not disclosed	10	

Sources

1/ Docket No. 07-04-27 - DPUC Review of Long-Term Renewable Energy Contracts - Round 2 Results - August 21, 2007
2/ Docket No. 03-07-17RE05 Pre-filed Testimony of James S. Potter - revised April 2, 2010
3/ Docket No. 03-07-17RE03 - DPUC Review of Long-Term Renewable Energy Contracts - Round 1 Results - January 31, 2007
4/ Docket No. 03-07-17RE05 Pre-filed Testimony of William C. Sheehan - revised April 5, 2010
5/ Docket No. D-10-36 Purchase Power Agreement between National Grid and Rhosel Island LFG Genco, LLC - June 7, 2010
6/ Docket No. 4185 - Review of Amended PPA Between NGRID and Deepwater Wind Block Island, LLC - June 30, 2010
7/ Docket No. 2008-104 Order Directing Utilities to Enter Into Long-Term Contract - October 8, 2009
8/ NSTAR Electric Co. DPU 10-71, 10-72, and 10-73 - July 7, 2010
9/ DPU 10-54 Petition of NGRID for Approval of the DPU of Two Long-Term Contracts - June 4, 2010
10/ SNL Interactive Article - "Vermont approves power contracts for 40 MW First Wind Project" - August 14, 2009

Notes

1/ Clearview has filed a request to modify the fixed-pricing terms of the previously executed contract to include certain pricing adjustment mechanisms.
2/ Watertown pricing based on the ISO-NE spot market energy price plus a renewable premium of $45 - $55/MWH
3/ Watertown has filed a request to modify the fixed-pricing terms of the previously executed contract to include certain pricing adjustment mechanisms.
4/ Price escalates at 2.5% annually
5/ Price escalates at 3.5% annually. Contract price may be reduced if final facility installation cost is less than budget.
6/ PPA is for energy and capacity only (no renewable attributes included). Price is indexed to ISO-NE spot market with a floor and ceiling.
7/ Price escalates at 3.5% annually.

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)

PETITION TO INTERVENE OF BRIDGEWATER POWER COMPANY, L.P., PINETREE POWER, INC., PINETREE POWER-TAMWORTH, INC., SPRINGFIELD POWER LLC, WHITEFIELD POWER & LIGHT COMPANY, AND INDECK ENERGY -- ALEXANDRIA, LLC

Pursuant to Admin. Rule Puc 203.17 and RSA 541-A:32, I(b), Bridgewater Power Company, L.P., Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Springfield Power LLC, Whitefield Power & Light Company, and Indeck Energy -- Alexandria, LLC request intervention in this proceeding. This petition rests upon the following grounds.

1. Bridgewater Power Company, L.P. ("Bridgewater"), Pinetree Power, Inc. ("PPI") Pinetree Power-Tamworth, Inc. ("PPTI"), Springfield Power LLC ("Springfield"), Whitefield Power & Light Company ("Whitefield"), and Indeck Energy -- Alexandria, LLC ("Alexandria") (collectively, the "Wood-Fired Plants") each has a principal place of business and operates a wood-fired small power production facility located respectively in Bridgewater, Bethlehem, Tamworth, Springfield, Whitefield, and Alexandria, New Hampshire.

2. On July 26, 2010, Public Service Company of New Hampshire ("PSNH") filed a petition ("PSNH Petition") for approval of a twenty-year power purchase agreement ("PPA") with Laidlaw Berlin BioPower, LLC ("Laidlaw") for the purchase of energy, capacity, renewable energy certificates ("RECs"), and other defined environmental attributes for potential use under the State's renewable portfolio standard law, RSA 362-F (the "RPS").

3. Laidlaw proposes to develop a 70 MW biomass generation facility which will utilize wood chips, wood residue, and other low grade wood materials ("Biomass") as fuel.

When operating at full capacity, the facility will utilize approximately 750,000 tons of Biomass fuel per year. This fuel is projected to be sourced within a 100 mile radius of the City of Berlin, where the facility is to be located. Testimony of T. Large at 2, filed July 26, 2010.

4. The PPA contains a "Wood Price Adjustment" or "WPA" clause that adjusts the price that PSNH will pay Laidlaw for energy based upon some factor of change in "the actual average $/ton Biomass Fuel cost that PSNH paid for Biomass Fuel at its Schiller station facility." Testimony of Gary A. Long filed July 26 2010 at GL-1, Section 6.1.2(a)(ii). The PPA also grants PSNH an option to purchase the Laidlaw facility and right of first refusal. *Id.* at Article 7.

5. N.H. Code Admin. Rules PUC 203.17 requires the Commission to grant petitions to intervene in accordance with the standards of RSA 541-A:32. Section I of RSA 541-A:32, mandates intervention if a petitioner demonstrates that its "rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law." RSA 541-A:32, I. Discretionary intervention is permitted under RSA 541-A:32, II when the Commission determines "that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings." RSA 541-A:32, II; *see also In re: Public Service Company of New Hampshire, Reconciliation of 2009 Energy Service and Stranded Cost Recovery Charges,* 2010 N.H. PUC Lexis 70 at *2 (July 20, 2010) (Petitioners were granted intervention pursuant to RSA 541-A:32, II, where the petitioners "raised certain issues that are relevant to this proceeding that [would] not necessarily be addressed by other parties and, in the Commission's discretion, [would] serve the purposes of justice if pursued.").

6. The Wood-Fired Plants utilize Biomass fuel as their fuel source. The Wood- Fired Plants obtain their fuel primarily from New Hampshire, and primarily within a small radius of each facility. The Laidlaw facility and the Wood-Fired Plants will compete for Biomass fuel

and will have similar geographic markets for Biomass fuel procurement. The Wood-Fired Plants have a substantial interest in the availability and cost of this Biomass fuel. This substantial interest would be directly affected by approval of the PPA and its use by the Laidlaw facility, because, as the largest Biomass-fueled facility in the State, it will create a major new demand for Biomass, and thereby affect the availability and price of Biomass. Fuel cost is the largest operating cost for each of the Wood-Fired Plants, and increases in Biomass fuel prices can threaten their economic viability. The PPA's Wood Price Adjustment clause affects the Wood-Fired Plants' substantial interest in Biomass fuel cost and their economic viability because the WPA clause allows Laidlaw to pay more for Biomass without necessarily affecting that facility's economic viability. These interests are related to the Commission's public interest determination under RSA 362-F:9, II (a) (furthering the purposes and goals of the RPS), (c) (creating a reasonable mix of uses in accordance with RSA 378:37-41), and (e) (whether approval will result in a net economic benefit). *See* RSA 362-F:9, II(a),(c), and (e); *see also* paragraphs 10 and 12 below.

7. Approval of the PPA will directly affect the Wood-Fired Plants substantial interests in selling their energy and capacity, and for Alexandria, its New Hampshire Class I RECs to PSNH and the wholesale power market. The Wood-Fired Plants compete with Laidlaw to provide these products to PSNH, and PSNH's need for these products is limited. The PPA would affect PSNH's need to purchase energy from the Wood-Fired Plants for a twenty year period. Bridgewater currently sells its electricity into a spot market. PPI and PPTI currently sell energy, capacity, and Class III New Hampshire RECs to PSNH, but their contracts end December 31, 2010. In addition, Alexandria, which currently sells its energy and capacity into a spot market, will compete with Laidlaw for the sale of New Hampshire Class I RECs. This issue is related to the Commission's public interest determination under RSA 362-F:9, II (a) (dealing with whether a noncompetitive procurement is cost-effective, and whether detrimental effects to Class III of the RPS will result), and (d), (dealing with competitive procurement practices). *See* paragraphs 10 and 12, below.

8. Approval of the twenty-year-long PPA will also directly affect the Wood-Fired Plants' substantial interest in their tariff rates. PSNH's obligation to purchase under the PPA is contingent upon receipt of a final, nonappealable decision approving and allowing for full cost recovery of the rates, terms and conditions of the PPA. PSNH Petition at 2. The reason that RSA 362-F:9 requires Commission approval of the PPA is to allow PSNH to recover the prudently incurred costs of such agreements in its energy service rates. *See In Re: PSNH Petition for Approval of a Power Purchase Agreement and a Renewable Energy Certificate Option Agreement with Lempster Wind, LLC*, 2009 N.H. PUC Lexis 34 at *29-30 (May 1, 2009). The Commission will be making determinations whether the rates, terms, and conditions of the PPA are reasonable. *See id.* at *28 (finding pricing terms for energy, capacity, and RECs in PPA with Lempster Wind, LLC to be reasonable). Each of the Wood-Fired Plants buys back-up power supply from PSNH. Approval of full cost recovery of the rates, terms and conditions of the PPA directly affects rates for all of PSNH's customers, including purchasers of back-up power supply.

9. The Wood-Fired Plants, as wholesale sellers of renewable energy have a substantial interest in the competitive wholesale power market for renewable energy and the procurement of such power. If approved, the PPA's twenty-year term with the WPA clause impacts the competitive wholesale market for all generators. This docket raises issues whether the contract approval is in the public interest, where the PPA was procured without a competitive procurement process, *see* RSA 362-F:9, II(d), that would have permitted competition as to price and terms by other generators, including the Wood-Fired Plants. Additionally, the PPA's purchase option affects the Wood-Fired Plants' interest in a competitive market and raises issues such as the PPA's compatibility with progress toward a competitive market and with the restructuring principle that utilities should not be acquiring new generation, unless perhaps it is

small scale distributive generation, which the Laidlaw facility is not. *See id.* at (b); RSA 374-F:3, II and III; s*ee also* paragraphs 10 and 12, below.

10. PSNH's Petition asks the Commission to find that the PPA is in the public interest as required by the New Hampshire Renewable Energy Portfolio Statute, RSA 362-F:9, I, and that term is defined in RSA 362-F:9, II. Pursuant to RSA 362-F:9, II, the Commission must find that the PPA is, on balance, substantially consistent with:

> (a) The efficient and cost-effective realization of the purposes and goals of this chapter;
>
> (b) The restructuring policy principles of RSA 374-F:3;
>
> (c) The extent to which such multi-year procurements are likely to create a reasonable mix of resources, in combination with the company's overall energy and capacity portfolio, in light of the energy policy set forth in RSA 378:37 and either the distribution company's integrated least cost resource plan pursuant to RSA 378:37-41, if applicable, or a portfolio management strategy for default service procurement that balances potential benefits and risks to default service customers;
>
> (d) The extent to which such procurement is conducted in a manner that is administratively efficient and promotes market-driven competitive innovations and solutions; and
>
> (e) Economic development and environmental benefits for New Hampshire.

RSA 362-F:9, II.

11. PSNH claims that the PPA meets these factors because the PPA will, among other things, (a) provide fuel diversity to the state and New England (Testimony of T. Large at 7-8, filed July 26, 2010), (b) support efforts that develop the market for renewable power, *id.* at 8-9, (c) positively impact energy security and independence in the region through the use of locally harvested wood in support of RSA 378:37, *id.* at 8-14, (d) result in a procurement conducted in a manner that is administratively efficient and which promotes market-driven competitive innovations and solutions, *id.* at 14, and (e) provide economic development and environmental

benefits to the State. *Id.* at 14-15.

12. PSNH's justifications and the effects that the PPA may have on the wood market, the Wood-Fired Plants market for their power and other products, and the Wood-Fired Plants' economic viability raise the following issues relevant to the public interest standard contained in RSA 362-F:9, II (a)-(e):

> (a) whether approval of the PPA will further the purposes and goals behind the creation of Class I in a cost-effective manner given that no RFP was issued and procurement was not conducted in a competitive manner; and whether approval of the PPA will further the purposes and goals behind the creation of Class I at the expense of the purposes and goals of Class III (which applies to existing wood-fired power plants);
>
> (b) whether, combined with PSNH's option to purchase such a large generation facility, the restructuring principles of "fully competitive and innovative markets" and "market competition" with "minimal economic regulation" of generation will be accomplished (*see* RSA 374-F:3, II and III);
>
> (c) whether diversity and its benefits and the goals of RSA 378:37 are better achieved through purchases from one large generation facility rather than from a number of smaller facilities; and whether approval of the PPA will actually harm diversity available to PSNH and within New England by adversely affecting smaller scale generators such as the Wood-Fired Plants;
>
> (d) whether the procurement was conducted in a competitive manner given that no RFP was issued; and whether the purchase option is a market driven competitive solution; and

(e) whether there will be any (and, if so, what level of) net economic benefit as the result of the PPA if the PPA adversely affects the Wood-Fired Plants, the associated plant and fuel procurement jobs, and the communities that benefit economically from the Wood-Fired Plants' continued operation.

13. The Wood-Fired Plants' intervention will not impair the prompt conduct of this proceeding.

WHEREFORE, the Wood-Fired Plants respectfully request that they be permitted to intervene in this proceeding as full parties.

Respectfully submitted,
BRIDGEWATER POWER COMPANY, L.P., PINETREE POWER, INC., PINETREE POWER-TAMWORTH, INC., SPRINGFIELD POWER LLC, WHITEFIELD POWER & LIGHT COMPANY and INDECK ENERGY – ALEXANDRIA, LLC By Their Attorneys, BROWN, OLSON & GOULD, P.C.

By: /s/ David J. Shulock
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CERTIFICATE OF SERVICE

I hereby certify that, on this date, I caused the attached Petition to Intervene 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 NH Puc 203.11(c).

Date: 9/24/10 /s/ David J. Shuock
David J. Shulock, Esq.

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STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

In re: Petition for Approval of Power Purchase Agreement with Laidlaw Berlin BioPower, LLC) Docket No. DE 10-195

WOOD-FIRED IPPS' MOTION TO DISMISS

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") move to dismiss the Petition for Approval of Power Purchase Agreement between Public Service Company of New Hampshire and Laidlaw Berlin BioPower, LLC ("Laidlaw") because the Commission lacks authority to grant the relief that PSNH seeks. The Wood-Fired IPPs state the following in support of their motion:

INTRODUCTION

1. Public Service Company of New Hampshire ("PSNH") has petitioned the Commission pursuant to RSA 362-F:9 for approval of a 20-year long-term contract with Laidlaw for the purchase of New Hampshire Class I renewable energy certificates ("RECs") in conjunction with the purchase of energy and capacity (the "PPA"). PSNH also seeks approval of the "full cost recovery of the rates, terms and conditions of the PPA"[1] which includes the determination and purchase of, and the payment for New Hampshire Class I RECs on the terms and conditions as set forth in the PPA.

2. For the reasons discussed below, a plain reading of unambiguous terms of the PPA, RSA chapter 362-F (the "RPS statute"), RSA 374-F:3, V(c) and RSA 365:28 mandate that

[1] PSNH Petition at 2; *see also* Article 4.1.3 of the PPA.

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the Commission dismiss PSNH's petition as a matter of law. *New Hampshire Water Resources Council v. Steels Pond Hydro, Inc.*, 151 N.H 214, 215 (2004) (the meaning of a contract is a matter of law for the Supreme Court to ultimately determine); *Town of Acworth v. Fall Mt. Reg'l Sch. Dist.*, 151 N.H. 399, 401 (2004) (statutory interpretation involves a question of law and is reviewed by the Supreme Court *de novo*). The Commission must dismiss PSNH's petition, because approval of the terms and conditions of the PPA exceed the Commission's authority under RSA 362-F:9, I for the following reasons: (1) there is no requirement for the purchase of RECs after 2025 in RSA 362-F, and the Commission cannot approve cost recovery under RSA 362-F or RSA 374-F:3, V(c) for non-existent REC purchase obligations under the PPA; (2) the Commission may not usurp the legislature's prerogative to end or otherwise modify the RPS requirement in 2025 by imposing a contractual obligation on ratepayers to purchase RECs after 2025; and (3) read in *pari materia,* RSA 362-F:9, RSA 374-F:3, V(c), and RSA 365:28 prohibit the Commission from approving the PPA's change in law provisions that operate to prevent the Commission from subsequently reexamining critical elements of the PPA such as the number of RECs required to be purchased, the price and the amount of the REC price to be recovered from PSNH ratepayers in the future.

ARGUMENT

3. "The [Commission] is a creation of the legislature and as such is endowed with only the powers and authority which are expressly granted or fairly implied by statute." *Appeal of Public Service Company of New Hampshire*, 122 N.H. 1062, 1066 (1982). The Commission's power to authorize PSNH to enter into a multi-year purchase agreement for RECs in conjunction with a power purchase agreement "is limited to the authority specifically delegated or fairly implied by the legislature and may not be derived from other generalized powers of supervision."

Cf. Id. (applied to sale of stock and bonds). The scope of the Commission's authority to authorize PSNH to enter into the PPA is derived from RSA 362-F:9, I. This statute only permits the Commission to authorize PSNH "to enter into multi-year purchase agreements" for RECs "in conjunction with . . . purchased power agreements . . . to meet reasonably projected renewable portfolio requirements and default service needs *to the extent of such requirements* . . . " RSA 362-F:9, I. Emphasis supplied.

I. UNDER RSA 362-F, RPS REQUIREMENTS END IN 2025, AND THE COMMISSION HAS NO AUTHORITY TO APPROVE A CONTRACT FOR THE PURCHASE OF RECS THAT EXTENDS BEYOND THAT DATE OR TO APPROVE COST RECOVERY FOR RECS TO BE PURCHASED POST-2025.

4. The Commission lacks authority to approve the PPA because the term of the PPA (and hence the REC purchase obligation) extends beyond the end of the RPS program. The PPA has a 20-year term commencing on the In-Service Date. PPA at 7, Article 2.1. The PPA provides for an In-Service date as early as June 1, 2014, and as late as December 31, 2014, unless extended for reasons specified in the PPA. PPA at 18, Article 12.3.2. The 20-year term of the PPA will therefore end in 2034 or later. However, the RPS program, and the requirement that PSNH purchase Class I RECs ends in 2025. RSA 362-F:3.

5. The duration of the RPS program is set forth in RSA 362-F:3, titled "Minimum Electric Renewable Portfolio Standards." That provision states, "*For each year specified in the table below*, each provider of electricity shall obtain and retire certificates sufficient in number and class type to meet or exceed the following percentages of total megawatt-hours of electricity supplied by the provider to its end-use customers *that year*. . ." RSA 362-F:3. Emphasis supplied. The table provides the percentages and class types only for the years 2008 through 2025. *Id.* Neither the wording of the provision nor the table creates a purchase requirement for

the years 2026 and beyond. *Id.* Without further legislative action, the RPS program and PSNH's renewable portfolio requirements end December 31, 2025.

6. It is clear from a plain reading of the RPS statute that the legislature did not intend to empower the Commission to authorize multi-year REC contracts that extend beyond the year 2025. First, in RSA 362-F:9, I, the legislature was careful to limit permissible authorization of REC contracts to the "extent" of "renewable portfolio requirements." These requirements are set forth in RSA 362-F:3, and by clear statutory language, extend only through the year 2025. Second, the legislature reserved to itself the authority to increase, decrease, or eliminate the Class I purchase requirements in years 2026 and beyond. The legislature did so by creating a requirement in RSA-F:3 that extends only until 2025, while limiting the Commission to making recommendations to the legislature as to what should occur after that time. Whether a purchase obligation will exist after 2025, the classes to which it will apply, and at what levels, are matters of legislative prerogative. This distribution of authority is set forth in RSA 362-F:5, titled "Commission Review and Report."

7. Because the PPA obligates PSNH to purchase RECs for approximately nine years after 2025, when the RPS program ends and the purchase requirement ceases to exist, the terms and conditions of the PPA exceed PSNH's renewable portfolio requirements in absolute statutory terms. Consequently, the Commission lacks authority under RSA 362-F to authorize PSNH to enter into the PPA and to approve PSNH's request for cost recovery for a non-existent REC obligation.

8. Furthermore, the Commission lacks authority under RSA 374-F:3, V(c) to approve, as prudently incurred, any cost recovery for a non-existent REC obligation extending

beyond the RSA 362-F statutory limit of 2025. *See* RSA 374-F:3, V(c) (recovery in default service rate limited to prudently incurred costs of *compliance*)

II. THE COMMISSION MAY NOT LEGISLATE AN EXTENSION OF THE RPS PROGRAM BY APPROVING THE PRIVATE CONTRACTUAL TERMS OF THE PPA.

9. The legislature reserved for itself the question whether ratepayers will be obligated to fund an RPS program after 2025, *see* RSA 362-F:3, and limited the Commission's role to one of making recommendations for legislative action. *See* 362-F:5. The Commission may not, by approving a private contract (*i.e.* the PPA), extend the RPS program and ratepayer responsibility for that program beyond 2025. If the Commission were to do so, the Commission would be arrogating power that the legislature has reserved for itself.

10. The role of the Commission with regard to RPS requirements post 2025 is set forth in RSA 362-F:5. Under RSA 362-F:5, the Commission is required to review the RPS program three times, and report its findings and any recommendations to the legislature by November 1, 2011, 2018, and 2025. The Commission is to include in its reports any recommendations for legislative action that the Commission may have with regard to changes in class requirements or other aspects of the program. RSA 362-F:5. Ultimately, however, it is the legislature that will decide whether the RPS program and its requirements will continue, and if so, in what form.

11. Authorizing PSNH to enter into the PPA with its term that extends beyond 2025 and obligating PSNH's ratepayers to bear the expense of REC purchases would extend the RPS by fiat. The Commission would, in effect, be usurping the legislature's authority to decide whether the RPS program will extend beyond 2025. Nothing in RSA 362-F empowers the Commission to do so.

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III. THE COMMISSION MAY NOT APPROVE THE REC CHANGE IN LAW PROVISIONS OF THE PPA OR, BY PPA APPROVAL, PRECLUDE ITSELF FROM REVIEWING REC COST RECOVERY IN THE FUTURE, BECAUSE TO DO SO WOULD ABROGATE THE COMMISSION'S CONTINUING JURISDICTION UNDER RSA 365:28.

12. For the 20-year term of the PPA, Articles 1.44, 1.57, 8.1, and 23.1 will protect Laidlaw from legislative mandates and prevent the Commission from revisiting critical terms of the PPA, including the number of NH Class I RECs to be purchased, the purchase price for those RECs, and the amount of the REC price to be recovered from ratepayers in the future.[2] Approval of these provisions will abrogate the Commission's authority by insulating PSNH and Laidlaw from the Commission's continuing obligation to protect the public interest under RSA 365:28. As demonstrated below, abrogation of legislative prerogative and the Commission's authority is the clear purpose and intent of these change in law provisions, at least with regard to the term, the amount, and the minimum pricing of the REC purchase obligation.

13. The PPA defines a change in law to mean "that any applicable law, rule, or regulation is changed (whether directly or indirectly by pre-emption, displacement or substitution) or any new applicable law, rule, or regulation is enacted or promulgated subsequent to the Effective Date." PPA at 2, Article 1.8.

14. Article 23.1 of the PPA states the consequences of a change in law as follows:

> If, during the Term, a Change in Law occurs or any of the ISO-NE Documents are changed, resulting in elimination of or a material adverse affect upon a material right or obligation of a Party, then ***unless such Change in Law is otherwise specifically addressed herein***, the Parties will negotiate in good faith in an attempt to amend this Agreement to incorporate such changes as they mutually deem necessary to reflect the Change in Law or the change in any ISO-NE Documents. The intent of the Parties is that any such amendment reflects, as closely as possible, the intent and substance of the economic bargain before the Change in Law or the change in any ISO-NE Documents. If the Parties are

[2] *See* PSNH Petition at 2; and Article 4.1.3 of the PPA.

unable to reach agreement on such an amendment, the Parties agree to resolve the matter pursuant to the terms of Article 25 of this Agreement.

PPA at 26, Article 23.1. Emphasis supplied.

15. Changes in law related to the REC purchase obligation are "otherwise specifically addressed" in the PPA. Articles 1.44 and 1.57 make it clear that changes in law will not subject the REC purchase obligation to any decrease in amount or reduction in price from that existing in 362-F as of the PPA effective date of June 8, 2010. These change in law provisions instead create a minimum purchase requirement and a minimum floor base price *regardless* of changes in law.

16. The operation of Article 1.44 sets the minimum number of NH Class I RECs to be purchased over the 20-year term regardless of changes in the RPS requirements. That article defines "NH Class I Renewable Energy Credits" or "NH Class I RECs" as "REC[s] produced *or, in the event of a Change of Law that would have been produced*, by the Facility pursuant to its qualification as a renewable energy source as defined in the NH Class I Renewable Statutes at NH RSA § 362-F, *as in effect on the Effective Date, and regardless of any subsequent Change in Law.*" PPA at 5, Article 1.44. Emphasis supplied. As a result of this definition, the minimum number of NH Class I RECs that the Facility produces and that PSNH is obligated to purchase at ratepayer expense will be determined for the 20-year term with reference to RPS requirements as those requirements existed as of June 8, 2010, (*see* PPA at 1, preamble) regardless of any legislative change to those requirements. Under a plain reading of the PPA, this would include changes in Class I eligibility requirements and even repeal.

17. Articles 1.57 and 6.1.2(c) set the minimum floor base price for RECs over the 20-year term regardless of changes in the RPS requirements. Article 1.57 defines "Renewable Products Payment" as:

> the alternative compliance payment schedule set forth under NH RSA § 362-F for RECs produced by NH Class I Renewables, as adjusted from time to time, *provided* that if there is a Change in Law with respect to NH RSA § 362-F and/or the New Hampshire statute is pre-empted by later federal law, Parties will use good faith efforts to revise the Renewable Products Payment to conform to the value of any replacement payment available following such Change in Law, consistent with the provisions of Section 23 of this Agreement; and ***provided further*, that for the term hereof, the Renewable Products Payment shall not be less than the alternative compliance payment schedule (including future adjustments) set forth under NH RSA § 362-F for RECs produced by NH Class I Renewables as in effect on the date hereof.**

PPA at 6, Article 1.57. Emphasis supplied.

18. This provision prohibits any changes to the base floor price that fall below the ACP under the version of RSA 362-F and its ACP schedule in effect on June 8, 2010, while providing Laidlaw with the financial benefit of any change in law that might increase the price of RECs. The initial ACP amount is set forth in RSA 362-F:10, II. The amount escalates each year at the rate of change in the Consumer Price Index under RSA 362-F:10, III. From this initial ACP and the statutory escalation methodology, one can determine what the ACP will be, or would have been in any year even if there is a subsequent change in law. It will never change throughout the term, even if RSA 362-F were to be repealed.

19. Article 4.1.3 of the PPA requires the NHPUC to issue a final, non-appealable order approving and allowing full cost recovery of the rates, terms, and conditions of the PPA.

20. Read in *pari materia,* RSA 362-F, RSA 374-F:3, V(c), and RSA 365:28 bar the Commission from approving the PPA because under the terms of the PPA such approval would abrogate the Commission's jurisdiction under RSA 365:28. RSA 362-F and RSA 365:28 both govern the Commission's jurisdiction over orders concerning REC purchase agreements while

RSA 374-F:3, V(c) governs cost recovery. These three provisions therefore must be read in *pari materia*. *See Petition of Public Service Company of New Hampshire*, 130 N.H. 265, 273-74 (1988) (reading "anti-CWIP" and "emergency rate" statutes in *pari materia* to prevent the Commission from authorizing emergency rates to ameliorate a financial crisis that PSNH claimed arose from the anti-CWIP law). Statutes that deal with similar subject matter should be construed so that they do not contradict each other where reasonably possible, so that they lead to reasonable results and effectuate the legislative purpose of the statutes. *Id.* at 273.

21. RSA 362-F, RSA 374-F:3, V(c), and RSA 365:28 do not contradict each other, are not ambiguous, and are readily harmonized. RSA 362-F:9 empowers the Commission to issue orders authorizing electric distribution companies to enter into multi-year REC purchase agreements. RSA 374-F:3, V(c) allows for recovery of prudently incurred costs of complying with the RPS statute. RSA 365:28 grants the Commission continuing jurisdiction over orders issued pursuant to these provisions and the ability to revisit and "alter, amend, suspend, annul, set aside, or otherwise modify" those orders. Nothing in the RPS statute or RSA 374-F:3, V(c) explicitly modifies or repeals the Commission's jurisdiction under RSA 365:28 over the orders it issues pursuant to RSA 362-F:9 and RSA 374-F:3, V(c). Whenever the legislature intended to curtail the Commission's jurisdiction under RSA 365:28, the legislature has done so explicitly.[3] The lack of an explicit repeal or modification demonstrates that the legislature intended to require the Commission to retain its RSA 365:28 jurisdiction over orders issued pursuant to RSA 362-F:9 and RSA 374-F:3, V(c).

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[3] *See, e.g.*, RSA 369-B:3, II and III (revoking the commission's general authority under RSA 365:28 to rescind, alter, or amend its orders or requirements thereof with regard to rate reduction bond financing); RSA 362-C:6 (prohibiting the commission from altering, amending, suspending, annulling, setting aside or otherwise modifying its approval of the restructuring of PSNH); and RSA 362-C:7 (same with regard to commission approvals of certain rate plans for the New Hampshire Electric Cooperative).

22. Further, as discussed above, between the commencement of the RPS program and its end, the legislature reserved to itself at least three opportunities to change or eliminate RPS requirements after receiving reports and recommendations from the Commission. RSA 362-F:5. These reviews are to occur in 2011, in 2018, and again in 2025, immediately before the RPS program is currently set to end, *id.* with legislative action or inaction to occur in the 2012, 2019 and 2026 legislative sessions. *See Id.* RSA 365:28, which was not repealed or limited by the enactment of the RPS statute, works in harmony with RSA 362-F:5 and 374-F:3, V(c) by permitting the Commission to revisit its orders issued pursuant to RSA 365-F:9 and RSA 374-F:3, V(c) to respond to these changes in law or other circumstances affecting the public interest.

23. RSA 362-F:9 empowers the Commission to authorize PSNH to enter into multi-year agreements while RSA 374-F:3, V(c) authorizes cost recovery. Read in *pari materia* with RSA 365:28, however, neither empowers PSNH to insulate its shareholders and counterparties from legislative adjustments to, or elimination of, the RPS program at ratepayers' expense for a 20-year period.

24. In fact, three key features of the RPS statute and RSA 365:28, read in *pari materia*, protect ratepayers with regard to expenditures under contracts like the PPA. First, the legislature did not extend renewable portfolio requirements past 2025. RSA 362-F:3. This time frame allows for multi-year contracts while providing rate-payers with the protection of an end point until more is known about the success of the program as currently structured. Second, the legislature intends to periodically revisit the program's requirements until 2025. RSA 362-F:5. This provision makes clear that the legislature intends to consider adjustments to program requirements to respond to changes in circumstances and accumulated knowledge concerning the success or failure of the program. Third, the legislature only authorized multi-year REC

agreements to the extent of PSNH's portfolio requirement needs. RSA 362-F:9, I. The obvious intent of this provision is to prevent the Commission from authorizing PSNH to obligate its ratepayers to terms, conditions, and contracts extending beyond the obligations imposed by the legislature itself. Last, the legislature left the Commission's authority to alter and amend its orders intact, thereby allowing the Commission to revisit its orders issued pursuant to RSA 362-F:9 and RSA 374-F:3, V(c) in order to respond to changes in circumstance and legislative changes in the RPS law.

25. The Commission may not, through the approval of private, contractual change in law provisions, voluntarily waive its authority under RSA 365:28 to modify its orders issued pursuant to RSA 362-F:9 and RSA 374-F:3, V(c). Consequently, the Commission must dismiss PSNH's petition.

WHEREFORE, for the foregoing reasons, the Wood-Fired IPPs respectfully request that the Commission dismiss PSNH's petition and grant such other relief as the Commission deems just and proper. Because this motion is dispositive in effect, and because this docket is on an accelerated schedule, a timely decision by the Commission in the Wood-Fired IPPs favor will save staff, the Office of Consumer Advocate, and the parties from expending resources preparing for hearing. The Wood-Fired IPPs request that the Commission act on the motion at its earliest opportunity after objections are filed.

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 Dismiss to be filed electronically and via U.S. Mail, first class 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: December 13, 2010

David J. Shulock, Esq.

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

OBJECTION
of
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
to
WOOD-FIRED IPPs'
MOTION TO DISMISS

December 23, 2010

Pursuant to N.H. Code of Admin Rule Puc 203.07(e), Public Service Company of New Hampshire ("PSNH") hereby objects to the Wood-Fired IPPs' Motion to Dismiss ("Motion") dated December 13, 2010.[1] The Motion asserts "the Commission lacks authority to grant the relief that PSNH seeks."[2] This assertion is incorrect, and therefore, the Motion should be denied.

If the Motion to Dismiss was granted, the Commission would essentially be eliminating any realistic possibility for investments in new renewable power generation in the state. Moreover, by granting the Motion to Dismiss, the Commission would be signaling that it could never approve a utility entering into, and recovering costs under, a wholesale power sales arrangement falling under FERC jurisdiction.

In support of this objection, PSNH states:

BACKGROUND

1. In 2007 N.H. Laws, Chapter 26, the Legislature enacted the state's "Electric Renewable Portfolio Standard" ("RPS"), codifed as RSA Chapter 362-F. That law

[1] Although the Motion was dated December 13, 2010, it was not docketed with the Commission until December 15, 2010. Per Rule Puc 202.05, the date of filing is deemed to be December 15, 2010.

[2] Motion, at 1.

stated as one of its purposes that it is "in the public interest to stimulate investment in low emission renewable energy generation technologies in New England and, in particular, New Hampshire, whether at new or existing facilities." RSA 362-F:1. In addition, in 2007 N.H. Laws, 26:1, the Legislature also found:

> I. New Hampshire's electric utility restructuring policy principles in RSA 374-F:3, IX recognize that increased use of renewable resources can provide environmental, economic, and energy security benefits.
>
> II. In 2005, 2.3 million megawatt hours of electricity was generated from renewable energy facilities, including hydroelectric, biomass, and landfill gas power plants, with a combined generating capacity of 576 megawatts. This equaled 10 percent of the total electricity generation and 20 percent of the total retail electricity sales in New Hampshire in 2005.
>
> III. The 2002 state energy plan prepared by the governor's office of energy and community services pursuant to 2001, 121 recommended establishing a renewable portfolio standard to support indigenous renewable energy sources such as wood and hydroelectric, to encourage investments in new renewable power generation in the state, and to allow New Hampshire to benefit from the diversity, reliability, and economic benefits that come from clean power.
>
> IV. The state energy policy commission, established by 2006, 257:1 identified in its December 1, 2006 interim report principles that the governor and general court should use to evaluate any new energy policy initiative. One principle is to increase the state's fuel diversity by reducing the fossil fuel component of the state's energy mix and promoting use of renewable energy resources to buffer against global instability.
>
> V. The energy planning advisory board established by 2004, 164:2 received extensive comments supporting establishment of a state renewable portfolio standard during a stakeholder forum on energy policy held June 23, 2006.
>
> VI. Governor Lynch has committed New Hampshire to a goal of meeting 25 percent of the state's energy needs from renewable energy resources by 2025. Enactment of a renewable portfolio standard in New Hampshire will be an important step in meeting this goal.

2. To further these public interest findings, the Legislature created a series of escalating minimum annual requirements beginning in 2008 and continuing to increase until 2025, mandating that the electricity sold to retail customers within the state be composed of not less than certain percentages of various types, or classes, of

renewable energy. All "providers of electricity" – meaning an electric distribution company providing default service or an electricity supplier as defined in RSA 374-F:2, II – must comply with these minimum renewable portfolio standard requirements. In 2025, the RPS requires at least 23.8% of the energy sold in the state to be from designated renewable sources.

3. The RPS law created four classes of renewable generation. Of these classes, so called "Class I" will ultimately be the largest, with a requirement that by 2025, 16% of the electricity sold to retail consumers be from Class I renewable sources. Class I generation includes, *inter alia*, "eligible biomass technologies" that began operating after January 1, 2006. That is a sixteen-fold increase from the 2010 requirement of 1%. Future increases in the state's electric sales would also correspondingly increase the actual number of RECs required.

4. PSNH is an electric distribution company, and is a provider of electricity that must comply with the requirements of the RPS.

5. To comply with the RPS law, PSNH negotiated with, and ultimately entered into a Power Purchase Agreement (the "PPA") with Laidlaw Berlin BioPower, LLC. That PPA was executed on June 8, 2010, following comprehensive, detailed, and lengthy arms-length negotiations. That agreement would provide PSNH with, *inter alia*, Class I RECs necessary to comply with the RPS law.

6. The RPS law provides a mechanism for the state's electric distribution companies to enter into multi-year purchase agreements with renewable energy sources. An electric distribution company may request that the Commission find such a power purchase agreement to be in the public interest. The RPS law sets forth various factors to consider in balancing the public interest.

7. On July 26, 2010, PSNH petitioned the Commission for approval of the Laidlaw PPA pursuant to RSA 362-F:9.

8. On September 29, 2010, the Commission held a prehearing conference in this docket. During that proceeding, the Commission granted intervenor status to several parties,

including the Wood-Fired IPPs.[3] The Commission also adopted a procedural schedule which included a comprehensive discovery process.

9. The initial discovery period has been completed, with PSNH responding to over three hundred separately numbered data requests, and multiple hundreds of individual subparts therein. The Commission has expeditiously dealt with myriad confidentiality and discovery disputes. Staff and intervenor testimony has also been filed.[4]

10. The Wood-Fired IPPs now contend that the Commission must dismiss PSNH's petition "as a matter of law."[5] The Wood-Fired IPPs base their legal conclusion on two factors: i) the RPS law has established minimum standards for renewable energy supply only through year 2025. Hence, the Wood-Fired IPPs claim the Commission cannot approve cost recovery for purchases of Renewable Energy Certificates ("RECs") after year 2025, because such approval would "usurp the legislature's prerogative to end or otherwise modify the RPS requirement in 2025… ."[6]; and, ii) approval of the PPA would impact the Commission's authority under RSA 365:28 to later "alter, amend, suspend, annul, set aside, or otherwise modify" the authorization it granted pursuant to RSA 362-F:9.

THE COMMISSION HAS AUTHORITY TO APPROVE THE PPA

11. The Wood-Fired IPPs begin their argument by quoting from *Appeal of Public Service Company of New Hampshire*, 122 N.H. 1062, 1066 (1982): "The [Commission] is a creation of the legislature and as such is endowed with only the powers and authority which are expressly granted or fairly implied by statute." PSNH contends that its Petition for Approval of the PPA is precisely what the Legislature had in mind when it enacted the RPS law in general, and RSA 362-F:9, specifically. Hence, the

[3] The Wood-Fired IPPs are 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

[4] Notably, the Wood-Fired IPPs did not file any testimony.

[5] Motion, at 2.

[6] *Id.*

Commission indeed has the authority necessary to review the PPA under RSA 362-F:9 and to authorize PSNH to enter into that agreement.

12. As noted earlier, the Legislature made a number of "findings" and expressed their intended "purpose" when it enacted the RPS law. One of the express purposes of the RPS law is "to stimulate investment in low emission renewable energy generation technologies in New England and, in particular, New Hampshire, whether at new or existing facilities."[7] Approval of the PPA in this proceeding would meet this stated purpose, as it would result in the investment in, construction of, and jobs created by Laidlaw's new biomass generating facility in Berlin.

13. The Legislature found that enactment of the RPS law was consistent with the Governor's commitment to have 25 percent of the state's electric energy needs supplied from renewable sources by 2025.[8] A fair implication of this desire to meet the Governor's commitment to the use of renewable energy is that it is in the best interest of the state to continue the use of renewable energy beyond the year 2025 at levels at least equaling that required in 2025. Any other inference one might make would be unreasonable.

14. The Legislature found that in 2005, all of the renewable energy generating facilities in the state combined only generated enough electricity to meet 20 percent of that year's total retail electricity sales.[9] Even if the entire output of all of those renewable energy facilities remained available in the future, and sold the entirety of their renewable attributes to satisfy New Hampshire's RPS requirements, and if there was no increase in retail electricity sales in the future, there still would not be sufficient renewable generation to meet the "25 by 25" goal. Clearly, the Legislature "expressly granted or fairly implied by statute" the need and desire for additional renewable energy generation to be built within the state.

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[7] RSA 362-F:1.

[8] 2007 N.H. Laws, 26:1, VI.

[9] *Id.* at II.

15. The Legislature also found that "establishing a renewable portfolio standard to support indigenous renewable energy sources such as wood and hydroelectric, to encourage investments in new renewable power generation in the state, and to allow New Hampshire to benefit from the diversity, reliability, and economic benefits that come from clean power" was consistent with the 2002 state energy plan.[10] Approval of a PPA such as the one in this proceeding was clearly what was anticipated by the Legislature when it made this finding.

16. Finally, the Legislature created a specific process for the Commission to review and authorize electric distribution companies to enter into PPAs - - RSA 362-F:9. RSA 362-F:9, I reads:

> Upon the request of one or more electric distribution companies and after notice and hearing, the commission may authorize such company or companies to enter into multi-year purchase agreements with renewable energy sources for certificates, in conjunction with or independent of purchased power agreements from such sources, to meet reasonably projected renewable portfolio requirements and default service needs to the extent of such requirements, if it finds such agreements or such an approach, as may be conditioned by the commission, to be in the public interest.

17. The Wood-Fired IPPs argue that because the twenty year term of the PPA would extend beyond the RPS minimum purchase requirements that are enumerated only until 2025, the PPA as a matter of law cannot be approved by the Commission. They claim that the Commission may only approve a PPA that supplies RECs "to the 'extent' of 'renewable portfolio requirements.'"[11]

18. First, contrary to the Wood-IPPs' assertion, it is not at all clear that the phrase "to the extent of such requirements" found in the statute applies to an electric distribution company's "renewable portfolio requirements." In light of the earlier inclusion in that sentence of the words "reasonably projected" prior to "renewable portfolio requirements," it would be meaningless to have both modifiers (i.e., "reasonably projected" and "to the extent of such requirements") apply to both "renewable

[10] *Id.* at III.

[11] Motion, at 4.

portfolio requirements" and "default service needs" as they impart similar, yet different, restrictions (e.g., consider what would be meant by an electric distribution company's "reasonably projected...default service needs to the extent of such requirements.") In *West v. Turchioe*, 144 N.H. 509, 516 (1999), the Court quoting from 4 W. Jaeger, *Williston on Contracts* § 601, at 310 (3d ed. 1961) said ("[T]o ascertain and to give effect to the true intention of the parties the courts will examine and consider the entire writing, seeking as best they can to harmonize and to give effect to all the provisions of the contract so that none will be rendered meaningless.")[12] To best "harmonize and give effect" to both the "reasonably projected" and "to the extent of such requirements" modifiers found in the statute, the former would apply only to "renewable portfolio requirements" and the latter only to "default service needs."

19. Nonetheless, for sake of argument, even if both modifiers were deemed to be applicable to an electric distribution company's renewable portfolio requirements, the Wood-Fired IPPs interpretation of the statute would lead to nonsensical results. The legislation included an express and unambiguous goal for the RPS law to support indigenous renewable energy sources such as wood and hydroelectric, and to encourage investments in new renewable power generation in the state. The Wood-Fired IPPs interpretation of that law would eliminate any realistic possibility for investments in new renewable power generation to occur. "The Commission has recognized...that many developers need the assurance of a long term rate in order to obtain financing for their projects."[13] The PPA before the Commission in this

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[12] Interpretation of contracts and statutes are both questions of law, which the Supreme Court reviews *de novo*. *Gulf Ins. Co. v. AMSCO, Inc.* 153 N.H. 28, 34-35 (2005) ("The interpretation of a contract is a question of law, and thus we review the trial court's decision *de novo*. *Sherman v. Graciano*, 152 N.H. 119, 121, 872 A.2d 1045 (2005)."); *Billewicz v. Ransmeier* 2010 WL 4868179, 4 (N.H.) (N.H.,2010) ("The interpretation of a statute is a question of law, which we review *de novo*. *Kenison v. Dubois*, 152 N.H. 448, 451 (2005)."); *Porter v. Town of Sandwich* 153 N.H. 175, 178 (2006) ("The interpretation of a contract is a question of law. *Dillman v. N.H. College*, 150 N.H. 431, 434 (2003); *Erin Food Servs., Inc. v. 688 Props.*, 119 N.H. 232, 235 (1979). Statutory interpretation is also a question of law. *Pennelli v. Town of Pelham*, 148 N.H. 365, 366 (2002).")

[13] *Re Thermo-Electron Energy Systems*, 70 NH PUC 763, 765 (1985). *See also Re Minnewawa Hydro Company, Inc.*, 74 NH PUC 368, 371 ("The Commission has recognized however, that many developers need the assurance of a long term rate in order to obtain financing for their projects."); *Re Concord Regional Waste/Energy Company*, 70 NH PUC 736, 738-9 (1985); *Re Fuel Adjustment*

proceeding has a term of 20 years - - the same duration that the Commission has historically deemed necessary and adequate to provide that assurance developers need to obtain financing.[14]

20. If the Wood-Fired IPPs' argument that any PPA must as a matter of law end on or before 2025, no new developer would have the 20-year rates necessary to obtain financing. In light of the fact that it will be 2011 in a matter of days, and it would take some time to build any new generating facility, the Wood-Fired IPPs argument would limit the availability of rates for a RPS-related PPA to perhaps 10 to 12 years at best. There can be little doubt that such a limitation as endorsed by the Wood-Fired IPPs would be inconsistent with the legislative findings and purpose of the RPS law.

21. The RPS law specifically allows the Commission to authorize PPAs "to meet reasonably projected renewable portfolio requirements."[15] As noted earlier, it would be unreasonable to project that the renewable portfolio requirement would totally disappear after 2025. A reasonable projection would be that the requirement would continue at the same, or higher, minimum levels after 2025. Had the Legislature intended to limit an electric distribution company's ability to purchase RECs to precisely what was required by the RPS law, it would not have included the "reasonably projected" standard in the law (leaving the law to read "to meet renewable portfolio requirements"). Moreover, the Legislature would have specifically included that limitation in the language of the law by inserting the words "until 2025" to modify the description of reasonably projected renewable portfolio requirements. Furthermore, the Legislature would not have described the law's requirements as the *Minimum* Electric Renewable Portfolio Standards, with an obligation for electricity providers to *meet or exceed* the requisite percentages.[16]

Charge, 66 NH PUC 581, 583 (1981) ("During recent months, the commission has noted that many hydroelectric developers and other small power producers often were unable to secure project financing without long-term power sales contracts with the company.")

[14] *Re Small Energy Producers and Cogenerators*, 69 NH PUC 351 (1984).

[15] RSA 362-F:9, I.

[16] RSA 362-F:3.

THE COMMISSION'S AUTHORITY OVER THE PPA IS NOT TIME-LIMITED

22. The Wood-Fired IPPs argue that RSA 362-F:5, the RPS law's review and reporting provision, evidences the Commission's lack of authority to approve PPA's that extend beyond 2025. RSA 362-F:5 requires periodic reporting by the Commission to the legislature regarding a number of aspects of the RPS law. However, nothing in that section in any way limits the ability of the Commission to approve a PPA that the Commission determines meets the public interest requirements of RSA 362-F:9, II.

23. Approval of the PPA, and its obligation for PSNH to purchase RECs for twenty years, would not "extend the RPS by fiat" as suggested by the Wood-Fired IPPs. If the Legislature decided not to extend the RPS law beyond 2025, the concomitant renewable portfolio standard purchase obligations for this state's electricity suppliers would indeed end, notwithstanding the continuance of any contractual obligations entered into by PSNH, other electric distribution companies, or any of the other providers of electricity to the state's retail consumers. The reasonableness of the PPA as a whole and the compliance of the PPA with the RPS law's public interest criteria should be the determining factors governing the Commission's approval consideration.

RSA 365:28 DOES NOT PROHIBIT THE COMMISSION FROM APPROVING THE PPA

24. The Wood-Fired IPPs' argument that approval of the number of NH Class I RECs to be purchased, the purchase price for those RECs, and the amount of the REC price to be recovered from customers in the future "will abrogate the Commission's authority by insulating PSNH and Laidlaw from the Commission's continuing obligation to protect the public interest under RSA 365:28"[17] is creative, but wrong. If accepted, that argument would prohibit the approval of any PPA that does not provide the

[17] Motion, at 6.

Commission with unlimited authority to change material terms of the agreement (including pricing, quantities, and term). Such unlimited authority to set-aside, alter, or amend the contract would likely make any agreement unfinanceable, contrary to the intent of the RPS law.

25. In addition, the PPA is a FERC-jurisdictional contract. Although this Commission has the authority to determine the prudence of PSNH entering into the PPA, and the PPA's effectiveness is conditioned upon the Commission's approval, once approved the contract would be subject to the filed rate doctrine. "[T]he Supreme Court has ruled that where the FERC has lawfully determined a rate, allocation, or other matter, a state commission cannot take action that contradicts that federal determination. And even without explicit federal approval of a rate, the Court has treated a rate reflected in a FERC tariff as setting a rate level binding on a state commission in regulating the costs of the purchasing utility. *See Mississippi Power & Light Co. v. Mississippi ex rel. Moore*, 487 U.S. 354, 373-74, 108 S.Ct. 2428, 101 L.Ed.2d 322 (1988); *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 962-66, 106 S.Ct. 2349, 90 L.Ed.2d 943 (1986); *cf. Montana-Dakota Utils. Co. v. Northwestern Pub. Serv. Co.*, 341 U.S. 246, 251-52, 71 S.Ct. 692, 95 L.Ed. 912 (1951)."[18]

26. If the Wood-Fired IPPs' argument regarding "abrogation" of RSA 365:28 was accepted, the Commission would be prohibited from approving any FERC-jurisdictional matter due to the constraints of the filed rate doctrine. The negative impact on this state's utilities resulting from such a restriction would extend far beyond this proceeding.

27. The Commission has the ability and authority to review all of the terms of the PPA and make a determination whether, taken as a whole, the agreement is consistent with the RPS law's public interest standard. If so, the Commission would approve the agreement, fulfilling the prerequisite for purchases found in Section 4.1.3 of the PPA.

[18] *Public Service Co. of New Hampshire v. Patch*, 167 F.3d 29, 35 (1st Circ., 1998).

WHEREFORE, the Commission has clear authority to review and approve PSNH's Petition for Approval of the Laidlaw PPA. PSNH respectfully requests this Commission to deny the Wood-Fired IPPs' Motion to Dismiss.

Respectfully submitted,

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that I served an electronic or written copy of this filing on the various Petitioners pursuant to Rule Puc 203.11.

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STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

In re: Petition for Approval of Power Purchase Agreement with Laidlaw Berlin BioPower, LLC	))	Docket No. DE 10-195

WOOD-FIRED IPPS' REPLY TO PSNH'S OBJECTION TO WOOD-FIRED IPPS' MOTION TO DISMISS

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") filed a motion to dismiss PSNH's petition on December 13, 2010. Settlement discussions are scheduled for January 14, 2011. Settlement discussions will benefit from a determination of the legal issues raised in the Wood-Fired IPPs' motion to dismiss. It is vital to meaningful settlement for the parties to understand whether they are negotiating contract modifications that are within the Commission's power to authorize. To aid the Commission in making its determination, the Wood-Fired IPPs reply to the December 23, 2010 objection filed by Public Service Company of New Hampshire ("PSNH") as follows:

1. **The Commission Must Dismiss the PSNH Petition Because PSNH Concedes That RPS Purchase Requirements End in 2025.**

PSNH concedes that RPS purchase requirements under RSA 362-F:3 end in 2025, absent some future legislative action. As stated by PSNH, "[i]f the legislature decides not to extend the RPS beyond 2025, the concomitant renewable portfolio standard purchase obligations would indeed end, notwithstanding the continuance of contractual obligations entered into by PSNH . . ." Obj. at 9. Because RSA 369-F:9, I grants the New Hampshire Public Utilities Commission ("Commission") jurisdiction to authorize REC contracts only to the extent of the RPS

requirements, and RSA 374-F:3, V(c) allows for recovery only of the costs of compliance with established RPS requirements, the Commission must dismiss PSNH's petition.

2. PSNH's Statutory Construction Arguments Do Not Refute That The RPS Ends In 2025.

PSNH's statutory construction arguments regarding RSA 362-F:9 are unpersuasive. First, PSNH argues that the phrase "to the extent of such requirements" contained in RSA 362-F:9, I modifies the phrase "default service needs" instead of the phrase "renewable portfolio requirements." Obj. at 7. This argument is an attempt to create an ambiguity where no ambiguity exists. The phrase "to the extent of such *requirements*" clearly modifies the previous phrase "renewable portfolio *requirements*." It would simply make no sense for the legislature to have used the two different words "needs" and "requirements" to describe default service needs. Instead, the legislature can be presumed to have used the same word "requirements" twice in the same sentence to describe the same subject -- renewable portfolio requirements.

Second, PSNH argues that, even if the phrase "to the extent of such requirements" modifies the phrase "renewable portfolio requirements" and those requirements extend only through 2025, PSNH may gamble that purchase requirements would not "totally disappear after 2025" and that it may make "[a] reasonable projection . . . that the [renewable portfolio] requirement would continue at the same, or higher minimum levels after 2025." Obj. at 7-8. This argument is nonsensical because, by statute, a reasonable projection of renewable portfolio requirements is limited to the extent of such requirements, and there is no such renewable portfolio requirement after 2025. Moreover, this argument fails when RSA 362-F:9, I is read in *pari materia* with RSA 374-F:3, V(c), which limits recovery to prudently incurred costs of *compliance* with renewable portfolio requirements. There simply can be no "compliance" with a

requirement, and no recovery for any such "compliance," when there is no requirement to be complied with. The renewable portfolio standard compliance requirements are set forth in RSA 362-F:3, and PSNH has conceded that these requirements terminate at the end of 2025.

Third, PSNH argues that the legislature would have included the words "until 2025" in RSA 362-F:9, I if the legislature had intended to disallow Commission authorization of REC purchase obligations beyond the expiration of the RPS requirement. The Commission, however, can only abide by the plain words that the legislature did include, and may not ignore them. *In re: Heinrich and Curotto*, 160 N.H. 650, 654 (2010). The phrase that limits the Commission's authority here is "to the extent of such requirements," which references the statutory renewable portfolio requirements in RSA 362-F:3, as these are the only renewable portfolio requirements contained in the statute. Because of this limitation, the Commission lacks authority to approve the PPA and must dismiss PSNH's petition.

Fourth, PSNH argues that the legislature "would not have described the law's requirements as the *Minimum* Electric Renewable Portfolio Standards, with an obligation for electricity providers to *meet or exceed* the requisite percentages" if the Commission could not authorize entry into a REC purchase obligation that extends beyond 2025. Obj. at 8. PSNH, however, fails to acknowledge that the requisite percentages in the quoted section actually exist only for the years 2008 through 2025 under RSA 362-F:3; there simply are no requisite percentages to exceed after 2025.

3. <u>The RPS Statute Does Not Repeal The Commission's Authority Under RSA 365:28</u>.

PSNH's claim that the Commission's continuing "authority to set-aside, alter, or amend the contract would likely make any agreement unfinanceable, contrary to the intent of the RPS law" is incorrect and misses the point. Simply stated as a matter of law, and as more fully set

forth in the Wood-Fired IPPs' motion, RSA 362-F did not repeal RSA 365:28 or RSA 374-F:3, V(c). As a consequence, these statutes must be read in *pari materia*, and an order approving a PPA must be subsequently reviewable under RSA 365:28 to give full effect to all statutes. The REC change in law provisions of the Laidlaw PPA have the effect of precluding the Commission from exercising this review with regard to its order in this docket. This is impermissible. Private contracting parties do not have the ability to alter the Commission's statutory jurisdiction, and neither does the Commission.

Because the PSNH petition asks the Commission to voluntarily relinquish its jurisdiction under RSA 365:28 with regard to REC purchases under the Laidlaw PPA, the Commission lacks authority to approve the PPA, and must dismiss PSNH's petition.

4. **The Filed Rate Doctrine is Inapplicable to REC Sales.**

PSNH's claim that the Commission's continuing jurisdiction under RSA 365:28 runs afoul of the federal "filed rate doctrine" is incorrect because that doctrine does not apply to RECs. The Wood-Fired IPPs' motion relates only to the change-in-law provisions of the PPA that define PSNH's purchase obligation for NH Class I RECs, a "product" that, unlike certain energy and capacity sales, is entirely State jurisdictional. The filed rate doctrine applies only to matters that are within the jurisdiction of the Federal Energy Regulatory Commission ("FERC"). RECs are not FERC jurisdictional.

Section 201(b) of the Federal Power Act provides the FERC with regulatory jurisdiction over the "sale of *electric energy* at wholesale in interstate commerce." 16 U.S.C. §824(b) (emphasis supplied). FERC has expressly recognized that "RECs are separate commodities from the capacity and energy produced by [renewable energy generators]. If a state chooses to create these separate commodities, they are not compensation for capacity and energy" but represent

additional compensation for "environmental externalities." *California Public Utilities Commission; Southern California Edison Company, Pacific Gas and Electric Company, San Diego Gas & Electric Company*, 133 FERC ¶61,059 at P31 (October 21, 2010) (citing *American Ref-Fuel*, 105 FERC ¶61,004 at P23 (2003)). Because RECs are tradable commodities separate from electric energy and capacity that are created to satisfy State-imposed renewable energy policy mandates, REC sales provisions do not represent FERC jurisdictional rates or terms of service subject to the filed rate doctrine. PSNH's argument regarding the effect of the filed rate doctrine on the Commission's continuing jurisdiction over the PPA under RSA 365:28 therefore is inapposite and should be rejected.

WHEREFORE, the Wood-Fired IPPs respectfully request that the Commission dismiss PSNH's petition, and that the Commission issue its order as soon as possible to aid settlement discussions scheduled for January 14, 2011.

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 Dismiss to be filed electronically and via U.S. Mail, first class 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: January 6, 2011

David J. Shulock, Esq.

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 10-195

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Petition for Approval of a Long-Term Power Purchase Agreement with Laidlaw Berlin BioPower, LLC.

Order on Pending Motions

ORDER NO. 25,192

January 14, 2011

I. PROCEDURAL BACKGROUND

On July 27, 2010, Public Service Company of New Hampshire (PSNH or Company) filed a petition for approval of a power purchase agreement (PPA) between PSNH and Laidlaw Berlin BioPower, LLC (Laidlaw). With its petition, PSNH filed a motion for confidential treatment of detailed pricing terms and certain other information made with its filing. On October 14, 2010, the Commission issued a prehearing conference order (Order No. 25,158) which denied PSNH's motion for confidential treatment except insofar as it related to the value of property to be protected by title insurance.[1] The Commission issued Order No. 25,171 on November 17, 2010, which accepted Laidlaw's notice of withdrawal, granted the motion to strike any information provided by Laidlaw in discovery from the record, and denied Concord Steam's motion to dismiss.

On November 24, 2010 the Commission issued Order No. 25,174 that disposed of PSNH's motion for confidentiality regarding its responses to data requests as well as the pending

[1] See Order No. 25,158 (October 14, 2010) and Order No. 25, 174 (November 24, 2010), for additional procedural history and a list of intervenors in this docket.

motions to compel filed by the Wood-Fired IPPs[2]. On December 8, 2010, PSNH filed unredacted copies of the testimony of Mr. Labrecque and the PPA. On December 2, 2010, the Wood-Fired IPPs filed an objection to the statement of Clean Power Development (CPD) filed on November 18, 2010. CPD responded to the objection on December 13, 2010. The Wood-Fired IPPs filed a Motion to Dismiss PSNH's petition for approval of the PPA on December 15, 2010.

On December 17, 2010, testimony was filed as follows: Thomas C. Frantz and George R. McCluskey on behalf of Staff; Mark E. Saltsman, Robert J. Berti, James C. Dammann, and John Dalton, on behalf of Concord Steam; and Kenneth E. Traum on behalf of the Office of Consumer Advocate (OCA). The OCA included a separate filing of confidential information on December 17, 2010 and the Staff filed a confidential attachment to Mr. McCluskey's testimony on December 20, 2010. The City of Berlin filed the testimony of George E. Sansoucy on December 20, 2010.

The Commission issued a secretarial letter on December 22, 2010 re-scheduling the hearing in this docket to January 24, 2011. Also on December 22, 2010, PSNH filed a motion to strike the testimony of Mr. Saltsman and the joint testimony of Messrs. Berti and Dammann on behalf of Concord Steam. On December 23, 2010, PSNH filed an objection to the Wood-Fired IPPs' Motion to Dismiss. Edrest Properties filed an objection to PSNH's motion to strike on December 27, 2010 and Concord Steam also filed an objection to PSNH's motion to strike on December 28, 2010. Finally, on January 10, 2011, the Wood-Fired IPPs filed a reply to PSNH's objection to the Wood-Fired IPPs' Motion to Dismiss.

[2] See Order No. 25,158 for a list of the entities referred to as the Wood-Fired IPPs.

II. PENDING MOTIONS AND COMMISSION ANALYSIS

We will address three pending motions in this order: (1) the Wood-Fired IPPs' Motion to Strike Statement on behalf of CPD; (2) the Wood-Fired IPPs' December 15, 2010 Motion to Dismiss PSNH's petition; (3) and PSNH's December 22, 2010 motion to strike certain of Concord Steam's prefiled testimony.[3]

A. Wood-Fired IPPs' Motion to Strike Statement on behalf of CPD

We have reviewed the statement of Mel Liston filed by CPD, the Wood-Fired IPPs' objection and CPD's response. The Wood-Fired IPPs stated that, as a full party intervenor in the docket, CPD must conduct itself in accordance with the procedural schedule in this docket and Commission rules, which authorize public statements by those who are not intervenors. CPD responded to the Wood-Fired IPPs' objection by stating that it is allowed to make a public comment pursuant to N. H. Code of Admin. R. Puc 203.18, which does not prohibit and intervenor from making a public statement in lieu of testimony. Puc 203.18 reads as follows:

> "Puc 203.18 Public Comment. Persons who do not have intervenor status in a proceeding but having interest in the subject matter shall be provided with an opportunity at a hearing or prehearing conference to state their position."

Puc 203.18 applies only to non-intervenors and thus is not applicable to CPD. As a full party intervenor, CPD had an opportunity to file testimony and to submit to cross examination by the other Parties and Staff pursuant to the procedural schedule, which it elected not to do. Given the foregoing, the statement of Mr. Liston filed by CPD on November 18, 2010 does not

[3] Concord Steam filed a motion to continue and requested additional time to file testimony given discovery disputes and PSNH's then-pending motion for reconsideration of Order No. 25,158 (October 15, 2010). Concord Steam filed its motion before we issued Order No. 25,168 denying PSNH's motion for reconsideration, Order No. 25,171 on pending discovery motions, and the November 17, 2010 secretarial letter modifying the procedural schedule. These actions render Concord Steam's motion to continue moot.

constitute a public comment under Commission rules nor is it testimony, therefore we will strike it from the record. As a full party intervenor in this docket, however, CPD will be afforded the opportunity to make a closing statement.

B. Wood-Fired IPPs' Motion to Dismiss PSNH's Petition

1. Motion to Dismiss

The Wood-Fired IPPs assert that the Commission lacks authority to approve the PPA because the terms of the PPA, including the obligation to purchase renewable energy certificates (RECs), extends beyond the end of the renewable portfolio standard requirements contained in RSA 362-F and that the authority granted to the Commission under RSA 362-F:9, I to approve such PPAs is only "to the extent of such requirements." The Wood-Fired IPPs state that the PPA has a 20 year term commencing between June 1, 2014 and December 31, 2014, thus extending the PPA and the REC purchase obligations to 2034. Wood-Fired IPPs' Motion at 3. Because the RPS obligations expire in 2025 according to the current law, the Wood-Fired IPPs argue that the Commission lacks authority to authorize PSNH to enter into the PPA and to approve PSNH's request for cost recovery for a non-existent REC obligation for the nine years beyond 2025. *Id.* at 4.

The Wood-Fired IPPs also contend that the operation of RSA 365:28 limits the Commission's ability to approve the PPA. According to the Wood-Fired IPPs, RSA 362-F:9 empowers the Commission to authorize PSNH to enter into multi-year agreements, while RSA 374-F:3, V(c) authorizes cost recovery. The Wood-Fired IPPs assert that RSA 365:28, which empowers the Commission to amend or set aside orders under certain conditions, constitutes a continuing obligation of the Commission to protect the public interest. *Id.* at 6. Read in *pari*

materia with RSA 362-F:9 and RSA 374-F:3, V(c), the Wood-Fired IPPs argue that RSA 365:28 compels the Commission to protect ratepayers with regard to expenditures under contracts such as the PPA. *Id.* at 10. The Wood-Fired IPPs therefore conclude that the Commission may not, through the approval of a private, contractual change in law provisions, waive its authority under RSA 365:28 to modify orders issued pursuant to RSA 362-F:9 and RSA 374-F:3,V(c). As a result, the Wood-Fired IPPs assert that the Commission must dismiss PSNH's petition. *Id.* at 11.

2. Objection of Public Service Company of New Hampshire

In its objection, PSNH states that it entered into the PPA as contemplated by RSA 362-F:9 to help meet its RPS obligations. PSNH Objection at 3. PSNH asserts that its petition for approval of the PPA is precisely what the New Hampshire Legislature had in mind when it enacted the RPS law and, specifically, RSA 362-F:9. *Id.* at 4.

According to PSNH, the Wood-Fired IPPs' interpretation of the law would eliminate any realistic possibility for investments in renewable power generation. PSNH posits that such an interpretation would limit the availability of rates for a RPS-related PPA to perhaps 10 to 12 years at best, and that limitation would be inconsistent with the legislative findings and purpose of the RPS law. PSNH further argues that the RPS law allows the Commission to authorize PPAs to "meet the reasonably projected renewable portfolio requirements," and that it is reasonable to project the continuation of RPS requirements after 2025. *Id.* at 8. According to the Company, the Commission's authority over the PPA is not time-limited. PSNH argues that the reasonableness of the PPA as a whole and the compliance of the PPA with the RPS law's public interest criteria should be the determining factors governing the Commission's approval. *Id.* at 9.

Regarding the Wood-Fired IPPs argument pertaining to RSA 365:28, PSNH states that, if that argument were to be accepted, the Commission would have unlimited authority to change material terms of approved PPAs, including pricing, quantities and term. PSNH asserts that such unlimited authority to set-aside, alter or amend the PPA would likely make any agreement un-financeable, contrary to the intent of the RPS law. *Id.* at 9-10. PSNH further argues that the PPA is a contract subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC) and, once approved, would be subject to the filed rate doctrine. If the Wood-Fired IPPs' argument regarding "abrogation" of RSA 365:28 were accepted, PSNH states that the Commission would be prohibited from approving any FERC-jurisdictional matter due to the constraints of the filed rate doctrine. *Id.* at 10. PSNH concludes by stating that the Commission has the ability and authority to review all of the terms of the PPA and to make a determination whether, taken as a whole, the PPA is consistent with the RPS law's public interest standards. *Id.*

3. Commission Analysis

The Wood-Fired IPPs' motion to dismiss essentially asserts that PSNH's petition for approval of the PPA fails to state a claim for which relief can be granted when it argues that the Commission lacks authority to approve the proposed PPA. When reviewing a motion to dismiss, we assume that PSNH's factual allegations are true and that all reasonable inferences therefrom are construed in favor of PSNH. Order No. 25,171 (November 17, 2010) at 9. *See also Southern New Hampshire Water Company, Inc.*, Order No. 19,826, 75 NH PUC 282 (1990) *and Mountain Springs Water Company, Inc. v. Mountain Lakes Village District,* 126 N.H. 199, 200-201 (1985).

Consistent with these standards, in order to grant the motion to dismiss, we must be persuaded that we have no authority to approve the long term PPA under RSA 362-F.

It has long been established that the Commission is a "creation of the legislature and as such is endowed with only the powers and authority which are expressly granted or fairly implied by statute." *Appeal of Public Service Co. of New Hampshire*, 122 N.H. 1062, 1066 (1982) (*citing Petition of Boston & Maine R.R.*, 82 N.H. 116, 129 A. 880 (1925)). *See also Public Service Co. of New Hampshire*, 86 NH PUC 407 at 410, Order No. 23,734 (June 28, 2001). The Commission has statutory authority under RSA 362-F:9 to authorize an electric distribution company to enter into multi-year purchase agreements with renewable energy sources for RECs "in conjunction with or independent of purchased power agreements from such sources, to meet the reasonably projected renewable portfolio requirements and default service needs to the extent of such requirements," provided that the Commission finds such agreements to be in the public interest. RSA 362-F:9, I. The statute further allows the Commission to condition such agreements as part of its review and approval. *Id.* The criteria by which the Commission evaluates public interest are set out in RSA 362-F:9, II.

PSNH filed the proposed long-term PPA with Laidlaw for the purchase of power, RECs and capacity under RSA 362-F:9 and has asked the Commission to approve the PPA under the authority granted to the Commission by the Legislature. The Wood-Fired IPPs' argument is that the Commission's authority is limited to PPAs with terms that expire on or before 2025 because RSA 362-F does not require REC purchase obligations after 2025.

The Commission has authority under RSA 362-F:9 to consider any properly filed petition seeking approval of a long-term PPA between an electric distribution utility and a renewable

energy source. Inasmuch as we have before us a properly filed petition and a proposed PPA, we will deny the motion to dismiss. We will review the PPA to determine whether it meets the public interest consistent with the statute and will also consider whether we should exercise our authority under RSA 362-F:9, I to place conditions on our approval of the PPA. We will consider the individual criteria and other arguments at hearing. The existence of contractual terms that may conflict with statutory requirements or authority is not a basis for dismissal before the facts and arguments in the case are fully developed, rather it is a factor to be considered in our public interest review of the PPA, especially in light of the conditioning authority granted to the Commission under RSA 362-F:9, I.

Finally, we disagree with the Wood-Fired IPPs' argument regarding the interplay of RSA 365:28 and RSA 362-F:9. If we were to claim unlimited authority to revise contractual obligations such as those contained in the PPA after we approved them, the resulting uncertainty would halt the use of PPAs for the procurement of power and RECs. Such uncertainty would be harmful to both utilities and their customers, and would ultimately be detrimental to the development of renewable energy facilities in New Hampshire.

C. PSNH Motion to Strike Concord Steam Testimony

1. PSNH Motion to Strike

In its motion to strike, PSNH points out that it filed the petition pursuant to RSA 362-F, and that RSA 362-F:9, II states five criteria that the Commission must consider in determining whether the proposed PPA with Laidlaw is in the public interest. PSNH argues that the testimony of Mr. Saltsman and the joint testimony of Messrs. Berti and Dammann relate to the

impact that the PPA would have on the region's wood supply and the resulting cost of wood. PSNH Motion at 2.

PSNH states that the Commission had considered the scope of the proceeding at the prehearing conference. According to PSNH, Commissioner Ignatius referred to the concern expressed by counsel for the Wood-Fired IPPs about the size of the plant and asked if those issues are in the Site Evaluation Commission proceeding or in the instant proceeding. PSNH notes that its counsel, later in the prehearing conference, asked the Commission whether the issue of wood supply would be part of this docket and the Commission responded by saying that it would wait and see what the discovery looks like before formulating a response to the question. *Id.* at 3.

According to PSNH, the purpose of the Site Evaluation Commission is to review certain characteristics of a proposed energy generation facility or transmission facility subject to its jurisdiction. The review includes the evaluation of, among other things, the selection of sites for energy facilities, including the routing of high voltage transmission lines, that will have a significant impact on the welfare of the population, the environment of the state and the use of natural resources, citing RSA 162-H:1. PSNH points out that the Site Evaluation Committee had reviewed the proposed Laidlaw facility in its Docket No. 2009-02 and issued a decision to grant a Certificate of Site and Facility to Laidlaw on November 8, 2010. PSNH states that the decision included detailed considerations of the potential impact of the Laidlaw facility on the region's wood supply. *Id.*

According to the Company, the Commission has recognized that certain issues are within the jurisdiction of the Site Evaluation Committee and would not be part of a proceeding before

the Commission (citations omitted). *Id.* at 5. PSNH argues that the issues surrounding the region's wood supply and related matters have been fully heard, considered and ruled upon by the Site Evaluation Committee. PSNH states that Concord Steam had the opportunity to seek intervener status in that proceeding and that Mr. Saltsman was present for much of that proceeding. *Id.*

PSNH asserts that if the Commission were to review wood supply issues in the instant docket, it would "undertake a colossal duplication of administrative resources" already expended by the Site Evaluation Committee. *Id.* at 6. PSNH claims that a Commission review of the wood supply issue would intrude into the jurisdiction of the Site Evaluation Committee and that wood supply is not a component of the requisite public interest finding. For these reasons, PSNH moves to strike the pre-filed testimony of Messrs. Saltsman, Berti and Dammann. *Id.*

2. Objection of Edrest Properties, LLC

Edrest Properties, LLC (Edrest) states in its objection that the Commission can benefit by collecting information pertinent to wood supply as it becomes available. According to Edrest, the issue of fuel price is one before the Commission in this docket. Edrest argues that the issue merits more investigation than that conducted before the Site Evaluation Committee. Edrest opined that Commissioner Below's synopsis of biomass within New Hampshire[4] clearly shows that PSNH "is bringing into question whether or not they are truly working towards the State's 2015 initiative when most of these currently operating biomass facilities are not operating with

[4] The synopsis Edrest refers to is apparently a power point presentation made by Commissioner Below at the July 2010 meeting of the Energy Resources & Environment Committee of the National Association of Regulatory Utility Commissioners (NARUC) as part of a panel on biomass generators. The power point visually supported a summary of the history of the development and regulation of biomass power in New Hampshire. The presentation can be found at www.narucmeetings.org/Presentations/CB%20Biomass%20ERE%207-20-10_updated.pdf

PPAs with PSNH." Edrest objection at 1. Edrest expressed concern that PSNH's proposed PPA with Laidlaw would monopolize wood fuel. *Id.* at 2.

3. Objection of Concord Steam

Concord Steam states that the testimony it provided is relevant because increases to the cost of biomass fuel at PSNH's Schiller Station will increase the price paid for energy by PSNH's customers under the Laidlaw PPA. According to Concord Steam, Schiller Station already pays more per ton of biomass fuel than any other facility in New Hampshire. Concord Steam claims that the Laidlaw PPA will further increase prices paid at Schiller Station as suppliers respond to the increases in demand. Concord Steam posits that the increase will be at least as large as occurred when Schiller Station came on line. Concord Steam's Objection at 1-2. Further, Concord Steam states that the Site Evaluation Committee did not consider the price of biomass fuel because it could not predict prices with any accuracy and that the impact on other facilities was outside of its control. (citations omitted) *Id.* at 2.

Concord Steam also argues that the legislature repealed certain provisions in the Site Evaluation Committee's jurisdictional statute which, as a result, barred the Site Evaluation Committee from considering the impact of the Laidlaw PPA on the State's energy policy. According to Concord Steam, the Site Evaluation Committee could only consider whether the Laidlaw project would adversely impact the orderly development of the region. *Id.*

Concord Steam asserts that its testimony is properly before the Commission in its evaluation of the public interest pursuant to RSA 362-F:9 and is relevant to the criteria set forth in RSA 362-F:9, II. *Id.* at 3. Concord Steam goes on to argue that whether or not the issue was considered by the Site Evaluation Committee has no bearing on the instant proceeding because

the Legislature directed the Commission to make its own determination after consideration of both the public interest and specific statutory criteria under RSA 362-F:9,II. According to Concord Steam, there is no legal basis to exclude relevant testimony simply because it may or may not have been considered by a different body applying different criteria. *Id.* Concord Steam concludes by requesting that the Commission deny PSNH's motion to strike Concord Steam's prefiled testimony.

4. Commission Analysis

We have reviewed the arguments presented and deny PSNH's motion to strike the testimony of Messrs. Saltsman, Betri and Dammann. The fact that the Site Evaluation Committee may have considered wood supply and wood fuel price issues for purposes of RSA 162-H does not preclude our consideration of such issues to the extent that they may be relevant to RSA 362-F:9, II, which requires a public interest determination that the proposal is substantially consistent with a number of factors including: the restructuring policy principles of RSA 374-F:3, which includes, among other principles, VII concerning "Full and Fair Competition," VIII concerning "Environmental Improvement," and IX concerning "Renewable Energy Resources;" whether the proposed PPA conforms with the most recently accepted least cost integrated resource plan (LCIRP) filed by PSNH; and the "economic development and environmental benefits for New Hampshire." We therefore deny PSNH's motion to strike.

Based upon the foregoing, it is hereby

ORDERED, that the Wood-Fired IPPs' motion to strike the statement of Mr. Mel Liston on behalf of CPD is hereby GRANTED; and it is

FURTHER ORDERED, that the Wood-Fired IPPs' motion to dismiss the petition of PSNH for approval of a long term purchase power and REC agreement with Laidlaw is hereby DENIED; and it is

FURTHER ORDERED, that PSNH's motion to strike certain testimony filed on behalf of Concord Steam is hereby DENIED.

By order of the Public Utilities Commission of New Hampshire this fourteenth day of January, 2011.

Thomas B. Getz
Chairman

Clifton C. Below
Commissioner

Amy L. Ignatius
Commissioner

Attested by:

Debra A. Howland
Executive Director

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 FOR REHEARING

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") filed a motion to dismiss PSNH's petition on December 13, 2010 and a Reply to PSNH's Objection to Wood-Fired IPPS' Motion to Dismiss on January 6, 2011. The Commission denied this motion to dismiss in an order on all pending motions, Order No. 25,192, issued January 14, 2011. Pursuant to RSA 541:3 and Puc 203.33, the Wood-Fired IPPs request reconsideration of the Commission's decision.

The Wood-Fired IPPs raised three main legal issues in their motion to dismiss. The first argument concerned the Commission's lack of statutory power under both RSA 362-F:9, I and RSA 374-F:3, V(c) to authorize entry into a proposed power purchase agreement ("PPA") and to provide for recovery of the costs associated with that PPA through default service rates when the term of the PPA extends for many years beyond the end of the New Hampshire renewable portfolio percentage requirements specified in RSA 362-F:3. The second argument concerned the arrogation of legislative authority by the Commission, if the Commission were to require ratepayers to make subsidy payments despite the lack of legislative authority for those subsidies or for the pass-through of such payments. The Wood-Fired IPPs' third argument concerned the Commission's lack of statutory power to voluntarily waive its jurisdiction under RSA 365:28 by

approving entry into contractual change in law provisions that would have that effect. These legal arguments are more fully set forth in the Wood-Fired IPPs' motion to dismiss, which is appended to this motion for rehearing, and are incorporated herein by reference.

The Commission dispensed with the Wood-Fired IPPs' first two legal arguments by ruling that it has general authority to review properly filed petitions, assumed without deciding that the Wood-Fired IPPs' legal arguments might be correct, and stated:

> We will review the PPA to determine whether it meets the public interest consistent with the statute and will also consider whether we should exercise our authority under RSA 362-F:9, I to place conditions on our approval of the PPA. We will consider the individual criteria and other arguments at hearing. The existence of contractual terms that may conflict with statutory requirements or authority is not a basis for dismissal before the facts and arguments in the case are fully developed, rather it is a factor to be considered in our public interest review of the PPA, especially in light of the conditioning authority granted to the Commission under RSA 362-F:9, I.

Order 25,192 at 8.

The Wood-Fired IPPs agree that it is within the Commission's authority to condition a proposed PPA to bring it within the public interest standards articulated in RSA 362-F:9, II. However, the Wood-Fired IPPs assert that the Commission misapprehended this authority as a basis for avoiding a determination of its jurisdiction. The conditioning authority granted in RSA 362-F:9, I goes to the public interest, not to whether the Commission has authority to award the relief requested, which relief is the approval of REC purchases and ratepayer payments for these RECs beyond 2025. The Commission lacks the authority under the RPS statute to grant this relief. Consequently, it was error to hold that contract conditioning by the Commission can remedy this lack of initial jurisdiction, error not to address the underlying legal jurisdictional issues, and error to proceed to hearing.

The Commission dispensed with the Wood-Fired IPP's third argument by stating:

> Finally we disagree with the Wood-Fired IPP's argument regarding the interplay of RSA 365:28 and RSA 362-F:9. If we were to claim unlimited authority to revise contractual obligations such as those contained in the PPA after we approved them, the resulting uncertainty would halt the use of PPAs for the procurement of power and RECs. Such uncertainty would be harmful to both utilities and their customers, and would ultimately be detrimental to the development of renewable energy facilities in New Hampshire.

Order 25,192 at 8.

First, the Wood-Fired IPPs believe that the above quoted provision of the order misapprehends the thrust of their argument. The Wood-Fired IPPs never argued that the Commission has unlimited authority to revise contractual obligations contained in PPAs; rather, the Wood-Fired IPPs argued that the Commission lacks the power to approve contract provisions that have the effect of preventing the Commission from revisiting its order approving a PPA and approving the pass-through of the costs associated therewith. This is the plain wording of RSA 365:28 which has not been repealed explicitly or implied by RSA 362-F:9.

Second, this is not a matter of *claiming* jurisdiction; this is a matter of jurisdiction that has already been explicitly granted to the Commission under RSA 365:28 and that was not taken away by RSA 362-F.

Third, dismissal, denial, or conditioning based upon elimination of the change in law provisions would not halt the use of PPAs for the procurement of RECs, and there is no record evidence to support such an assertion. It would simply require contracting parties to take the regulatory risk imposed by existing law, RSA 365:28. This is what RSA 362-F:9, I and RSA 365:28 require. Additionally, as testified to by Mr. McCluskey (regarding long-term NSTAR PPAs in Massachusetts) and as appears in the Lempster docket which the Commission took administrative notice of (Article 3.4 of the Lempster PPS requires each party to take its own

regulatory risk), requiring a developer to assume regulatory risk does not result in non-financeable PPAs.

Last, as demonstrated by PSNH Exhibit 25, a statutory and rule change would have to occur in New Hampshire to accomplish what PSNH and Laidlaw are trying to accomplish through approval of the change in law provisions in the Laidlaw PPA: the continued validity of a state-jurisdictional REC contract if RPS requirements were to cease to exist. In New Hampshire, unlike Massachusetts, there is no statutory authority for vesting in the event of RPS repeal. What the New Hampshire legislature put in place is a requirement that PSNH only contract to the extent of the statutory requirements (RSA 362-F:9, I) and the ability of the Commission to revisit its approval orders when necessary under RSA 365:28.

Wherefore, the Wood-Fired IPPs respectfully request that the Commission grant rehearing, and either dismiss or deny PSNH's petition in its entirety, or condition its approval of the PPA in conformity with the law as set forth herein and as contemplated by the Commission in Order 25,192.

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

By Their Attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that, on this date, I caused the attached Motion for Rehearing to be filed electronically and via hand-delivery with the Commission and served upon the persons identified on the attached Service List in accordance with N.H. Admin. Code Rules PUC 203.11.

Date: February 14, 2011

_____
David J. Shulock, Esq.

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DE 10-195

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

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

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S OBJECTION TO WOOD-FIRED IPPs' MOTION FOR REHEARING

Pursuant to Rule Puc §203.07(f), Public Service Company of New Hampshire ("PSNH") hereby objects to the Wood-Fired IPPs' Motion for Rehearing dated February 14, 2011. By that Motion, the IPPs request that the Commission grant rehearing of its decision in Order No. 25,192.

PSNH objects to the Motion, as it does not allege sufficient good reason for rehearing or reconsideration; therefore it should be denied. RSA 541:3.

In support of this Objection, PSNH says the following:

I. Introduction

All of the grounds for rehearing contained in the Motion were previously carefully reviewed and considered by the Commission in its Order No. 25,192 whereby it denied the Wood-Fired IPPs' December 15, 2010 Motion to Dismiss PSNH's petition.

II. Discussion

Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when a party states good reason for such relief. Good reason may be shown by

identifying new evidence that could not have been presented in the underlying proceeding, *see O'Loughlin v. N.H. Personnel Comm'n,* 117 N.H. 999, 1004 (1977), or by identifying specific matters that the were "overlooked or mistakenly conceived" by the deciding tribunal. *Dumais v. State*, 118 N.H. 309, 311 (1978). A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *See Connecticut Valley Electric Co.*, Order No. 24,189, 88 NH PUC 355, 356 (2003), *Comcast Phone of New Hampshire*, Order No. 24,958 (April 21, 2009), and *Public Service Co. of New Hampshire*, Order No. 25,168 (November 12, 2010, issued earlier in this very docket.).

A careful review of the Motion reveals that the grounds set forth for reconsideration have been previously raised and addressed in the Order, or are mere reformulations of previous arguments. The IPPs merely reiterate their previous claims that were set forth in their December 15, 2010 Motion to Dismiss. In fact, the IPPs Motion refers back to their "legal arguments [which] are more fully set forth in the Wood-Fired IPPs' motion to dismiss, which is appended to this motion for rehearing, and are incorporated herein by reference. Motion at 2.

Therefore, the IPPs have failed to meet the requirement for rehearing set forth in RSA 541:3 that "good reason for the rehearing be stated in the motion." The IPPs Motion is the classic reassertion of prior arguments with a request for a different outcome.

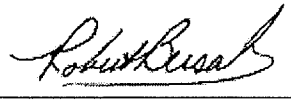
To the extent that the Commission deems it necessary to consider the very same legal arguments contained in the Wood-Fired IPPs original Motion to Dismiss, which they incorporated by reference in the instant Motion, PSNH respectfully requests the Commission to consider the matters set forth in the "Objection of Public Service Company of New Hampshire to Wood-Fired IPPs' Motion to Dismiss" dated December 23, 2010, which is incorporated herein by reference.

III. Conclusion

For the reasons set forth herein, the Commission should sustain its original decision in Order No. 25,192, and deny the Wood-Fired IPPs' Motion for Rehearing.

Respectfully submitted this 16th day of February, 2011.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2011, I served an electronic copy of this filing with each person identified on the Commission's service list for this docket pursuant to Rule Puc 203.02(a).

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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' CLOSING STATEMENT

The Wood-Fired IPPs' respectfully request that the Commission deny PSNH's petition in its entirety. In the alternative, the Wood-Fired IPPs request that the Commission condition its approval in accordance with the law as discussed below and in their separately filed Motion to Dismiss, Reply to PSNH's Objection to Wood-Fired IPPs' Motion to Dismiss, and Motion for Rehearing.

RSA 362-F:9, I and RSA 374-F:3, V(c) empower the Commission to authorize entry into, and to grant recovery for the prudently incurred costs of, contracts for certificates that are necessary for a distribution utility to meet its reasonably projected New Hampshire renewable portfolio standard ("RPS") requirements and default service needs, to the extent of those requirements. While these provisions grant the Commission its authority, the plain wording of these provisions also strictly confines that authority. The Commission may only authorize entry into a contract that is designed to meet a reasonable projection of the purchasing utility's New Hampshire RPS compliance need as a function of the utility's reasonably projected default service load and the percentage compliance requirements explicitly set forth in RSA 362-F:3, and the Commission may only pre-approve prudently incurred costs incurred in meeting that compliance need.

The limitations contained in RSA 369-F:9, I and RSA 374-F:3, V(c) present four hurdles that PSNH must clear at the outset. PSNH has stumbled over all four. First, as detailed in the Wood-Fired IPPs' filings, the contract term goes beyond 2025, the last year in which there is a statutory requirement to purchase compliance certificates for the New Hampshire RPS program. After 2025, there is no requirement for a utility to "project." Consequently, it is of no import that Mr. Long assumes that the New Hampshire compliance requirements will not ultimately drop to zero in 2026. Under RSA 362-F:9, I, even if a distribution utility makes an assumption that the legislature will eventually require ratepayers to purchase compliance certificates after 2025, the distribution utility may not require its ratepayers to bear the risk of that assumption. That risk

must be borne by the utility or the developer. The Commission has no authority under RSA 362-F:9, I to place such risk on ratepayers.

The second hurdle is that the PPA must be to meet a reasonable projection. Not only has PSNH failed to make a reasonable projection of its renewable portfolio requirements and default service needs for the period up to and including 2025 (the Commission will remember the rather tortuous review of data requests to demonstrate that PSNH's calculations all contain erroneous assumptions and arithmetic errors which PSNH has never corrected) but PSNH also failed to provide the Commission with any projection of its renewable portfolio requirements and default service needs whatsoever for a significant portion of the term of this PPA. Again, the Commission will remember from the Wood-Fired IPP's review of data requests that all of PSNH's calculations ended in 2025, coincident with the end of the RPS program. One of the main points of that review, of course, was to demonstrate that PSNH is fully aware that it was not reasonable to project a New Hampshire compliance requirement beyond the end of the New Hampshire program. However, the review also demonstrated that PSNH failed to provide any projections whatsoever for the period 2026 through 2034. No such projection exists in this record. A reasonable projection though 2034 that includes an integrated working forecast of market dynamics, pricing, cost, migration, and resulting default service need over the twenty-year term of the PPA was too bothersome for PSNH to prepare. Unfortunately, it was PSNH's burden to do so.

The third statutory hurdle in RSA 362-F:9, I is that, separate and apart from the "2025 issue," any projection must be limited to the percentage requirements stated in RSA 362-F:3. PSNH attempted to extract a concession on this legal point from Mr. McCluskey, a non-lawyer, that RSA 362-F:3 provides a minimum purchase requirement that an energy provider may exceed. However, a requirement is a requirement; a requirement is not the excess over minimum. Stated practically, in years when the statute states a 1% minimum requirement, PSNH is not required to purchase 2%. Additionally, PSNH's cross examination missed the fundamental legal point that, although a utility may exceed the statutory requirements in any one of the years listed in RSA 362-F:3, the plain wording of RSA 362-F:9, I prevents the Commission from authorizing entry into a multi-year contract to exceed those minimum statutory requirements and from placing the associated costs in rates. The multi-year contract provision of the statute plainly says "to meet" and "to the extent of" the requirements, it does not

say "to exceed those requirements." This is a fundamental rate-payer protection that the legislature built into the explicit wording of the multi-year contract provision of the statute and which the Commission may not ignore.

Mr. McCluskey demonstrated that PSNH does not require any New Hampshire compliance certificates from this project to meet any reasonable projection of PSNH's New Hampshire compliance requirements until 2016 and that PSNH will not require the full number of the New Hampshire compliance certificates that the Laidlaw facility is likely to produce until at least 2023, and maybe later in time given PSNH's ever-rising migration rate. After 2023, Mr. McClusky merely assumed that PSNH would require all of the RECs produced by Laidlaw, but did not project that PSNH would. Mr. McCluskey did not identify a mere tens of thousands of excess RECs that might be banked or hedged on a short-term basis against spikes in demand, as in the case of PSNH's contract with Lempster in Docket DE 08-077. Here, the evidence demonstrates that PSNH would be purchasing nearly one half million excess RECs per year at the very outset.

The environmental attributes to be purchased under the Laidlaw PPA are clearly to be used to speculate in, and arbitrage among, the various RPS programs in New England or as yet unknown markets for such attributes. The limitations in RSA 362-F:9, I forbid such speculation at ratepayer risk. Our statute's multi-year contracting provisions are for the purpose of compliance with New Hampshire RPS requirements, nothing more. This is so even if a private developer might require a utility's ratepayers to bear the risk of such speculation for the private developer to obtain construction financing. That is why the limitations appear in RSA 362-F:9, I, rather than among the factors to be balanced under RSA 362-F:9, II. That is why RSA 374-F:3, V(c) limits cost recovery to prudently incurred costs arising from compliance with New Hampshire RPS percentage requirements. These are threshold protections against improvident and excessive long-term contracting and public policy determinations by the legislature that the Commission may not overturn in its balancing of interests under 362-F:9, II.

New Hampshire's RPS program does not authorize the Commission to approve PPAs that force ratepayers to bear the cost of meeting New Hampshire RPS requirements that do not exist -- either because the legislature repeals the RPS, revises the classes, changes eligibility requirements, or changes the level of the alternative compliance payment. However, this is the effect of the PPA's change in law provisions. For better or worse, neither our statute nor our

Commission's rules promise that Class I requirements or the level of alternative compliance payments will remain static, that the Commission will not revisit its orders, or that contracts for certificates will remain valid even if the RPS requirements terminate. Quite the opposite. Our statute promises instead that the Commission will investigate and report to the legislature on perceived successes and failures of the program as designed, and that the Commission will make recommendations for change as appropriate. Our statute, unlike the Massachusetts program, does not provide for the continued validity of certificate contracts or orders approving the pass-through of costs in the event of changes in law. Instead, our statute leaves in place the Commission's continuing jurisdiction and only provides for the pass-through of prudently incurred costs of actual compliance.

The New Hampshire RPS statute does not permit PSNH and Laidlaw, or the Commission, to obligate PSNH ratepayers to make secure, never changing subsidy payments through 2025, divorced from legislative changes or Commission review under 365:28, and does not allow PSNH and Laidlaw to obligate ratepayers to pay any subsidy after 2025. It is not permissible for PSNH and Laidlaw to redesign the New Hampshire RPS program by contract to suit Laidlaw's desires, or to fix some aspects of a changeable legislative design in stone through change in law provisions that make New Hampshire's RPS program seem less risky to financiers, all at ratepayer expense. More importantly, it is not permissible for the Commission to authorize and pre-approve a contract for pass-through that attempts to do so.

PSNH's fourth hurdle emanates from RSA 374-F:3, V(c). This statute not only required PSNH to demonstrate that the costs associated with this PPA are necessary to comply with New Hampshire's percentage requirements, but also required PSNH to demonstrate that the details of this transaction do not exhibit inefficiency, improvidence, economic waste, abuse of discretion, or action inimical to the public interest (as generally defined, not as specifically defined in RSA 362-F:9, II). At a minimum, PSNH was required to demonstrate that the rates in the PPA are reasonable and cost-effective from a ratepayer's perspective in light of the alternatives available in the market. This was PSNH's burden, but PSNH failed to provide the Commission with any information upon which to base its necessary findings.

PSNH did not conduct a competitive solicitation to determine market pricing. Having failed to hold a competitive solicitation, PSNH then ignored all other methods for determining the cost-effectiveness and reasonableness of the PPA's pricing. PSNH readily admitted that it

conducted no tests to determine whether the PPA is cost effective. PSNH did not base pricing upon unsolicited offers for the same products. PSNH made no effort to base pricing on the developer's rate of return. PSNH shunned long-term pricing forecasts available in the market for benchmarking prices for electricity, capacity, or RECs. PSNH did not even consider, let alone explore, the costs and benefits of any other alternative for acquiring compliance RECs, whether by short-term or long-term methods.

These are common and accepted tools for testing whether pricing of products is cost-effective, reasonable, and prudent. Using these tools, Commission Staff and the Office of Consumer Advocate have demonstrated that -- looking at long-term, not short-term indicators -- the pricing in the PPA is not competitive, not cost-effective, not reasonable nor prudent over the 20-year term, for any of the PPA's products.

Lastly, PSNH's claim that it has resolved market uncertainties through the "structure" of the PPA, that is, through the cumulative reduction mechanism, is baseless. PSNH has ignored the extent of market overpayments. The cumulative reduction account does not create an absolute payment requirement that would bring overpayments within a reasonable approximation of market over the long term. The cumulative reduction account does not compensate ratepayers for the time value of money. The cumulative reduction does not account for overpayments for RECs or capacity. As importantly, the supposed security for the cumulative reduction account is illusory, depending upon on an unknown and dubious fair market value for the facility twenty years from now, and dressing up this uncertainty with priority liens and title insurance does nothing to make the security less illusory. Conservative forecasts of over-market costs for this PPA range from $330 million to $550 million over the 20-year term. PSNH has not introduced evidence that the fair market value of the Laidlaw facility will even approach this amount in 20 years. PSNH has stated only that the fair market value will be determined by market conditions at the time that the option is exercised, and that it cannot predict those conditions twenty years in advance. What we do know today is that adding more over-market costs and interest to the cumulative reduction account will not increase the fair market value of the facility, and therefore will not provide any additional security. It is simply another illusion and only accentuates that the mechanism will not work as promised.

As accurately summarized by Mr. Long, whether the PPA is in the interest of PSNH's ratepayers depends upon the Commission's "guess" where markets will go in future. The

Commission is left to guess because PSNH has not done the difficult analysis necessary to provide reliable evidence upon which the Commission can rely to make findings. Guessing and speculation do not provide a sufficient foundation for burdening ratepayers with the risks associated with a 20-year PPA, either with or without conditions.

As Mr. McCluskey and Mr. Frantz testified, it is absolutely necessary to forecast market prices using a number of fuel and other indicators to create a base case, to conduct sensitivity analyses, and then to use numerous tests for verifying whether forecasted prices are within a reasonable approximation of market. As testified to by Staff, PSNH's approach of "throwing up their hands and doing nothing" was inappropriate. When Mr. Traum and Mr. McCluskey utilized the scant information provided by PSNH to create a simplified price forecast, conducted standard tests of cost-effectiveness, and compared their analyses to the only currently valid, in-depth market forecasts in the record, their analysis showed that the PPA is not cost effective, the rates are not reasonable, PSNH's decision to shun every single method for determining the reasonableness of long-term pricing was not prudent.

Lastly, the Commission should not approve the wood price adjustment clause of the PPA. The testimony demonstrated that Laidlaw is able to manage its own fuel risk and does not require a wood price adjustment. Laidlaw will be a major player in what is claimed to be a prolific wood basket, and will be able to manage its costs through its wood procurement contracts and loans directed at bringing new local fuel providers into business. Because there is no connection between the cost of fuel at Schiller Station and the cost of wood fuel to be paid at the Laidlaw facility, there is little connection between the adjustment and its purpose of compensating Laidlaw for changes in its fuel costs. Moreover, cross examination of PSNH demonstrated that the price of wood fuel at the Laidlaw facility may go down as the price of wood fuel at Schiller Station rises, and that even without this, the conversion factor of the wood price adjustment results in additional profit to Laidlaw at ratepayer expense. Neither has PSNH demonstrated a need for this type of adjustment for a facility of Laidlaw's size or in its location in the North Country. PSNH and Laidlaw have simply passed another risk of private generation onto PSNH's captive ratepayers.

Although the Wood-Fired IPPs comments are directed at legal requirements, they are equally applicable to the public interest standards of cost-effectiveness and efficient and competitive procurement.

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

By Their Attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that, on this date, I caused the attached Closing Statement to be filed electronically and via U.S. Mail, first class 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: February 14, 2011

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David J. Shulock, Esq.

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STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 10-195

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

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

Order Granting Conditional Approval

O R D E R N O. 25,213

April 18, 2011

APPEARANCES: Robert A. Bersak, Esq., on behalf of Public Service Company of New Hampshire; James T. Rodier, Esq., on behalf of Clean Power Development, LLC ; Brown, Olson & Gould by David J. Shulock, Esq., and David K. Wiesner, Esq., on behalf of Bridgewater Power Company, L.P., Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Springfield Power LLC, Whitefield Power & Light Company, and Indeck Energy - Alexandria, LLC; Jonathan Edwards on behalf of Edrest Properties LLC; Donahue, Tucker & Ciandella, PLLC by Christopher Boldt, Esq., and Keriann Roman, Esq., on behalf of the City of Berlin; Meredith A. Hatfield, Esq., Office of Consumer Advocate on behalf of residential ratepayers; and Suzanne G. Amidon, Esq., and Edward N. Damon, Esq., for the Staff of the Public Utilities Commission.

I. PROCEDURAL HISTORY

On July 26, 2010, Public Service Company of New Hampshire (PSNH or the Company) filed a petition for approval of a Power Purchase Agreement (PPA) with Laidlaw Berlin BioPower, LLC (Laidlaw) for the acquisition of energy, capacity, and renewable energy certificates (RECs). With its petition, PSNH filed the supporting testimony of: Gary A. Long, President of PSNH; Terrance J. Large, Director of Business Planning and Customer Support Services for PSNH; Richard C. Labrecque, Manager of Supplemental Energy Sources for the Company; and Dr. Lisa K. Shapiro, an economist consulting with PSNH. PSNH also filed a motion for confidential treatment of pricing information in the PPA and for portions of Mr. Labrecque's testimony, which discussed the pricing terms.

On August 3, 2010, the Office of Consumer Advocate (OCA) filed notice of its intent to participate in this docket on behalf of residential utility consumers consistent with RSA 363:28. On August 17, 2010, Laidlaw filed a petition to intervene and motion for expedited consideration. Concord Steam filed a petition to intervene on September 3, 2010.[1] Petitions to intervene were filed on September 24, 2010 by Clean Power Development (CPD); Bridgewater Power Company, L.P., Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Springfield Power LLC, Whitefield Power & Light Company, and Indeck Energy - Alexandria, LLC (collectively, the Wood Independent Power Producers (Wood IPPs)); Edrest Properties, LLC (Edrest), and the City of Berlin. The New England Power Generators Association, Inc. (NEPGA) filed a petition to intervene on September 28, 2010. PSNH and Laidlaw objected to all petitions to intervene, with the exception of the City of Berlin's petition.

On September 1, 2010, the Commission issued an order of notice establishing a prehearing conference for September 29, 2010, to be followed by a technical session. The prehearing conference was held as scheduled, during which the Commission granted all pending petitions for intervention.

On October 1, 2010, Staff filed a report following the prehearing conference that contained a proposed procedural schedule and an agreement among the parties regarding discovery matters. Staff requested that the Commission approve the proposed procedural schedule and the parties' agreement on discovery and, because discovery was underway, requested a ruling on PSNH's motion for confidential treatment. On October 15, 2010, the Commission issued a prehearing conference order (Order No. 25,158) that approved Staff's proposed expedited procedural schedule and the agreed-upon process for discovery, ruled on

[1] Concord Steam filed a notice of withdrawal on January 21, 2011. The Commission granted the request at the beginning of the afternoon portion of the first day of hearings held on January 24, 2011, under the same conditions as that of the Laidlaw withdrawal, which was approved in Order No. 25,171 on November 17, 2010.

related objections and motions to compel, and denied PSNH's motion for confidential treatment except insofar as it related to the value of property to be protected by title insurance. The Commission also denied a request made during the hearing by CPD to take administrative notice of the Site Evaluation Committee's (SEC) record in its review of Laidlaw's petition to build the biomass facility. In response to Order No. 25,158, on October 19, 2010, PSNH filed a letter with the Commission stating that PSNH and Laidlaw would be determining an appropriate course of action in light of "the Commission's unprecedented denial of confidentiality for the Laidlaw PPA." PSNH disagreed with the Commission's characterization of the testimony of Gary Long, stating that the Commission misinterpreted the testimony.

On October 21, 2010, Laidlaw filed a motion for confidential treatment of its financial pro forma produced in response to Staff's data requests. The pro forma was Laidlaw's business plan/financial model showing projected revenue and expenses for the Laidlaw project. Concord Steam filed an objection to Laidlaw's request of confidential treatment on October 22, 2010. The Wood IPPs filed an objection to the motion on October 28, 2010. Laidlaw filed a response to Concord Steam's objection on October 27, 2010. The Commission granted Laidlaw's request for confidential treatment of the pro forma by secretarial letter dated October 27, 2010.

Also on October 21, 2010, Concord Steam and the Wood IPPs jointly filed a motion to continue the procedural schedule during the 30-day period in which PSNH or other parties may request a rehearing of Order No. 25,158. Staff filed a letter in support of the motion to continue the procedural schedule on October 22, 2010. On October 27, 2010, Laidlaw objected to the joint motion, the City of Berlin concurred with Laidlaw's objection, and the Wood IPPs responded to Laidlaw's objection. CPD filed a letter on November 4, 2010, in support of keeping the procedural schedule on track. By secretarial letter dated October 27, 2010, the Commission extended the deadline for discovery requests and responses from all parties, but

ruled that it would not suspend the procedural schedule and that further adjustments to the schedule would be addressed as needed over the course of the docket.

On October 22, 2010, PSNH filed a motion for rehearing of Order No. 25,158 (October 15, 2010). In particular, PSNH requested that the Commission reconsider its denials of confidential treatment and the issuance of a protective order for certain confidential, commercial, or financial information contained in the PPA. The Wood IPPs and Concord Steam filed objections to PSNH's motion on October 29, 2010. The Commission issued Order No. 25,168 on November 12, 2010, denying PSNH's motion for rehearing. The order discussed the balancing test applied by the Commission in determining whether ratepayers and the public will be better served by granting PSNH's request for confidential treatment of the terms of the PPA or by public disclosure of the terms. The Commission affirmed its decision made in Order No. 25,158, stating that "[t]he circumstances before us . . . tip the balance towards disclosure."

On October 28, 2010, Laidlaw filed a notice of withdrawal. Concord Steam objected to Laidlaw's request on October 29, 2010. The objection contained a request that if the Commission allowed Laidlaw to withdraw, all data responses from Laidlaw to Staff should be stricken from the record and none of the documents or information provided by Laidlaw should be used by PSNH or any party in support of PSNH's petition. On November 5, 2010, the Wood IPPs filed an objection to Laidlaw's withdrawal notice and requested that the Commission compel Laidlaw's continued participation in this docket. PSNH objected to the Wood IPPs' objection and motion to compel on November 5, 2010, and to Concord Steam's objection and motion to strike on November 8, 2010. On November 9, 2010, Laidlaw filed a letter in support of PSNH's objection to the Wood IPPs' objection.

Concord Steam also filed on October 29, 2010, motions to compel Laidlaw and PSNH to respond to data requests served upon them by Concord Steam. The Wood IPPs also filed

motions to compel PSNH (on October 29 and November 4, 2010) and Laidlaw (on November 2, 2010) to respond to data requests. PSNH filed objections to Concord Steam's and the Wood IPPs' motions to compel on November 5, 2010. On November 15, 2010, the Wood IPPs again filed a motion to compel PSNH to provide discovery responses, and PSNH filed its objection on November 18, 2010. The Wood IPPs, on November 17, 2010, filed a response to PSNH's November 5, 2010 objection to its motion to compel. Also on November 17, 2010, the Commission issued a secretarial letter designating F. Anne Ross, the Commission's General Counsel, to hear the parties' arguments, report the facts and make recommendations to the Commission concerning the disposition of the motions on discovery. The letter also scheduled a discovery conference on November 19, 2010, for the purpose of achieving a negotiated resolution of the various discovery disputes.

On November 19, 2010, PSNH filed a motion for confidential treatment of Staff data request numbers 1-17, 1-18, 5-4, and 5-6. On November 23, 2010, Concord Steam objected to PSNH's motion for confidential treatment. On November 22, 2010, General Counsel Ross filed a letter detailing the agreements reached among the parties regarding the discovery matters brought up at the discovery conference held on November 19, 2010. On November 24, 2010, the Commission issued Order No. 25,174 ruling on outstanding motions for confidential treatment and objections thereto, and ordering that "the scope of discovery shall be limited as agreed upon by the parties" as outlined in General Counsel Ross's letter. On December 8, 2010, pursuant to Commission Orders No. 25,158 (October 15, 2010) and 25,168 (November 12, 2010), PSNH filed unredacted copies of the testimony of Richard C. Labrecque and the PPA.

On November 2, 2010, Concord Steam filed a motion to dismiss or summarily deny the application of PSNH. PSNH objected to Concord Steam's motion on November 4, 2010.

On November 9, 2010, Concord Steam filed a motion to continue the procedural schedule. PSNH filed an objection to Concord Steam's motion to continue on November 10, 2010.

On November 17, 2010, the Commission issued Order No. 25,171, ruling on pending motions. The order 1) permitted Laidlaw to withdraw from the docket, granted Concord Steam's motion to strike all evidence provided by Laidlaw to any party in this docket, and instructed the parties to refrain from using such information as a basis for testimony or other evidence in this docket, rendering moot all motions to compel discovery from Laidlaw; and 2) denied Concord Steam's motion to dismiss.

On November 18, 2010, Mel Liston of CPD filed a statement, accompanied by a letter that indicated that the statement should be treated as a public comment pursuant to Puc Rule 203.18, and that CPD has not determined whether it will file testimony in this proceeding. The Wood IPPs responded and objected to the statement on December 2, 2010, and on December 13, 2010, CPD responded to the Wood IPPs' objection.

On December 15, 2010, the Wood IPPs filed a motion to dismiss, stating "the Commission lacks authority to grant the relief that PSNH seeks." On December 23, 2010, PSNH filed an objection to the Wood IPPs' motion to dismiss, and on January 10, 2011, the Wood IPPs filed a response to PSNH's objection.

Between December 17 and 20, 2010, the following entities submitted pre-filed testimony: Concord Steam by Mark E. Saltsman, Robert J. Berti/James C. Dammann, and John Dalton; the OCA by Kenneth E. Traum; the City of Berlin by George E. Sansoucy; and Staff by Thomas C. Frantz and George R. McCluskey. On December 22, 2010, PSNH filed a motion to strike Concord Steam's testimony by Mark E. Saltsman and the joint testimony of Robert J. Berti and James C. Dammann. Edrest and Concord Steam filed objections to PSNH's motion to strike on

December 27 and 28, 2010, respectively. On January 7, 2011, PSNH filed a motion to rescind the grant of intervenor status to Concord Steam or, in the alternative, to strike certain testimony submitted by Concord Steam and/or compel Concord Steam to respond to discovery requests. The City of Berlin filed a motion for confidential treatment of data responses to the Wood IPPs on January 12, 2011, and filed its concurrence with PSNH's motion to rescind on January 14, 2011. Also on January 14, 2011, CPD filed a joinder in support of PSNH's motions to rescind and to compel discovery. Concord Steam filed a motion for confidential treatment of its response to a PSNH data on January 18, 2011, and its objection to PSNH's motion to rescind and motion to compel on January 19, 2011. PSNH filed a response to the objection on January 19, 2011. Rebuttal testimony was filed on January 19 and 20, 2011, by the following: PSNH by Gary A. Long, Terrance J. Large, and Richard C. Labrecque, and by Lisa K. Shapiro, Ph. D., the City of Berlin by George E. Sansoucy; and Concord Steam by Mark E. Saltsman. On January 20, 2011 the OCA filed revised direct testimony of Kenneth Traum.[2]

On January 14, 2011, the Commission issued Order No. 25,192, ruling on pending motions. The Commission granted the motion by the Wood IPPs to strike the statement of Mel Liston filed by CPD (December 2, 2010), affording CPD the opportunity to make a closing statement, and denied the Wood IPPs' motion to dismiss PSNH's petition (December 15, 2010). The Commission also denied PSNH's motion to strike portions of Concord66 Steam's testimony (December 22, 2010).

On January 21, 2011, the following occurred: Concord Steam filed a notice of withdrawal. The City of Berlin filed a motion to designate George McCluskey as a staff advocate under RSA 363:32, alleging that in view of the "strong positions" taken by Mr.

[2] In addition to the pre-filed testimony, approximately 85 public comments were filed between August 5, 2010, and March 3, 2011.

McCluskey in his pre-filed testimony on behalf of Staff, the City of Berlin believed that he would be unable to "fairly and neutrally" advise the Commission in this proceeding. The Commission issued a secretarial letter addressing these two matters. Regarding the designation of Mr. McCluskey, the Commission determined that the standard for mandatory designation under RSA 363:32, I had not been met; however, because this is a particularly controversial case and of significant consequence within the meaning of RSA 363:32, II, it would enhance the public's confidence in the fundamental fairness of this proceeding to designate Mr. McCluskey as a staff advocate. Regarding the notice of withdrawal filed by Concord Steam, the Commission stated that it would allow time at the hearing for parties to be heard regarding the issue.

During the first day of hearing, on January 24, 2011, the Commission heard argument regarding Concord Steam's notice to withdraw from the proceeding. The Commission allowed Concord Steam to withdraw from the proceeding and ordered all testimony, responses to data requests, and other information provided by Concord Steam in the course of the proceeding to be struck from the record. Hearing Transcript of January 24, 2011 (Afternoon) (1/24/11 PM Tr.) at 4.

On the same day, the OCA filed a motion *in limine* to strike certain portions of the testimony of George Sansoucy submitted on behalf of the City of Berlin.[3] The Commission heard argument regarding the OCA's motion to strike and the Commission granted the motion to strike in part. *Id.* at 10. In a secretarial letter dated January 28, 2011, the Commission issued a final ruling on the OCA motion. In the secretarial letter, the Commission granted in part and denied in part the OCA motion to strike and disposed of the City of Berlin's motion for rehearing.

[3] The OCA filed a revised motion to strike on January 27, 2011 to correct typographical errors in its original motion.

Hearings were held on January 24, 25, and 26, and February 1, 8, and 9, 2011. During the hearings, the Commission made rulings on various motions and requests and received public comment by James C. Dammann, who had been engaged by Concord Steam until it withdrew its participation in the proceeding. Edrest filed a closing statement by email on February 9, 2011. The following filed post-hearing written closing statements on February 14, 2011: PSNH, Wood IPPs, City of Berlin, CPD, the OCA, and Staff. Additionally, on February 14, 2011, the Wood IPPs filed a motion for rehearing. PSNH filed an objection to the Wood IPPs' motion on February 16, 2011.

On March 7, 2011, CPD filed a motion to strike a letter sent by Indeck Energy – Alexandria, LLC (Indeck) (one of the Wood IPPs) directly to Commissioners Getz , Below, and Ignatius (but not to any party to this matter) and originally docketed in this proceeding as a public comment on March 1, 2011. CPD argued that because Indeck was a full party intervenor in the docket, it may not file a public comment, and cited to Order No. 25,192 granting the motion of the Wood IPPs to strike the public statement made by Mel Liston of CPD. Indeck withdrew its comments on March 10, 2011.

On March 14, 2011, Edrest filed a communication with the Commission regarding changes proposed by Laidlaw to the ownership structure and original structure submitted to the SEC in a filing dated March 9, 2011. PSNH objected to the e-mail communication on March 15, 2011.

II. SUMMARY OF THE POWER PURCHASE AGREEMENT

The PPA is an agreement between PSNH and Laidlaw as Seller for PSNH's purchase from Laidlaw of 100% of the Products,[4] including Energy, Capacity, and New Hampshire Class I RECs, produced by a new biomass Facility to be constructed in Berlin, New Hampshire. As set

[4] The capitalized terms in this section of the Order are based on the PPA definitions in Article 1.

forth in Appendix A, the Facility will be designed to have a net electric output at standard conditions of approximately 64 megawatts (MW) (winter) and 61 MW (summer).[5] The PPA is binding on the parties as of the Effective Date, June 8, 2010, and remains in effect for 20 years from the In-Service Date, as defined in the PPA. Section 2.1.

The Facility is expected to utilize Biomass Fuel, defined in section 1.5, as its primary fuel and will be designed and operated as a NH Class I renewable energy source. The PPA contemplates that the Facility will acquire and maintain the status of a "qualifying facility" pursuant to 18 C.F.R. Part 292 for the duration of the PPA. Section 3.3.[6]

Numerous definitions applicable to the PPA are set forth in Article 1. For example, Capacity is defined in section 1.7 as MWs of capacity that (i) has obtained a capacity supply obligation as a result of participation and clearing in an ISO-NE administered forward capacity auction, reconfiguration capacity auction or any successor auction, marketplace, or agreement and (ii) as such, is receiving compensation pursuant to this capacity supply obligation by ISO-NE via the ISO-NE settlement process.[7]

Under section 1.8, Change in Law means that any applicable law, rule, or regulation is changed (whether directly or indirectly by pre-emption, displacement or substitution) or any new applicable law, rule, or regulation is enacted or promulgated subsequent to the Effective Date.

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[5] The Company explained at hearing that the term "standard conditions" means normal, steady-state operation of the unit. 1/25/11 Tr. at 117. PSNH stated that there are seasonal differences in atmospheric conditions that affect efficiency of the unit. *Id.* The Company further explained that summer months are June, July, August and September, with winter months being the other 8 months of the year. *Id.* at 118.

[6] PSNH explained at hearing that wholesale power transactions are within FERC jurisdiction under the Federal Power Act and this requirement allows the Commission to have jurisdiction over the PPA. 1/25/11 Tr. at 101-102. PSNH provided a further explanation of section 3.3 in PSNH Exhibit 12, which provided a response to Record Request RR-002. PSNH stated in that response that the purpose of this requirement is to ensure that the Facility maintains the exemptions provided under FERC's PURPA regulations at 18 CFR 292.602. PSNH also stated that since the Facility is too large to qualify for the regulatory exemptions from the Federal Power Act provided under 18 CFR 292.601, the PPA will have to be filed as a FERC tariff. PSNH further said that the Commission's authority to amend the PPA, see Article 24 of the PPA, would be governed by the Federal Power Act and FERC regulations.

[7] According to PSNH, this definition protects PSNH's customers from paying for non-qualified capacity with no real value within ISO-NE's forward capacity market (FCM) structure. PSNH Exh. 5 at 6.

Energy is defined in section 1.15. The In-Service Date is the date on which Laidlaw declares the Facility to be in service and the Facility is capable of regular commercial operation with a predictable daily dispatch.[8] Section 1.25. The Interest Rate for purposes of the PPA is the prime lending interest rate as published from time to time in the *Wall Street Journal* plus 2%. Section 1.28. NH Class I RECs are defined as RECs produced or, in the event of a Change of Law that would have been produced, by the Facility pursuant to its qualification as a renewable energy source as defined in 362-F on the Effective Date and regardless of any subsequent Change in Law. Section 1.44. Under section 1.57, Renewable Products Payment means the alternative compliance payment (ACP)[9] schedule set forth in RSA 362-F for Class I RECs, as adjusted from time to time, provided that if there is a Change of Law with respect to RSA 362-F, the Renewable Products Payment may be adjusted consistent with the section 23 Change in Law provision and provided further that the Renewable Products Payment shall not be less than the Class I ACP payment schedule, including future adjustments, in effect on the date of the PPA.

The Products to be purchased by PSNH are defined as (i) any electrical product or service that is recognized and compensated pursuant to the ISO-NE Tariff from time to time, including but not limited to Energy, Capacity, Ancillary Services, and (ii) any Renewable Products.

[8] The original "Scheduled Operation Date" is June 1, 2014. Section 5.2. At hearing, PSNH stated that although Laidlaw had not notified PSNH of any change to the June 1, 2014 date, the Company expected operation of the Facility to begin in the second quarter of 2013 based on information presented to the SEC. 1/24/11 AM Tr. at 114, 116. As to the difference between the expected operation date and the Scheduled Operation Date, PSNH stated that the two dates were different based on the PPA provisions that referred to the two terms. *Id.* at 115. PSNH also conceded that the Scheduled Operation Date could be different than June 1, 2014 based on the operation of the PPA. *Id* at 117.

[9] ACPs are paid into the renewable energy fund by electricity providers in lieu of meeting the renewable portfolio requirements. RSA 362-F:10,II.

Section 1.49. Renewable Products are RECs as defined in section 1.54[10] and other Environmental Attributes as defined in section 1.16. Section 1.56.

Under section 2.4, if ownership or operating control of the Facility is transferred to a third party, Laidlaw will require the transferee to assume all of Laidlaw's rights and obligations under the PPA.

PSNH's obligation to purchase the Products is contingent on satisfaction of several conditions, e.g., execution of a FERC approved Interconnection Agreement; evidence of governmental approvals to commence commercial generation of the Products, including certification to produce New Hampshire Class I RECs; a final, non-appealable Commission decision "approving and allowing for full cost recovery of the rates, terms and conditions" of the PPA; and the execution of the Purchase Option Agreement (POA) attached to the PPA as of the In-Service Date, to be recorded, and furnishing of a title insurance policy in connection with the POA. Section 4.1.[11]

Pricing and payment terms for the Products in effect before the In-Service Date and after the execution of the Interconnection Agreement are set forth in section 6.1.1. Pricing and payment terms for the Products after the In-Service Date are set forth in section 6.1.2 and 6.1.3. Capacity is priced as follows: for the first five years, the price is $4.25 per kilowatt (kW) month;

[10] RECs include not only New Hampshire Class I RECs but also any other Renewable Energy Certificates that can be used to transfer rights to Environmental Attributes produced by the Facility under any Renewable Portfolio Standard (RPS), i.e., RSA 362-F and any other similar law, regulation or order. See section 1.55.

[11] At hearing PSNH stated that if it wants to exercise the POA in 20 years, there would be some form of proceeding before the Commission since the transaction could affect rates. 1/25/11 Tr. at 97-98; see also PSNH Exh. 5 at 11 (proceeding would be required in any scenario to ensure that the net economic benefits associated with the POA would be returned to customers). In PSNH Exh. 13, which responded to Record Request 003, the Company stated generally that "PSNH anticipates that [Commission] approval would authorize PSNH to administer routine matters under the [PPA] without further approval by the Commission. However, to the extent that there are material discretionary actions under the PPA (such as transfer of the Right to First Refusal), PSNH's actions regarding such discretionary actions would be subject to traditional Commission oversight to ensure the prudence of the Company's actions." Regarding the Company's authority for automatic cost recovery of any expenditure made pursuant to Article 8, PSNH indicated that the Commission would have authority to review any resulting rate changes. 1/25/11 Tr. at 114-115.

thereafter the price for Capacity is increased by $0.15 per kW-month for each of the final fifteen years. Section 6.1.2(b). However, any payments for Capacity prior to June 2014 are paid in accordance with section 6.1.1(b). Payment for the purchase of New Hampshire Class I RECs is based on a formula tied to the ACP schedule set forth under RSA 362-F for Class I RECs. Thus, during the first five years after the In-Service Date, payment for New Hampshire Class I RECs is the product of 80% of the Renewable Products Payment times the number of NH Class I RECs delivered. During the second five years, the price is based on 75% of the Renewable Products Payment; during the next five years, the price decreases to 70% of the Renewable Products Payment; and finally, during the final five years of the PPA, the price decreases further to 50% of the Renewable Products Payment. Section 6.1.2(c).[12]

Payment for all other Products (primarily, for Energy) is determined by multiplying the Adjusted Base Price in Dollars per megawatt-hour (MWh) by the hourly quantity of delivered Energy. The Adjusted Base Price is determined by a formula that starts with a Base Price of $83/MWh. In each subsequent calendar quarter following the In-Service Date, the Base Price will be adjusted to incorporate a Wood Price Adjustment (WPA). The WPA reflects the difference between the actual average price per ton that PSNH paid for biomass fuel at the

[12] At hearing, PSNH elaborated on how the Renewable Products Payment might or might not be affected by certain future events. PSNH said that even if RSA 362-F is repealed and there is no New Hampshire Class I REC requirement, the value of the Environmental Attributes would still go to PSNH's customers and the PPA pricing would continue to be based on the New Hampshire ACP as it currently exists. 1/24/11 PM Tr. at 44, 46-49. In addition, if the Facility is no longer eligible to produce New Hampshire Class I RECs as a result of a future change to RSA 362-F and the Facility is decertified as a generator of New Hampshire Class I RECs, the Company stated it would, consistent with the Article 23 provision that addresses the intent to preserve the value for both parties in the event of a Change in Law, continue to purchase the Environmental Attributes on the same pricing terms. *Id.* at 37-40, 47-48, 52-53. For example, if a federal RPS law were to preempt the New Hampshire RPS law, PSNH said it would realize the greater value but the payment would stay the same. *Id.* at 46. Moreover, if the ACP schedule for a Class I obligation were substantially changed or repealed in the future, the payment would stay the same under the PPA. *Id.* at 53-54. On the other hand, the annual adjustments to the ACP rates, see RSA 362-F:10, III (inflation adjustments), are not a Change in Law and therefore Laidlaw would get the benefit of an escalation in the rate. *Id.* at 46. As to the question of whether under the PPA the amount of New Hampshire Class I RECs available to be purchased under the PPA would be affected by a Change in Law, PSNH stated that the impact would be addressed pursuant to section 23.1 and that the intent of the parties is that any amendment negotiated because of a Change in Law would have to reflect as closely as possible the intent and the substance of the economic bargain before the Change in Law. *Id.* at 50-52; see also Wood IPPs Exh. 12.

Northern Wood Power Project (Schiller Station)[13] in the immediately preceding quarter and the base wood price of $34 per ton. The difference in $/ton, whether positive or negative, will then be converted into a $/MWh adjustment using a multiplier of 1.8 tons per MWh. The final energy price payable in the invoice period will be the Base Price, as adjusted by the WPA. Section 6.1.2.

Section 6.1.3 provides for a Cumulative Reduction adjustment[14] that could serve to reduce the purchase price of the Facility in accordance with the POA.[15] The CRF is designed to calculate and track any Energy payments that differ from the ISO-NE spot market energy price. For each MWh of Energy delivered under the PPA, a negative or positive adjustment will be determined. When the Adjusted Base Price exceeds the ISO-NE Day Ahead hourly Locational Marginal Price (LMP) at the Delivery Point, the hourly negative adjustment will equal the delivered MWh multiplied by the difference between the LMP and the Adjusted Base Price. Similarly, when the Adjusted Base Price is less than the LMP, the hourly positive adjustment will equal the delivered MWh multiplied by the difference between the LMP minus the Adjusted Base Price. These negative and positive adjustments will be continuously aggregated over the 20 years of the PPA and if, at the termination of the PPA, the aggregate balance is negative, that balance will be the CRF for the purpose of reducing the purchase price of the Facility as

[13] Although the Energy payment reflects actual Schiller Station wood prices, PSNH stated that benchmarking the price of wood fuel to an "index price" at Schiller Station, a regulated utility plant, is a positive aspect of the PPA because the Commission reviews the prudence of the Schiller Station wood purchases. 1/24/11 PM Tr. at 60. The Company explained that if the Commission were to find that PSNH was imprudent in its Schiller Station wood purchases, the Company would respond by changing its practices and that would change the going-forward price for the PPA. *Id.* at 62.

[14] This Cumulative Reduction adjustment is variously referred to in the record as the Cumulative Reduction factor, account, fund or mechanism. For consistency and brevity in this order, it is referred to simply as the CRF.

[15] PSNH stated that the POA might provide value to PSNH's customers in several ways. Depending on the future regulatory structure of the electric utility industry as it relates to PSNH, PSNH could operate the Facility as part of a portfolio of regulated generation assets providing energy service to customers or operate the Facility as a merchant plant and sell the output into the markets. PSNH could also transfer the option for a price to an Affiliate or third party under section 7.2.1. PSNH Exh. 5 at 11.

provided in the POA. If the aggregate balance is positive, meaning that over the term of the PPA customers did not pay over-market prices, the CRF will have no further effect.

Article 7 provides PSNH with a Right of First Refusal and the exclusive right to purchase the Facility in accordance with the POA. Under the Right of First Refusal, section 7.1, if Laidlaw proposes to sell all or any part of the Facility pursuant to a bona fide offer from a third party, PSNH would have the ability to match that third party's offer and purchase the Facility on similar terms.[16] In its prefiled testimony and at hearing, PSNH said that this right is transferable to a PSNH affiliate. PSNH Exhibit (Exh.) 5, prefiled testimony of Richard C. Labrecque, at 12, lines 10-11 and 1/25/11 Tr. at 132, line 1. The POA gives PSNH the exclusive right, but not the obligation, to purchase the Facility at the conclusion of the 20 year term. Section 7.2.1. Upon notice to Laidlaw, PSNH may transfer this option to an Affiliate or third party.

Under section 8.1, Laidlaw is responsible for all costs of qualifying the Facility to participate in the ISO-New England markets and other programs designed to document or provide for the sale and transfer of the Products established by any of the New England States or the federal government. In addition, upon notice from PSNH, Laidlaw must make commercially reasonable efforts to apply to other programs for the purpose of increasing the value of the Products to PSNH; this obligation is subject to two provisos, first, that this obligation does not require Laidlaw to pursue litigation or assume new capital or operational obligations and, second, that if a Change in Law would require Laidlaw to incur costs in order to continue to produce RECs or other Environmental Attributes or deliver them to PSNH, then, at PSNH's

[16] In PSNH Exh. 11, PSNH stated that this section applies when Laidlaw desires to sell any of its interests in the Facility, including any associated interests or rights in the Site, other than in a sale/leaseback arrangement or similar financing. PSNH said the right of first refusal would not extend to ownership/lessor interests; rather this right pertains to the sale of Laidlaw's leasehold interests in the Facility and the Site, i.e., the right to operate the Facility, over its first 20 years of operation. By contrast, the POA provides a first priority right to purchase the Facility and Site free of *all* other interests after 20 years, even if the right of first refusal had earlier been exercised.

option and as long as PSNH agrees to compensate Laidlaw for such costs, Laidlaw will take such actions.[17]

Section 9.1 requires Laidlaw to construct, operate and maintain the Facility using Good Industry Practices as defined in section 1.24. Section 23.1 states that if a Change In Law occurs or any of the ISO-NE Documents, as defined in section 1.31, are changed which affects a material right or obligation of the Parties, they will negotiate in good faith in an attempt to amend the PPA with the intent that any such amendment "reflects, as closely as possible, the intent and substance of the economic bargain" before the Change in Law or change to the ISO-NE Documents.

The general provision regarding assignment of PPA rights and obligations, section 17.1 provides that the rights and obligations of the Parties to the PPA may not be assigned without the written consent of the other Party, which consent will not be unreasonably withheld or delayed. This provision does not apply to Article 7 or to two special cases described in sections 17.2 (PSNH's right to assign to a regulated affiliated New Hampshire electricity distribution company) and 17.3 (Laidlaw's right to assign for purposes of financing).

Article 24 relates to certain FERC and Commission actions in respect to the PPA. Section 24.2 states that "[i]t is the intention of the Parties that any authority of FERC or the [Commission] to change this Agreement shall be strictly limited to that authority which applies when the Parties have irrevocably waived their right to seek to have FERC or the [Commission] change any term of this Agreement."[18] Under section 24.3, the standard of review by FERC

[17] For example, under this provision, PSNH stated that if there was a Change in Law requiring the installation of additional emissions equipment for the Facility to continue to produce New Hampshire Class I RECs, the Company would decide whether to require Laidlaw to make requisite capital improvements to continue to qualify the project for New Hampshire Class I REC production. 1/24/11 PM Tr. at 33-35.

[18] At hearing, PSNH said that the intent of Article 24.2 is that the parties themselves will not seek the change and will waive their rights to do so. 1/24/11 P.M. Tr. at 78.

expressed as the "public interest" application of the "just and reasonable" standard established by the so-called *Sierra-Mobile* doctrine.

Article 25 governs dispute resolution. It provides for disputes to be resolved first by negotiation, then by mediation, and then, except in cases where the dispute is subject to Commission or FERC jurisdiction, by arbitration.

Under section 26.7, to be valid, material amendments of the PPA that are agreed-upon by both parties must be approved by the Commission.

Appendix B to the PPA sets forth the form of the POA. The Parties to the POA are PSNH, Laidlaw, and PJPD Holdings, LLC, the Facility Site Owner.[19]

The Option Exercise period commences on the day after the 20th anniversary of the In-Service Date and extends for 120 days thereafter; if PSNH exercises the option, the closing of the transfer is to occur no later than 180 days after PSNH exercises the option. POA sections 2(a) and (b). The purchase price for the Facility Assets is their fair market value, assuming they are sold free and clear of financing liens, less any positive Cumulative Reduction value. POA section 4(a).[20] If the Parties to the POA are unable to agree upon the fair market valuation, the POA provides a process for establishing the valuation by qualified independent appraisers. POA section 4(b). PSNH and the Site Owner will each select two qualified independent commercial appraisers. The highest and lowest valuations will be discarded and the remaining two

[19] PSNH said that, to its knowledge, the ownership of the Facility had not been assigned to another party. 1/25/11 Tr. at 90. According to PSNH, PJPD Holdings, LLC and Laidlaw are both subsidiaries of a new entity referred to as NewCo. *Id.* On March 9, 2011, after the conclusion of the hearings in this docket, Laidlaw and Berlin Station, LLC filed with the Site Evaluation Committee a joint request for transfer and amendment of the certificate of site and facility issued by the SEC. The filing reflects a corporate reorganization required by lenders to the project. According to the filing, if approved, NewCo Energy, LLC, the same entity presented at the hearings to the SEC Subcommittee, will remain at the top of the corporate structure but a new corporate entity, Berlin Station, LLC, will be formed to replace both PJPD Holdings, LLC and Laidlaw Berlin BioPower, LLC. *See* SEC Docket No. 2011-01 (http://www.nhsec.nh.gov/2011-01/index.htm). PSNH said that if the POA is not executed and recorded at the registry of deeds, the PPA becomes null and void. 1/25/11 Tr. at 91.

[20] Because a net negative Cumulative Reduction adjustment reduces the purchase price of the Facility under section 6.1.3, the Commission understands this provision to mean that a net negative Cumulative Reduction adjustment is actually added to fair market value in order to achieve the reduction.

valuations will be averaged to determine a binding fair market value of the Facility Assets. Laidlaw and the Facility Site Owner must provide PSNH with a title insurance policy in the amount of $47 million insuring PSNH's interest in the POA free of liens and encumbrances as of the Effective Date.[21] POA section 7(a). All secured lending arrangements, mortgages, leaseholds and other liens and encumbrances on the Facility Site and Facility Assets as of the Effective Date must be discharged or fully subordinated to PSNH's rights under the POA. POA section 7(b). At the closing of the purchase option, Laidlaw and the Facility Site Owner must transfer the Facility Assets and all personal and intangible property with respect to the Facility and Facility Site as necessary for conveying good title to PSNH free, with certain exceptions, from liens and encumbrances; Facility Assets are to be transferred on an "as is" basis without warranties as to physical condition. POA section 8. Section 13 of the POA provides a dispute resolution procedure that is generally similar to that provided in the PPA. A memorandum of the POA, attached to the POA as Exhibit B, is recordable in the Coos Registry of Deeds. POA section 15.

At hearing, PSNH introduced PSNH Exh. 9-Rev. 1. Exh. 9-Rev. 1 describes five changes to the PPA offered by Laidlaw. According to PSNH, the changes reflect Laidlaw's reaction to the criticisms of certain parts of the PPA. *See* 1/24/11 AM Tr. at 55. Although PSNH stated it is fully prepared to go forward with the PPA as filed and does not recommend that the PPA be changed, it said that these changes were acceptable to the Company and Laidlaw if they were made conditions to Commission approval. 1/26/11 AM Tr. at 91-94, 102. PSNH stated that the changes are independent and not conditioned on each other. *Id.* at 94. The proffered changes are as follows.

[21] Pursuant to section 7(c), PSNH may obtain an owner's title policy at its expense.

1. CONTRACT QUANTITY--for the purposes of the PPA, the project size will not exceed 67.5 MW net.

2. INTEREST ON CUMULATIVE REDUCTION ACCOUNT-- the account will accumulate interest at an annual rate equal to the prime lending rate plus two percent (consistent with the PPA definition of Interest Rate).

3. EXCESS RECS--For each calendar year during the PPA Term, PSNH will determine the amount of any NH Class I RECs purchased from Seller (either in that calendar year or purchased in earlier years and banked, and released in such calendar year) in excess of the difference between (i) the minimum requirement of PSNH to obtain and retire NH Class I RECs pursuant to RSA 362-F (or any successor requirement) applicable to such calendar year and, (ii) all NH Class I RECs available to PSNH from the Lempster PPA and Smith Hydro (or released from banking) in such year ("Excess NH Class I RECs'). For each Excess NH Class I REC, PSNH will determine the difference between (i) the price it paid Seller for such Excess NH Class I REC, and (ii) any value realized by PSNH through the resale or other disposition of such Excess Class I REC (the "Net Value"). The Net Value, positive or negative, will be added to the continuous calculation of the Cumulative Reduction provided for in Section 6.1.3(a) of the PPA. PSNH will provide documentation reasonably necessary to verify such calculations.

4. BASE ENERGY PRICE-- The "Base Price" will be lowered from $83 to $75.80/MWh and a related change to the WPA is that the $34/ton price will be lowered to $30/ton.

5. WOOD PRICE FACTOR-- the established 1.8 tons/MWh WPA factor will be lowered to 1.6 tons/MWh.

According to PSNH, the contract quantity cap in item 1 would be a clarification and limitation to Exhibit A attached to the PPA. *Id.* at 92. PSNH stated that item 3 addressed the concern that, under the PPA, PSNH would be purchasing RECs in excess of its requirements under the Renewable Portfolio Standard (RPS, RSA Chapter 362-F). *Id.* at 93. PSNH explained that to the extent PSNH has an excess amount of RECs, the Company would realize some value from the sale of excess RECs into the market. *Id.* To the extent that the value realized is less than the price paid by customers under the PPA, the difference would be reconciled and applied to the CRF throughout the term of the PPA. *Id.* Item 4 is a reconfiguration of the formula that is in the WPA mechanism; according to the Company by itself it does not change any pricing. *Id.*

Finally, PSNH stated that item 5 would change the negotiated wood price adjustment factor to 1.6 tons/MWh, in lieu of the 1.8 tons/MWh factor in the originally filed PPA. *Id.* at 93-94.

III. POSITIONS OF THE PARTIES AND STAFF

A. PSNH

In PSNH's direct pre-filed testimony, Mr. Long presented the PPA and Mr. Labreque explained certain of its terms. PSNH Exh. 1, prefiled testimony of Gary A. Long and PSNH Exh. 5, prefiled testimony of Richard C. Labrecque. Mr. Labrecque said that the renewable products to be purchased by PSNH under the PPA include NH Class I RECs, but that PSNH is also entitled to any other environmental attribute, applicable now or in the future, related to the project, including certain credits, certificates, benefits, emission offsets, allowances, etc. PSNH Exh. 5 at 2. Mr. Labrecque explained that the PPA included this flexibility so that if RSA 362-F is amended, replaced or superseded by new legislation, including a Federal RPS program, PSNH's customers would continue to receive the benefits associated with purchases from the project. *Id.* at 3.

Mr. Labrecque explained that the WPA component of the energy price was developed because the parties were concerned that the cost of biomass fuel delivered to the project could vary over the 20 year term of the PPA. He said without the WPA, Laidlaw could be faced with increasing fuel costs and declining operating margins or even losses, perhaps to the extent that production would have to cease, which could pose an insurmountable barrier to Laidlaw to obtain financing for the project. *Id.* at 4. Similarly, if wood prices declined during the term of the PPA, PSNH customers would have to pay higher prices for purchases from the project without the WPA; thus, according to Mr. Labrecque, the WPA addresses the risk to both parties. *Id.* at 4-5. Further, he stated that the prices were indexed to biomass fuel at Schiller Station to link the WPA to an index under the full procurement control of PSNH and regulated by the

Commission. As to the 1.8 conversion factor which is part of the WPA, Mr. Labrecque said that it gives Laidlaw the incentive to operate as efficiently as possible while protecting PSNH's customers from inefficient operation. *Id.* at 5. Regarding the PPA REC prices, Mr. Labrecque said that they declined over time to produce increasing value to PSNH's customers over time while providing the developer with a predictable revenue stream. *Id.* at 7.

According to Mr. Labrecque, the CRF is a unique and important feature of the PPA that is essential to PSNH in order to protect customers from unknown future market energy prices. PSNH included this feature to protect its customers from the potential of paying over-market energy prices over the term of the PPA. By using the CRF to offset the purchase price of the project at the end of the PPA, PSNH customers will have the opportunity to recapture the over-market payments, if any, made during the PPA term over a subsequent time frame.

Mr. Labrecque stated that, pursuant to the Public Utilities Regulatory Policy Act (PURPA), PSNH was required to purchase the output of "qualifying facilities" from developers at a price known as "avoided cost." He recounted that many developers elected to use a long-term forecasted avoided cost as the basis for their payments under rate orders issued by the Commission which far exceeded PSNH's actual avoided costs and resulted in significant over-market payments to the developers. Then, at the termination of the PURPA rate orders, there was no opportunity for PSNH's customers to recapture those over-market payments. He maintained that the PPA provides PSNH's customers with the opportunity to receive value to offset any over-market payments following its termination. *Id.* at 8-9.

Mr. Labrecque opined that at the end of the PPA term it is possible the project will have significant value as a provider of economic, renewable, low-emission base load energy and capacity. *Id.* at 10. He stated that the POA provides PSNH with the ability to purchase the project either at the assessed value or at a discount when considering the CRF, a benefit which

could be passed on to the Company's customers. Mr. Labrecque further opined that PSNH's ability to transfer this right to an assignee ensures that this benefit will be available regardless of PSNH's own ability to purchase the project at that time. *Id.* at 11.

Mr. Large provided testimony on behalf of PSNH regarding how the PPA fits in with PSNH's overall power portfolio and its renewable energy resource needs and matters related to compliance with RSA 362-F. PSNH Exh. 4, prefiled testimony of Terrence J. Large. He stated that the output of its owned generation assets in conjunction with power purchases from a number of independent power producer facilities in New Hampshire do not fully satisfy the projected energy requirements of its customers and thus the power from the Laidlaw project is needed. According to Mr. Large, PSNH relied on forecasts included in its least cost integrated resource plan filed in Docket No. DE 07-108, which showed that it would need to purchase 4-5 million MWh of energy annually, between 900 and 1,000 MW of capacity, and more than 250,000 Class I RECs from qualified resources. He also noted that in the DE 07-108 filing it proposed to add at least one 50 MW biomass plant to its portfolio of assets as one means to close the gap between anticipated need and supply. PSNH Exh. 4 at 3-4.

According to Mr. Large, PSNH recognizes that as a result of the downturn in the economy, PSNH's sales have not met forecasted levels and, subsequent to the DE 07-108 filing, PSNH has experienced a substantial increase in the number of customers electing to take energy service from a competitive supplier. *Id.* at 4. He mentioned that approximately 30% of its total distribution service load was then currently being supplied by competitive suppliers. According to him, although these factors have reduced its near term need to obtain energy, capacity and RECs from the market, a gap still exists. For 2014, the energy gap between resources and supply is projected to range from 1,100,000 to 3,746,000 MWh per year and the capacity gap is projected to range from 401 to 1,073 MWs, depending on the particular forecast of customer

sales and migration to competitive retail suppliers. Also for 2014, PSNH projected a need for an additional 224,000 to 355,000 Class I RECs, increasing to between 942,000 and 1,397,000 by 2025. Annually, PSNH expects the PPA to produce over 484,000 MWh[22] of energy and associated RECs and provide approximately 65 MWs of capacity. *Id.* at 4-5.

Mr. Large argued that the PPA is consistent with RSA Chapter 362-F and will help the Company to comply with the statute. He affirmed that the Laidlaw facility is being designed to qualify as a Class I renewable resource and stated that the PPA is consistent with the five public interest factors set forth in RSA 362-F:9, II. Regarding the first factor, consistency with the efficient and cost-effective realization of the purposes and goals of the RPS law, he said that the Company employed a direct negotiation process with Laidlaw in order to bring this PPA to the Commission for approval in a timely manner. He stated that PSNH reviewed the benefits and goals of renewable power generation set forth in RSA 362-F:1, including the provision of fuel diversity to the state and New England through the use of local renewable resources that lowers regional dependence on fossil fuels. For example, he stated that a 65 MW wood-fired base load facility will reduce the need for reliance on the same amount of fossil fueled resources. Mr. Large also maintained that the 20-year PPA term will help provide price stability, especially since the pricing is not dependent on the cost of fossil fuel. Finally, he pointed out that Laidlaw will make a significant investment in New Hampshire during construction, and will provide jobs once the unit is operational. *Id.* at 5-8.

As to the second factor, consistency with the restructuring policy principles of RSA 374-F:3, Mr. Large pointed out that subsection V(f) calls for utilities to offer a renewable energy

[22] The initial filing incorrectly stated production of the project to be 474,000 MWh on an annual basis. *See* 1/25/11 Tr. at 48.

source default service[23] option. He stated that the PPA supports efforts that develop the market for renewable power; further, the Laidlaw project will adhere to the subsection IX principle that "over the long term, increased use of cost effective renewable energy technologies can have significant environmental, economic and security benefits." Finally, in PSNH's view, subsection VIII's encouragement of environmental protection and long term environmental sustainability is satisfied because the Laidlaw facility will emit very little or none of the four pollutants, sulfur dioxide, NOx, mercury, and CO_2,[24] that are the subject of the New Hampshire Clean Power Act. *Id.* at 8-9.

The third factor is the extent to which PSNH's multi-year procurements "are likely to create a reasonable mix of resources, in combination with the [Company's] overall energy and capacity portfolio, in light of the energy policy set forth in RSA 378:37[25] and [PSNH's] integrated least cost resource plan pursuant to RSA 378:37-41, if applicable, or a portfolio management strategy for default service procurement that balances potential benefits and risks to default service customers." As to this factor, Mr. Large described the positive impact of the Laidlaw project on the diversification of PSNH's resource portfolio and, in particular, the extent to which market purchases of energy and capacity will be displaced by purchases under the PPA in 2014. In addition, he maintained that the Laidlaw project will add fuel diversity to New Hampshire's and New England's generation energy and capacity resources through the use of local, renewable biomass fuels, improve air quality, public health, and lessen the risks of climate

[23] In PSNH's tariffs, default service is called energy service.

[24] More specifically, PSNH stated that it expected that the Laidlaw facility will not be required to obtain CO_2 allowances under the Regional Greenhouse Gas Initiative.

[25] RSA 378:37 states that "it shall be the energy policy of this state to meet the energy needs of the citizens and businesses of the state at the lowest reasonable cost while providing for the reliability and diversity of energy sources; the protection of the safety and health of the citizens, the physical environment of the state, and the future supplies of nonrenewable resources; and consideration of the financial stability of the state's utilities."

change, positively impact energy security and, assuming that Laidlaw manages the forest biomass resource in a sustainable way, enhance the region's energy independence. *Id.* at 10-14.

As to the fourth factor, the extent to which PSNH's procurement is conducted in a manner that is administratively efficient and promotes market-driven competitive innovations and solutions, Mr. Large pointed to Laidlaw's use of an existing power boiler and its infrastructure, in an area of the State long known for employing biomass resources for industrial use, in combination with newer emission controlling technologies, as being a solution to a market-driven need for renewable energy. He also alluded to the potential development of local community combined heat and power installations, such as has been considered by the City of Berlin or the supply of process steam or hot water to the paper mills still operating in the region. *Id.* at 14.

The fifth factor, economic development and environmental benefits for New Hampshire, was the subject of further testimony provided by Dr. Lisa K. Shapiro, a consultant for PSNH, regarding economic benefits, and specifically, the jobs, economic output (sales), value-added (gross state product), household earnings and tax revenues resulting from the construction and operation of the Laidlaw project. PSNH Exh. 6, prefiled testimony of Dr. Lisa K. Shapiro. Based on information Laidlaw submitted to the SEC and her use of the federal government's RIMS II modeling system, she concluded that the Laidlaw project will provide significant economic benefits to an economically depressed area of the state of New Hampshire by supporting approximately 470 average annual New Hampshire jobs during the construction of the project, and once the project is operational, 40 direct jobs at the plant, and about 200 additional indirect and induced jobs, many of which will be in the logging and related industries. PSNH Exh. 6 at 18. While she recognized that many of the economic benefits of the project are

likely to be concentrated in the North Country, she opined that statewide economic benefits would also accrue. *Id.* at 9, 16.

In the joint pre-filed rebuttal testimony of Messrs. Long, Large, and Labrecque, PSNH argued that the OCA's and Staff's forecasts of energy prices, which indicated that the PPA energy prices were over-market, were necessarily inaccurate because no one knows what the future day ahead or real time energy prices will be. PSNH maintained that it does not forecast energy prices. PSNH Exh. 7, rebuttal testimony of Long, Large and Labrecque, at 3. PSNH also complained that the OCA's and Staff's conclusions were based on a hypothetical financial analysis prepared by PSNH to assess the PPA economics. *Id.* at 3. PSNH stressed the inherent unreliability of forecasts, stating that modest changes in a market price scenario can greatly affect the conclusions to be drawn from the forecast. *Id.* at 4. PSNH provided Attachment PSNH Rebuttal 2 purporting to show that, using historic price data from the period 2003 to the present, the PPA's pricing mechanism would be more stable and less volatile than the wholesale market, and produces prices that on average would have been essentially at market. *Id.* at 4-5. PSNH encouraged the Commission to focus instead on the extent to which the PPA: (i) avoids past mistakes and limits potential negative outcomes to customers while preserving potential positive outcomes; (ii) fairly balances risks between the developer and customers; (iii) is consistent with State energy policy; and (iv) provides portfolio risk management benefits to PSNH customers by adding fuel diversity and renewable power at a known discount to the ACP.

As to capacity price forecasts, PSNH asserted that Staff's prefiled testimony indicated that the PPA price is less than the projected capacity prices developed by Levitan and Associates, a consultant for PSNH, resulting in customer savings of over $40 million over the term of the PPA. *Id.* at 7. Referring to Staff's testimony that gas-fired units are the marginal units in New England, PSNH maintained that since they are not recovering any capital costs through energy

market prices, the capacity markets must rise to levels that fully support new unit construction costs and in such a scenario, the PPA is expected to result in considerable savings for its customers. *Id.* at 8.

PSNH contested Staff's assessment of the wood price adjustment provision in the PPA and the validity of Staff's wood price projections. PSNH also argued that it is a mistake to focus on long term price projections rather than PPA design features that keep pricing closely tied to reality over the long term. *Id.* at 8-11.

PSNH defended the CRF, arguing that it provided a solution to the problem of developing a contract with enough certainty in the revenue stream during the 20-year financing term to allow the project to be financed and built, but that also protects customers from enriching the developer via excessively high energy payments, while simultaneously providing the possibility for those customers to benefit from potential below-market energy pricing under the PPA. *Id.* at 12. According to PSNH, at the end of the PPA term, if customers have cumulatively paid above-market energy prices, the CRF value can be considered an insurance fund to be used as a credit toward the purchase of the plant. PSNH pointed out that that fund need not be used by PSNH because PSNH can sell both the POA and the insurance fund value to someone else, and pass the sales proceeds back to customers. *Id.* at 13. PSNH asserted that due to financing concerns, it did not believe that a real time energy price tracking provision would allow the project to be built. In short, PSNH concluded that the PPA is its best attempt to balance myriad public interests, from protecting customers from the problems of the original IPP rate orders to allowing a financeable project to be developed that would both produce renewable energy and provide extensive economic benefits to the state. *Id.* at 14.

PSNH complained that Staff's and the OCA's positions imposed too many requirements and conditions and "over-constrained the solution space" to such an extent that they eliminate

any solution at all. *Id.* at 15. PSNH maintained that Staff and the OCA were wrong to hypothesize that the Laidlaw facility may have no value after 20 years. PSNH said that although it does not guarantee that the Laidlaw facility will operate after 20 years, its experience indicates that it will do so. *Id.* at 17-18. As to the OCA's claim that the PPA does not provide a match between the customers who pay the costs of the PPA and those who receive the benefits, PSNH stated that such matching never occurs in a cost-based regulated utility setting. PSNH also denied the validity of Staff's position that the CRF may be inconsistent with the "used and useful" principle and the OCA's position that the restructuring law must be amended to allow the CRF. PSNH contended that the "used and useful" provision in RSA 378:28 and the anti-construction work in progress (CWIP) provision in RSA 378:30-a are not applicable because the value accumulated via the CRF throughout the term of the PPA is not being added to rate base and the Company will not earn a return on it. As to the OCA's argument that the restructuring law must be amended to allow the CRF, PSNH contended that the value of the CRF can accrue to customers even if the Company cannot and does not ultimately purchase the facility. *Id.* at 20.

PSNH contended that Staff's and the OCA's conclusions regarding the prices for Class I RECs under the PPA are flawed. *Id.* at 21-23. As to Staff's reliance on REC price projections in a study prepared by Synapse Energy Economics (Synapse) in 2007 and updated in 2009, the Company questioned the accuracy of the REC price projections since even the short-term projections in the study turned out to be incorrect and Staff had to make adjustments to the projections. Similarly, PSNH questioned the OCA's assumption that future REC prices would always be equal to 30% of the ACP. *Id.* at 21. PSNH argued generally that long term market forecasts should not play a significant role in evaluating the PPA. Stating that "[p]resumably, the ACPs were created as an appropriate benchmark price that would create the necessary incentive for renewable resource construction," PSNH pointed out that all REC purchases under

the PPA are at a discount to the ACPs set forth in RSA 362-F. According to PSNH, Staff and the OCA fixated on the cost of the PPA compared to flawed REC market projections when they should have considered the discount relative to the ACP and State policy. PSNH further argued that Staff and OCA overlooked the supply versus demand balance that will play out in the REC market in the coming years. *Id.* at 22. According to PSNH, Attachment 6 to its rebuttal testimony indicates that growth in demand for RECs will outpace growth in supply, even under the most aggressive construction scenario, an imbalance that will result in market prices approaching the ACP. *Id.* at 22-23.

PSNH claimed that Staff erred in concluding that the PPA will generate excess Class I RECs. First, PSNH stated that Staff's position is inconsistent with Order No. 24,327 (order accepting proposed risk sharing mechanism regarding Schiller Station). Second, PSNH argued without elaboration that the 31% customer migration rate assumed by Staff in its projections could go up, down or stay the same. *Id.* at 23. PSNH also argued that for an economically sized biomass plant to be built, it may produce more RECs in the early years than PSNH might need but the alternative is either not to have any new renewable generation built, or to build more costly, inefficiently sized plants based on REC needs alone, a bad policymaking choice that would be inconsistent with the RPS law's public interest factor, see RSA 362-F:9,II(a), of the "efficient and cost-effective realization of the purposes and goals of this chapter." *Id.* at 24.

PSNH also questioned the usefulness of cash flow and return on equity (ROE) analysis performed by Staff. *Id.* at 25. PSNH stated that it reviewed some basic financial information provided by Laidlaw early in the negotiation process to help determine if the project was financially feasible and to negotiate PPA prices about 10% less than the initial set. *Id.* PSNH disputed Staff's assumption that an 11% ROE for the Laidlaw project is appropriate in light of

the risks for which a merchant plant such as the Laidlaw facility would need to be compensated through a higher ROE. *Id.* at 26.

PSNH defended the use of bilateral negotiations with Laidlaw, rather than conducting a competitive bid, RFP process. PSNH stated that the Lempster Wind project, which the Commission approved, could not have been developed through a competitive bidding process. *Id.* at 27. As to the two proposed biomass plants that made offers to PSNH, PSNH observed that one is not in PSNH's service territory and one would be very near the proposed Laidlaw facility. According to PSNH, neither offer was superior to the PPA. *Id.* at 28. Finally, PSNH denied that the PPA is inconsistent with certain of the restructuring policy principles in RSA 374-F:3 that Staff had mentioned in its analysis of the RSA 362-F:9 public interest factors. *Id.* at 29-31. In conclusion, PSNH warned that if the Commission rejects the PPA, new renewable generation will be built in other states and PSNH will be the price taker from those facilities, sending its customers' dollars to support economic development elsewhere. *Id.* at 36.

In her rebuttal testimony on behalf of PSNH, Dr. Shapiro argued that Thomas Frantz's testimony was based on three flawed assumptions: (i) he relies on George McCluskey's estimate of total above-market costs of the PPA, (ii) he assumes that the economic harm from the alleged above-market costs outweigh the economic benefits, and (iii) he does not take account of all the economic benefits of the Laidlaw project. PSNH Exh. 8, rebuttal testimony of Shapiro, at 1. Dr. Shapiro stated that PSNH disagrees with Mr. Frantz's assumption that the annual cost of the PPA is $26 million in above-market costs to PSNH's customers and she disagreed with his conclusion that the economic harm from a $26 million hypothetical rate increase would outweigh the economic benefit from the PPA. *Id.* at 2-3. She argued that, even assuming Mr. Frantz's flawed assumption of above-market costs raising rates from what they would otherwise be, the PPA still provides net economic development benefits to the state. In addition, she described additional

economic benefits associated with the Laidlaw project that she did not include in her RIMS II modeling. She maintained these benefits would increase the RIMS II estimates she reported in her direct testimony and are directly relevant to assessing the economic development benefits of the PPA.

At hearing, the Wood IPPs asked PSNH whether the Company was permitted under law to purchase a generation facility. PSNH said it could purchase a facility but questioned whether it could be included as a rate based facility that serves customers under default service. 1/24/11 AM Tr. at 132.

In connection with the WPA, the Wood IPPs asked PSNH whether, between the Laidlaw facility and the Schiller Station, PSNH would need approximately 1,250,000 tons of wood. PSNH said that sounded right and testified that the ratio is about 750,000 tons at Laidlaw and 500,000 tons at Schiller Station. 1/24/11 PM Tr. at 55-56. The Wood IPPs inquired whether PSNH had done any analysis as to whether Laidlaw would be competing with Schiller Station for wood, and PSNH said it had not done that analysis. *Id.* at 56. The Wood IPPs asked whether PSNH had conducted any projections, analyses, or sensitivity studies as to whether a new 75-megawatt facility will raise the wood price at Schiller Station, and PSNH said it had not done that analysis. *Id.* at 57. Similarly, the Wood IPPs asked if the wood prices at Schiller Station rise and the wood prices at Laidlaw decline, would the WPA operate to increase the energy price at the Laidlaw facility even with the reduction of fuel costs. PSNH said that whether the wood price at Schiller Station went up or down, the WPA would make a comparable adjustment to the Laidlaw pricing. *Id.* at 59-60.

The OCA asked whether PSNH believed that the POA was constructed to survive a Laidlaw bankruptcy. PSNH testified in response that the intent is to protect PSNH's interests in the POA against all other investors or parties that have an interest in Laidlaw by giving PSNH a

priority to other such interests. 1/25/11 Tr. at 42-43. The OCA asked whether Laidlaw's lenders were aware of PSNH's priority position in the use of the CRF and PSNH stated that its understanding is that the lenders are fully aware of that term. *Id.* at 43. PSNH further explained that PSNH required a title insurance policy to secure its right and that the parties negotiated such insurance in the amount of $47 million. In response to further questions, PSNH said that since the amount in the CRF will not be known for some time, it cannot be known whether the $47 million of title insurance is sufficient to protect ratepayers' interests in the account. *Id.* at 44. Staff asked PSNH whether the PPA allowed Laidlaw to expand the size of the facility and PSNH responded that the Company didn't believe so, although Laidlaw might argue the point. *Id.* at 119. Staff then inquired whether, if Laidlaw expands the output of the facility above the level set out in Appendix A, whether PSNH assumed it had an obligation to purchase all of the incremental products as a result of such expansion. *Id.* at 120-121. PSNH said it hesitated to respond because the Company viewed the project as very valuable and that it may want the project to be larger. Nonetheless, PSNH said it would be guided by the PPA and what is in Appendix A. Staff then asked if PSNH would seek Commission approval for cost recovery of any additional incremental purchases resulting from an expanded project. PSNH responded by saying that, if the Company thought it had value, the Company might argue that it would be a material change that had to come before the Commission. *Id.* at 120.

Regarding PSNH Exh. 9-Rev. 1, PSNH said that item 1 regarding contract quantity adds clarity. 1/26/11 AM Tr. at 95. PSNH also testified that, if the project is capable of producing power economically and the prices of the contract are below market, it would be to customers' advantage to have as much production as they could from the project; in response to a question from the Wood IPPs, however, PSNH said the Company did not know whether that would be the case. *Id.* at 105.

Regarding the question of whether the second item, interest on the CRF, is favorable to customers, PSNH responded that the result could work out either way. *Id.* at 95-96. According to PSNH, in the early years of the PPA, interest could work to the advantage of customers while in later years it could work against customers, depending on future market prices. *Id.* Regardless, PSNH said it makes sense to include interest to recognize the time value of money. *Id.* at 96. As to the merits of item 3, Excess RECs, PSNH said that it is a way to protect customers in the event that actual REC market prices are lower than the PPA REC prices but it would disadvantage them if it goes the other way. PSNH said that item 3 would also address the issue regarding the statutory requirements for RECs after 2025. 1/26/11 PM Tr. at 10.

According to PSNH, item 4 regarding the base price of energy, by itself does not change any pricing though it does reconfigure the PPA closer to current market prices. 1/26/11 AM Tr. at 93. Finally, regarding item 5, the wood price conversion factor, PSNH stated that overall, the 1.6 multiplier would be better for customers. *Id.* at 97.

In its closing statement, PSNH contended that the PPA protects customers against the potential for a wide range of possible outcomes[26] by having a fixed base energy charge, an adjustment for fuel based on an index that is within the Commission's regulatory jurisdiction, and a means to capture accumulated over-market energy costs and ultimately return that value to customers, while also providing that if accumulated prices are below market customers will receive the benefit of the below market prices. PSNH Closing Statement at 1. PSNH contended that virtually nothing is being built to meet the increasing demand for renewable energy resources caused by the escalating RPS standards and load growth and that ISO-NE predicts that even if 40% of the projects in the ISO-NE queue are developed, the region's need for RECs will

[26] PSNH cited Staff Ex. 14 for the proposition that, depending upon which set of numbers is used, the results of market predictions vary significantly, from a $300 million net benefit to customers to a $300 million detriment.

outstrip supply by 2013. The result, according to PSNH, is that when demand surpasses supply, as will soon occur, the price of REC compliance in the marketplace will escalate until it hits the ACP limit.

PSNH suggested that the REC pricing under the PPA is reasonable because it allows PSNH to buy RECs at a fraction of the ACP price, in ever decreasing percentages as the gap between supply of and demand for RECs widens. PSNH also mentioned testimony before the Massachusetts Department of Public Utilities that would tend to support the value of the PPA as a hedge against exposure to REC price increases, thereby reducing ratepayer costs versus paying the ACP. PSNH further argued that the OCA's analysis of REC pricing relied on the untenable assumption that the price of RECs will remain at 30% of the ACP for the term of the PPA.

Citing Attachment PSNH Rebuttal 2 [to PSNH Exh. 7], PSNH Exh. 19 and Staff Exh. 16, PSNH also contended that the evidence shows that the cost of wood fuel has demonstrated less volatility than market energy prices in the recent past, thus providing a hedge against price volatility or increasing fuel costs and achieving one of the important purposes of RSA 362-F as expressed in section 1. On the question of capacity pricing, PSNH stated that Attachment GRM-14 to Staff Exh. 1, prefiled testimony of George R. McCluskey, appears to present a nominal savings of over $40 million in capacity value over the life of the PPA. *Id.* at 2.

PSNH charged that Staff's testimony was tainted by myriad credibility issues due to inaccuracies and inconsistencies and that many "red herrings" have been thrown into this proceeding. As to Staff's and OCA's argument that a competitive solicitation process is superior to the bilateral negotiation process used by PSNH to develop the PPA, PSNH contended that Connecticut's Project 150 process is a competitive process that has been an utter failure because renewable projects cannot obtain financing and therefore none has been built in five years. *Id.* at 3.

PSNH said that Staff's recommendations for changes to the PPA would produce a deal that will not be financed and a project that will not be built. According to PSNH, its solution for untying the Gordian knot caused by the necessity to have a financeable PPA, while also protecting customers from unduly enriching the developer is the CRF mechanism, which protects customers by having a recorded real property purchase option interest and a lien on the facility that has priority over every other creditors and a title insurance policy. PSNH stated that, although the CRF mechanism was characterized by the Staff Advocate as insufficient, the City of Berlin's witness testified that the fair market value of the facility in 20 years may be upwards of $130 million, which would provide a substantial cushion against the risk of over-market energy prices. PSNH further complained that Staff provided no basis for testimony that the Laidlaw facility would have little value in the future, other than that the value would be influenced by future events. *Id.* at 4.

According to PSNH, one of the biggest problems with Staff's testimony was a mathematical error in computing the cost of RECs.[27] In cross-examination of Staff, PSNH questioned the "Adjusted Synapse Market REC Projection" on Attachment GRM 13 to Staff Exh. 1 for 2014 of $42.10. 2/9/11 Tr. at 78. PSNH stated in its closing that if Staff had correctly adjusted the 2014 REC price to account for its 30% lower initial energy price, consistent with Synapse's methodology, the "Adjusted Synapse Market REC Projection" for 2014 would be $54.55, a price higher than the PPA's 2014 REC price of $53.80. PSNH maintained that this error in Staff's analysis affects every REC number and every REC conclusion in the Staff's

[27] PSNH stated that Staff's REC pricing was based on data from the Synapse report, which in turn relied on a REC premium above projected energy market revenues needed to meet the cost-of-new-entry for a new facility. Although Staff had agreed that if the energy price drops, the cost-of-new-entry does not, PSNH stated that when Staff adjusted the Synapse REC projections to account for a 30% lower energy price, Staff failed to appropriately increase the REC price as necessary to make up the difference to reach the cost-of-new-entry.

testimony, thus clouding and undermining Staff's recommendations and Staff's testimony regarding the economic effects of the Laidlaw project. *Id.* at 5.

PSNH reiterated one benefit of the Laidlaw project touted by the City of Berlin, the location of the facility on a contaminated brownfield site. PSNH stated that turning "brown to green" is in the best interest of all residents of New Hampshire especially when "green dollars" can be turned into jobs and opportunities at the same time. On this last point, PSNH referred to Dr. Shapiro's testimony that the Laidlaw facility will provide significant economic benefits to an economically depressed area of the state by supporting 470 average annual New Hampshire jobs during the construction of the project and, once operational, 40 direct jobs at the plant and about 200 additional indirect and induced jobs, many of which will be in the logging and related industries. According to PSNH, those figures do not include the additional 65 possible jobs announced recently for the business that has announced its intention to locate on the site, and its additional indirect and induced jobs. *Id.* at 5. PSNH concluded its closing statement by stating that the PPA: is a good deal; is financeable and innovative; took extensive negotiations to complete; and provides unprecedented protections for customers. PSNH further stated that the deal will keep energy and investment dollars in the state to benefit its economy and create hundreds of jobs, as the Legislature intended. PSNH warned that this deal is the best one available for meeting the state's RPS law and there will not likely be another one if this PPA is not approved. *Id.* at 6.

In response to the Wood IPPs' motion for rehearing of Order No. 25,192, PSNH objected to the motion and observed that the Wood IPPs simply reassert the arguments contained in their motion to dismiss. PSNH argued that the Wood IPPs' motion for rehearing should be denied due to its failure to identify new evidence or specific matters that were overlooked or mistakenly

conceived in Order No. 25,192. Finally, PSNH incorporated by reference its arguments in its prior objection to the Wood IPPs' motion to dismiss.

B. City of Berlin

The City of Berlin supports approval of the PPA. Mr. Sansoucy's pre-filed direct testimony primarily related to the economic benefits of the PPA. The testimony was offered to support the decisions and proposals made by PSNH regarding the proposed PPA and urged the Commission to view the contract in the long term based on the projected benefits to the City, the North Country, ratepayers and the State. City of Berlin GES Exh. 1, prefiled testimony of George E. Sansoucy, at 2.

According to Mr. Sansoucy, the Laidlaw project would reduce the overall tax burden in the City of Berlin from an approximate current tax rate of $31.70 to an approximate tax rate of $26.25, or a reduction of 17 percent. Mr. Sansoucy said that the reduction in taxes will lift the value of all property in the community. He further maintained that the purchase of water and use of the sewer system by the project would substantially reduce the water and sewer bills to the rest of the residents in the City, again increasing the value of properties in the communities using City sewer and water. *Id.* at 4.

Mr. Sansoucy opined that the PPA is silent on the ability of Laidlaw to expand the facility. He stated that the infrastructure and the labor capabilities of the North Country will enable Laidlaw to expand the facilities or supplement the generation on the site. *Id.* at 5. He asserted that the site was sufficiently large to support the project plus additional construction, pollution control devices, alternative types of generation utilizing natural gas in the region, the potential to use waste heat and steam for wood gasification, pellet manufacturing facilities, and/or industrial co-located development, or to provide heat, hot water, and steam to the Cascade

Mill in Gorham. *Id.* at 5-6. Mr. Sansoucy said that these are unique, credible, and positive aspects of the PPA which may not be found in other locations of the State. *Id.* at 6.

Mr. Sansoucy testified that the City supports the PPA and the infrastructure upgrades necessary to support the project. *Id.* at 8-9. In terms of the cost of the PPA, Mr. Sansoucy opined without elaboration that there are long term high gas price, high capacity price and/or carbon cap and trade scenarios for which the PPA would provide significant risk mitigation and benefits to the state, potentially saving ratepayers up to $300 million over 20 years. *Id.* at 9.

Mr. Sansoucy explained that the City would benefit from the project through leveraged loan funds in the amount of approximately $4.5 million, which would be available to the community for the wood industry and economic development. He also stated that while the market may be stressed in the short term, the City believes the Laidlaw project may prove to be of significant future benefit as a number of power plants in New England may potentially close over the next ten years. *Id.* at 11.

The City of Berlin filed rebuttal testimony of Mr. Sansoucy and redacted the rebuttal testimony pursuant to the Commission's decision to grant in part the OCA's motion *in limine* to strike certain portions of the testimony.[28] In his rebuttal testimony, Mr. Sansoucy discussed the available capacity for New England as measured by ISO-NE. He posited a number of assumptions regarding reserve margin and annual growth, and concluded that New England will hit its reserve limits in 2014 at which time new capacity will have to be added. City of Berlin GES Exh. 3, rebuttal testimony of Sansoucy, at 13. According to Mr. Sansoucy, any new capacity that must be built and added to the system in 2016 will cost approximately $150 per megawatt-year or $12.50 per kilowatt-month, which he stated is the replacement cost in current dollars of a combustion turbine. *Id.* Mr. Sansoucy testified that a number of plants are

[28] See the January 28, 2011 secretarial letter regarding the OCA's motion to strike.

considering closure or are being put into cold storage, posing a risk of leaving the ISO-NE region in a capacity shortfall. *Id.* at 16. According to Mr. Sansoucy, using information in Ventyx's nominal dollar Fall 2010 capacity projections attached to his testimony as Exhibit 9, the 2033 New England capacity prices are anticipated to be $154 per kilowatt year. *Id.*

Mr. Sansoucy criticized the OCA and Staff for only considering the short term energy market in analyzing the project. *Id.* at 18. He argued that compliance with RSA 362-F "is not going to occur if every analysis and every proposal brought to the Commission is scrutinized on short-term immediate technical considerations and price signals." *Id.*

Mr. Sansoucy opined that it is more likely than not that the energy prices proposed in the PPA will be a good deal for ratepayers. *Id.* at 19. He said that, as the recession fades and with the lack of new power plants in New England, it is more likely that the availability of power from external ties will also tighten, placing more pressure on the existing capacity and fuel infrastructure in New England to produce its own electricity, setting the stage for escalating energy prices, volatility and excess reliance on combustion turbines, oil-fueled generation plants and other high cost measures. *Id.* at 22. He opined that the price forecast in the PPA is "a good bet and a good deal for the ratepayers under a number of scenarios which could or are likely to occur over the next 20 years." *Id.* He predicted that there will be considerable volatility in electricity prices and macro issues with natural gas prices, which are presently very low, will increase the price of electricity in New England. *Id.* at 23, 27, 30. Mr. Sansoucy opined that it is more likely than not that federal carbon legislation will be enacted during the term of the PPA, *id.* at 31, and he argued that the PPA could, under a "carbon constrained environment," prove to be valuable even though it has been negotiated in a time of unprecedented de-escalation of electricity pricing. *Id.* In addition, he maintained that the PPA is an excellent hedge against this type of environment. *Id.* Similarly, Mr. Sansoucy claimed that the REC prices in the PPA are "a

good deal and a good bet for the ratepayers of PSNH." *Id.* at 34. He stated that a significant amount of new generation will be required to create enough Class I RECs to meet New England's legal requirements (*Id.* at 32-33) and he asserted that demand will outstrip supply and REC pricing could immediately go to the "default penalty ceiling" sometime between 2015 and 2020. *Id.* at 38. In addition to beneficial PPA REC pricing, he claimed that if carbon legislation is enacted, the PPA could save ratepayers approximately $300 million in energy and capacity costs over the PPA term based on numbers and calculations contained in Exhibit 10 attached to his testimony. *Id.* at 33-34, 42.

Mr. Sansoucy criticized the analyses of the OCA and Staff because they did not provide the Commission with any fundamental analysis of the potential price repercussions of not constructing the project and not having enough RECs to satisfy PSNH's need. *Id.* He also criticized Staff's direct testimony on numerous grounds. *Id.* at 36-48. For example, he disputed statements of Staff that PSNH could have conducted a solicitation with multiple suppliers of RECs to get the best price. *Id.* He also disagreed with Staff's comparison of the Laidlaw project with Lempster Wind. *Id.* at 39. Finally, Mr. Sansoucy discounted Staff's comparison of Laidlaw prices with those offered by CPD and Concord Steam, distinguishing the project's "shovel-ready" characteristics and the fact that CPD's proposed "steam host," without which there could be no CPD plant, had filed for bankruptcy. *Id.* at 41.

Mr. Sansoucy also stated that Staff had overlooked a number of risks borne by Laidlaw. He said that Laidlaw's high debt to equity ratio assumes the limited availability of equity and a higher rate of return on equity required to finance the project. *Id.* at 43. Further, Mr. Sansoucy said that Laidlaw continued to have construction risk, a 20-year fixed operation and maintenance cost risk and regulatory risk. *Id.* at 44. Mr. Sansoucy also expressed disagreement with the discount rate proffered by Staff. *Id.* He also disagreed with Staff that the Commission should

look at the project and the PPA in terms of its consistency with PSNH's most recent least cost integrated resource plan. *Id.* at 47. In his view, least cost planning and the development of new Class I RECs are mutually exclusive. *Id.*

In its closing statement, the City of Berlin argued the project is the type of investment contemplated by RSA 362-F, particularly because the project would produce Class I RECs. City of Berlin Closing at 1-2. The City reiterated the environmental benefits of the project and stated that approval of the PPA will allow the site for the plant to be reused to meet the State's current and future energy needs and long-term renewable energy goals while at the same time increasing jobs in the North Country and increasing tax revenues in the City of Berlin and Coos County. The City argued that the PPA "is a win for the State, the City and the ratepayers." *Id.* at 3.

The City pointed to Staff Exh. 14 as proof that, depending on which variables are used, the PPA could turn out to be under-market by between $336 million and $391 million. *Id.* at 3. The City complained that Staff and OCA gave too little weight to the differences between a wood facility and a wind facility. According to the City, the Ventyx REC prices are based on wind facilities.

The City challenged Staff's price forecasts on a number of grounds: Staff assumed that there is a low probability of carbon legislation during the PPA term despite the fact that the 2010 Ventyx report, Staff Exhibit 12C, states only that carbon legislation is not expected in the next two years; Staff ignored the fact, alleged by the City to be true, that the Ventyx report contained an alternative model with carbon, entitled "Fall 2010 Federal Legislation Case"; Staff incorrectly interpreted the Ventyx REC prices as including a Production Tax Credit; Staff did not recognize that the numbers in Ventyx Table 5-1 were in 2010 dollars and not adjusted for inflation; and Staff ignored OCA testimony showing that current REC auction prices had increased. The City argued that had Staff correctly done the calculations, they would have agreed with Mr. Sansoucy

that the Ventyx figures are almost identical to the PPA REC prices. *Id.* at 4. According to the City, Ventyx confirms that more renewable capacity will be needed in the future and Ventyx suggests that demand requirements will result in increased energy and capacity prices resulting in a decline in future REC prices. *Id.* at 5.

The City of Berlin concluded by stating that the Commission can and should approve the PPA as presented (or if conditions are deemed needed, then with the conditions proposed in PSNH Exh. 9-Rev. 1) so that the project can remain financeable. *Id.* at 6.

C. Clean Power Development

At the outset of this docket, CPD stated it had a complaint that was pending before the Commission in Docket No. DE 09-067 which raised issues related to PSNH's unwillingness to discuss a power purchase agreement with CPD for a biomass plant in Berlin called the Berlin Clean Power Facility. CPD petition to intervene at 2.

On the first day of the hearing, CPD made a statement indicating that NewCo Energy, LLC, the 100 percent owner of Laidlaw, and Gestamp Biotermica (Gestamp) are discussing forming a relationship to work together to develop biomass energy projects in New Hampshire and New England. CPD said that Gestamp indirectly owns 100% of CPD. 1/24/11 Tr. AM at 51-52.

In its closing statement, CPD urged the Commission to expedite its consideration of the issues in this proceeding. CPD stated that it has worked in the community for four years and has seen firsthand the support that exists for the Laidlaw project. CPD claimed it must await a decision in this docket prior to further analysis on the status of other projects within its development portfolio and prior to establishing a strategy toward the development of new projects. CPD asserted that the handling of the numerous issues and concerns involved in

crafting of the PPA by PSNH has been undertaken with concern for ratepayers as well as the needs of the developer.

CPD further stated that if the Commission approves a revised PPA agreement with substantial modifications, the result could be that the project may not be financially strong enough to move forward. CPD referred to Mr. Long's testimony which indicated that in order for a merchant developer to obtain project financing, the investment banking community needs certainty regarding revenues over a period of years. CPD argued that adjustments to the PPA create risk that the project would not be financeable and therefore not built.

CPD asserted that the prices to be paid by PSNH under the PPA are very similar to the prices proposed by CPD to PSNH. According to CPD, the prices contained in the PPA appear to be in line with the prices that would be necessary for any biomass plant to be built in New Hampshire.

CPD stated that although the prices to be paid by PSNH are greater than the current market price of electricity, if natural gas prices return to the levels they were at just 2 ½ years ago, the prices under the PPA would become less than the prevailing market price of electricity. CPD said that no one knows exactly how long it will take for natural gas prices to return to their previous levels, but they are very likely return to 2008 levels at some point.

CPD concluded by stating that the CRF will very likely zero out any above-market payments made by PSNH over the term of the PPA and that any well-built biomass plant such as the one proposed by Laidlaw is very likely to have a substantial residual value after the 20-year term of the PPA. CPD said that it feels the Commission can find that this project should be granted a PPA as it is in the public interest. CPD Closing Statement at 1.

D. Edrest Properties

Edrest opposes the Commission's approval of the PPA. In its closing statement, Edrest expressed concern about the impact of the Laidlaw plan on the quality of life in Berlin, the value of the city's assets which are negatively impacted by this plant, the impact to tourism and the cost of power. Edrest said that it was also concerned about the extent of liquidation harvesting and forest mismanagement that has occurred around Berlin. Edrest pointed out that state law introduced into the record by PSNH seems to mandate the protection of New Hampshire forests as much as the protection of a forest-based economy. According to Edrest, Schiller Station and the Laidlaw facility could potentially form a monopoly that most certainly will lead to significantly high wood prices, especially if the whole tree is used when there is not enough junk wood available. Edrest also expressed concern that existing Class III REC facilities are being treated as "third rate citizens locked in the confines of the bottom level of the titanic" and the State and PSNH are not supporting them. Based on its 25 years in the real estate business, Edrest said that the mill property at the proposed Laidlaw site had resulted in low real estate prices for nearby properties. According to Edrest, the price of some two-family homes is the same as the price in 1975 and some of the properties are currently selling for $50,000. Further, Edrest observed that, because Berlin's housing stock is urban and situated close to the mill, there is a significant risk of fire in the city. In addition, Edrest stated that Berlin has depreciation zones surrounding the mill and that the mill is currently negatively impacting the value of many properties, by as much as 10 to 20% of assessed value depending on location. According to Edrest, Laidlaw's positive impact to the tax base in Berlin will be at the expense of hundreds of people living and trying to capitalize on home ownership under the shadow of a 300 foot stack.

Finally, Edrest noted that the cost of power would add $3.50 to the monthly electric bill of PSNH ratepayers according to Staff's analysis. Edrest said that for the low income residents

living in its properties, although the additional expense may or may not break them financially, most of the residents won't be alive at the end of the 20 year term of the PPA to enjoy the supposed windfall of ratepayer savings PSNH predicted. Edrest Closing Statement at 1.

E. Wood IPPs

In their closing statement, the Wood IPPs requested that the Commission deny PSNH's petition in its entirety or, in the alternative, condition its approval in accordance with the law as further discussed in its closing statement and in their separately-filed pleadings in connection with their motion for rehearing. They stated that their comments are directed at legal requirements but are also equally applicable to the public interests standards of cost-effectiveness and efficient and competitive procurement.

According to the Wood IPPs, RSA 362-F:9, I and RSA 374-F:3, V(c) empower the Commission to authorize entry into, and to grant recovery for the prudently incurred costs of, contracts for certificates that are necessary for a distribution utility to meet its reasonably projected New Hampshire RPS requirements and default service needs to the extent of those requirements. The Wood IPPs argued that the Commission may only authorize entry into a contract that is designed to meet a reasonable projection of the purchasing utility's New Hampshire RPS compliance need as a function of the utility's reasonably projected default service load and the percentage compliance requirements explicitly set forth in RSA 362-F:3 and the Commission may only pre-approve prudently incurred costs incurred in meeting that compliance need. Wood IPPs' Closing at 1.

The Wood IPPs argued that RSA 362-F:9, I and RSA 374-F:3, V(c) contain limitations that present four hurdles that PSNH must, but did not, clear in order to obtain approval of the PPA. First, the Wood IPPs claimed that the term of the PPA extends beyond 2025, the last year for which there is a statutory requirement to purchase RECs under the NH RPS program. The

Wood IPPs argued that, after 2025, there is no requirement for utilities to project. The Wood IPPs claimed that a distribution utility may not require its ratepayers to bear the risk of an assumption that the legislature will extend the RPS requirements beyond 2025. *Id.* at 1. According to the Wood IPPs , that risk must be borne by the utility or the developer and the Commission has no authority under RSA 362-F:9, I to place such risk on ratepayers. *Id.* at 1-2.

Second, the Wood IPPs contend that the PPA must meet a reasonable projection. The Wood IPPs argued that PSNH failed to make a reasonable projection of its renewable portfolio requirements and default service needs for the period through 2025 and any projections at all for the PPA term extending past 2025. The Wood IPPs further argued that PSNH failed to meet its burden to make reasonable projections through 2034. *Id.* at 2.

The Wood IPPs maintained that the third statutory hurdle in RSA 362-F:9, I is that, apart from the "2025 issue," any projection must be limited to the percentage requirements set forth in RSA 362-F:3. The Wood IPPs asserted that although a utility may exceed the statutory requirements in any one of the years listed in RSA 362-F:3,the plain wording of RSA 362-F:9, I prevents the Commission from authorizing entry into a multi-year contract where the utility will exceed those minimum statutory requirements and place the associated costs in rates. *Id.* at 2. The Wood IPPs further argued that this is a fundamental rate-payer protection built into the explicit wording of the multi-year contract provision of the statute which the Commission may not ignore. *Id.* at 3.

The Wood IPPs contended that, according to the evidence, PSNH would be purchasing nearly one half million RECs per year at the very outset, a very different situation than in the Lempster Wind docket, DE 08-077, where the small number of excess RECs could be banked or hedged on a short term basis against spikes in demand. The Wood IPPs maintained that the limitations in RSA 362-F:9, I forbid the kind of speculation and arbitrage at ratepayer risk

contemplated for the environmental attributes to be purchased under the PPA. According to the Wood IPPs, the statutes' multi-year contracting provisions are for purposes of compliance with the N.H. RPS requirements and nothing more. *Id.* at 3. As an example, the Wood IPPs argued that is why the limitations appear in RSA 362-F:9, I rather than among the factors to be balanced under RSA 362-F:9, II. The Wood IPPs claimed that the limits are threshold protections against improvident and excessive long-term contracting and public policy determinations by the legislature that the Commission may not overturn in its balancing of interests under RSA 362-F:9, II. *Id.*

The Wood IPPs further asserted that although the Commission is not authorized to approve PPAs that force ratepayers to bear the cost of meeting RPS requirements that do not exist, the PPA's Change in Law provisions do just that. *Id.* The Wood IPPs stated that the New Hampshire statute, unlike the program in Massachusetts, does not provide for the continuing validity of REC contracts or orders approving the pass through of costs in the event of changes of law. The Wood IPPs argued that the statute does not permit PSNH, Laidlaw, or the Commission, to obligate PSNH ratepayers to make never changing subsidy payments through 2025, without regard to legislative changes or Commission review under RSA 365:28, and further does not allow PSNH and Laidlaw to obligate ratepayers to pay any subsidy after 2025. *Id.* at 4.

According to the Wood IPPs, the fourth hurdle stems from RSA 374-F:3, V(c). They argued that this statute requires PSNH to demonstrate not only that the costs associated with the PPA are necessary to comply with percentage requirements but also that the details of the transaction do not exhibit inefficiency, improvidence, economic waste, abuse of discretion, or action inimical to the public interest as generally defined. The Wood IPPs argued that although PSNH is required, at a minimum, to show the PPA rates are reasonable and cost-effective for

ratepayers in comparison to alternatives in the market, PSNH failed to provide the information to allow the Commission to make the necessary findings. *Id.* Further, the Wood IPPs complained that PSNH did not conduct a competitive solicitation to determine market pricing and that PSNH ignored other ways to determine cost-effectiveness and reasonableness of the PPA pricing despite the availability of forecasts and other price-comparison tools. *Id.* at 4-5.

The Wood IPPs argued that PSNH's claim that market uncertainties are resolved through the CRF is baseless. *Id.* at 5. In their view, the CRF is an illusory protection. They argued that PSNH has ignored the extent of market overpayments, which could range from $330 million to $550 million over the 20 year term according to conservative market forecasts, and stated that the CRF does not create an absolute payment requirement that would bring overpayments within a reasonable approximation of the market over the long term. The Wood IPPs pointed out that the CRF does not compensate ratepayers for the time value of money and does not account for overpayments for RECs or capacity. According to the Wood IPPs, PSNH did not introduce evidence that the fair market value of the Laidlaw facility will even approach this amount in 20 years. The Wood IPPs pointed out that PSNH itself stated that the fair market value will be determined by market conditions at the time that the POA is exercised, and that the Company cannot predict those conditions 20 years in advance. *Id.*

The Wood IPPs maintained that OCA and Staff, when using the scant information provided by PSNH, showed that the PPA is not cost effective, the rates are not reasonable and PSNH's decision to shun every single method for determining the reasonableness of long-term pricing was not prudent. *Id.* at 6.

Finally, the Wood IPPs argued that the Commission should not approve the WPA clause of the PPA. They argued that testimony demonstrated that Laidlaw is able to manage its own fuel risk and does not require a WPA. The Wood IPPs stated that Laidlaw will be able to

manage its costs through its wood procurement contracts and loans directed at bringing new local fuel providers into business. According to the Wood IPPs, there is no connection between the cost of wood fuel at Schiller Station and the cost of wood fuel to be paid at the Laidlaw facility, and thus, there is little connection between the WPA and its purpose of compensating Laidlaw for changes in its fuel costs. The Wood IPPs said that PSNH had not demonstrated a need for this WPA for a facility of Laidlaw's size and location. The Wood IPPs argued that the adjustment is another risk of private generation that is passed onto the ratepayers. *Id.* at 6.

In their motion for rehearing, the Wood IPPs reiterated the three arguments they made in their underlying motion to dismiss, namely, (1) the Commission lacks authority under RSA 362-F to approve a power purchase agreement which extends beyond 2025, (2) such approval would be an arrogation of the Commission's legislative authority, and (3) approval of the PPA with Laidlaw's Change in Law provision amounts to an impermissible waiver of the Commission's jurisdiction to modify its own orders pursuant to RSA 365:28. The Wood IPPs further incorporated by reference the arguments made in their earlier motion to dismiss. The Wood IPPs refined their arguments on these three points by focusing on the Commission's approval of PSNH's recovery of the costs of the PPA in default service rates.

F. OCA

In its closing statement, the OCA stated that the record had insufficient evidence for the Commission to determine that, over the period of the proposed PPA, it will meet PSNH's reasonably projected needs for RECs and default service, a determination required by RSA 362-F:9, I. According to the OCA, PSNH admitted that for some portion of the 20-year PPA term, REC purchases under the PPA will be greater than the Company's need. PSNH also testified that the PPA would require default service ratepayers to purchase all of the RECs produced by

the Laidlaw plant regardless of default service customers' need for those RECs and regardless of whether lower cost RECs might be available to the Company.

The OCA claimed that, to merit Commission approval of the proposed PPA, PSNH must satisfy its burden of proving that the PPA is consistent with the public interest, with or without conditions imposed by the Commission, and that PSNH failed to meet its burden. OCA Closing Statement at 1. The OCA also noted that none of the criteria in RSA 362-F:9, II, by which the Commission must evaluate a long-term PPA for the purchase of RECs, state that the PPA must make the renewable project "financeable" for a private developer. The OCA further pointed out that the statute does not elevate economic development and environmental benefits above other factors, including the "cost effective realization" of the RPS goals, as well as the requirements of the Least Cost Integrated Resource Planning (LCIRP) statute. *Id.* at 2. The OCA recommended that the Commission reject the PPA as proposed because of the 20-year term of the PPA, the over-market costs that result from the proposed pricing terms which would be paid by PSNH's default service customers, and the right of first refusal to purchase the plant. OCA Exh. 1, prefiled testimony of Kenneth E Traum, at 1-2. The OCA contended that the basic flaw in the PPA is the uncompensated risk that it creates for default service customers of PSNH. The OCA argued that, although it did not attempt to predict exactly how much over-market the PPA would be, the risk that the PPA could be over-market is too high, even compared with the purported public interest benefits of the PPA. OCA Closing Statement at 3. The OCA said that the structure of the PPA and the PPA's fixed prices make it far too risky for customers and creates the real possibility that customers will not be compensated for that risk. *Id.* at 3-4.

The OCA calculated that over the 20-year term of the PPA, the over-market payments for energy, capacity and RECs could exceed $400 million. The OCA explained that its analysis is conservative because it assumed net output of 58 MWs and a capacity factor of 86 percent

instead of the 61-64 MWs contained in Appendix A to the PPA. OCA Exh. 1 at 7-8. The OCA said that another factor making its analysis conservative was its use of PSNH's base energy price. To calculate its base energy price, PSNH assumed a 2011 market energy price of $59.99 per MWh and projected the later years to grow from that price, so that in 2014 PSNH's base case market energy price is $66.63 per MWh. However, in PSNH's 2011 default service docket, the Company used $45.10 per MWh as the market figure for 2011, which is $14.89 per MWh less than the price used in PSNH's base case for purposes of calculating the over-market costs of the PPA. If this difference were built into the market price for the term of the contract, the OCA said that the result would be additional over-market payments of $130 million. *Id.* at 8.

With respect to the WPA mechanism, which is a factor in the calculation of energy prices, the OCA expressed concern that the WPA was based on the prices that PSNH pays at its own Schiller Station rather than on a true market-based price. According to the OCA, setting the WPA on the wood price paid at Schiller Station could put upward pressure on wood prices, which would impact the costs passed on to ratepayers for energy produced at both plants. *Id.* at 11.

The OCA also opined that, using PSNH's projections the price for capacity in the PPA appeared to be above-market in the first six years, and below-market for the remaining fourteen years, that trend may not hold for the entire 20-year term of the PPA. *Id.* at 4-5. In reviewing the REC prices, the OCA noted that, in PSNH's most recent default service case (Docket No. DE 10-257), PSNH said that it was forecasting a market price of $18.45 for Class I RECs for 2011. *Id.* at 5-6.

In addition, the OCA calculated that, under the PPA, PSNH's default service customers would pay approximately $276 million over-market for RECs. *Id.* at 6. The OCA noted that the 2010 and 2011 Class I REC prices approximated 30% of the ACP amount for Class I RECs

while, in contrast, the PPA set the payment for RECs at 80% of the ACP for 2014. *Id.* Assuming that the market price for Class I RECs in 2014 (the first year of the contract) would continue to approximate 30% of the ACP amount, the OCA calculated that the over-market REC costs in the first year alone would be $14 million. The OCA said that for PSNH to lock into REC purchases at a time when there are high levels of large customer migration increases the risk that the PPA will result in the purchase of RECs that PSNH may not even need. *Id.* at 7. Finally, the OCA contends that the proposed PPA extends to 2034, beyond what it considers the statutory mandate which sets renewable portfolio requirements until 2025. The OCA opined that there is a risk that the RPS statute could be amended or repealed, which could make the RECs potentially worthless to customers who would be locked into paying for them. *Id.* at 14.

The OCA also provided comments on the CRF. The OCA characterized the CRF as a "hypothetical benefit" that would accrue to future PSNH ratepayers only if PSNH seeks to purchase the plant, the purchase is to be found in the interest of ratepayers under a future regulatory regime, and the value of the plant exceeds the value of the CRF. The OCA testified that the CRF does not obviate the fact that ratepayers are likely to pay hundreds of millions of dollars in over-market energy costs under the PPA as it is currently structured over the 20-year term. *Id.* at 10.

The OCA argued that the cumulative reduction factor is a deferral that may not provide future ratepayers with a benefit commensurate to the risk involved. The OCA observed that if the plant is worth less than the balance of the CRF, ratepayers may never receive value for over-market payments. OCA Closing Statement at 2. The OCA maintained that the allocation of over-market amounts to the CRF constitutes an unlawful pre-payment of funds toward the future purchase of the Laidlaw plant. *Id.* The OCA noted that the CRF applied only to over-market payments for energy, not to those for capacity or RECs, and is only intended to reduce the

potential purchase price of the plant. OCA Exh. 1 at 9. The OCA pointed out that no interest would be provided to customers on the CRF, which it calculated to be approximately $4.7 million. *Id.* at 9-10. Finally, the OCA maintained that the restructuring law will have to be changed for ratepayers to receive the benefit of the CRF because PSNH does not have the legal authority to purchase the plant. *Id.* at 10.

The 20-year term of the PPA also concerned the OCA. The OCA noted that PSNH testified that the old QF rate orders resulted in more than $2 billion in over-market costs for customers. Referring to PSNH's testimony, the OCA noted that those rate orders illustrate why fixed-cost long-term contracts are generally not in the best interest of customers. The OCA said that this PPA must be considered in the context of significant migration of large customers that PSNH is experiencing due to low market prices and its management of its energy service portfolio. *Id.* at 11-12. The OCA asserts that PSNH's reported level of migration means that an increasingly smaller group of default service customers will have to pay the above-market costs of the PPA under PSNH's proposal, and that fewer RECs may be needed to satisfy an obligation that will shrink as the default service load drops. According to the OCA, in addition to paying over-market prices for the Laidlaw RECs, PSNH will buy RECs that it may not need to satisfy its REC obligations. *Id.* at 13.

Furthermore, the OCA expressed concern that it is possible under the PPA for Laidlaw to expand the facility, which would increase the amount of over-market payments by default service customers and generally make the PPA more costly and more risky for default service customers. *Id.* The OCA also commented on PSNH's failure to take advantage of offers from other renewable energy producers that could be at lower costs than Laidlaw. *Id.*

According to the OCA, it is clear that the principles of least cost planning in RSA 378:38 do apply to any proposed PPA. The OCA asserted that PSNH must act prudently on behalf of

ratepayers when complying with the RPS law, and must seek to do so in a manner that results in just and reasonable rates. OCA Closing Statement at 2.

The OCA criticized PSNH's argument that RSA 362-F:3 required a utility to "meet or exceed" the RPS requirements for support of the premise that the Company may knowingly purchase more RECs than it needs. The OCA said that PSNH's interpretation of the statute is not reasonable. According to the OCA, the word "exceed" does not give a utility license to knowingly purchase unnecessary RECs, the costs of which will be passed on to default service ratepayers. The OCA argued that a utility must prudently seek to comply with the RPS law at the least possible cost, consistent with general ratemaking principles, including those set forth in RSA 374-F as well as the least cost planning principles in RSA 378:37 *et seq*. *Id.* at 3.

The OCA also challenged PSNH's interpretation of the Schiller Modification Joint Motion and Order in DE 03-166 (Schiller Order). Observing that PSNH had testified that it believes it must sell Schiller Station RECs even if such sale results in a loss for ratepayers, OCA asserted that PSNH's interpretation of the Schiller Order is inconsistent with the intent of the Order and with the Company's duty to provide electric service at just and reasonable rates, and in accordance with RSA 378 and least cost planning principles. OCA argued that, if Schiller Station RECs are available for PSNH's default service customers because they are no longer eligible in another state's RPS, or because they are worth less in other jurisdictions than PSNH pays for RECs in New Hampshire, the Company must use the Schiller Station RECs to meet its NH RPS requirements. According to the OCA, to do otherwise would be economically irrational, as well as imprudent. *Id.*

According to the OCA, the fact that a project may result in significant economic benefit to an area or sector of the state is certainly one consideration under the RPS law but it is only one of five factors that must be considered within the context of underlying principles of ratemaking

and utility regulation. Referring to RSA 362-F:9, II, the OCA asserted that PSNH failed to support any conclusion that, when balanced with the remaining policy considerations, including the "efficient and cost effective realization of the purposes and goals of [the RPS law]", this PPA is in the public interest. The OCA contended that PSNH also failed to support the conclusion that a PPA that allowed it to own additional generation is consistent with the restructuring principles of RSA 374-F:3 or that the pricing terms of the PPA, which are not tied temporally or otherwise to market pricing, promote "market driven competitive innovations and solutions." *Id.* at 5.

The OCA noted that PSNH offered potential modifications of the PPA in PSNH Exhibit 9-Rev. 1. In the OCA's view, those provisions do not reduce the risk that ratepayers could significantly overpay for energy and RECs over the term of the PPA. According to the OCA, simply adding over-market payments for RECs to the CRF, or accruing interest on the CRF, does not sufficiently compensate ratepayers for the high risk of overpayment. The OCA asserted that the proposals could result in an even greater balance in the CRF, which could significantly exceed the fair market value of the plant if PSNH exercises its option to purchase the Laidlaw facility. In such an event, the ratepayers would lose every additional dollar accounted for in the CRF. *Id.* at 4.

The OCA said that, if the PPA is "necessary" in order to obtain financing for the plant, PSNH may want to pursue a legislative change. The OCA noted that only the Legislature is empowered to further incent renewable generation options in New Hampshire and to the extent PSNH finds the present structure unworkable, it can seek clarification from the Legislature. The OCA disagreed that PSNH needed the PPA approved to meet its REC requirements. *Id.* at 4. The OCA pointed out that ratepayers are indifferent as to how a utility acquires Class I RECs.

Id. at 4-5. The OCA also suggested that PSNH can comply with the RPS by purchasing from other Class I (non-wood) renewable facilities or by making ACPs. *Id.* at 5.

Finally, the OCA pointed out that the SEC denied Laidlaw's request to release confidential information from its docket to the OCA and Staff, including "sealed" transcripts of its hearings. The OCA requested that the Commission give no weight to the partially disclosed record of the SEC's proceedings in making its public interest determination. *Id.* at 6.

G. Staff

Staff filed the direct testimony of George R. McCluskey and Thomas C. Frantz. Mr. McCluskey's testimony provided an analysis of whether the PPA is in the public interest pursuant to the criteria set forth in RSA 362-F:9. Mr. Frantz's testimony addressed whether the PPA provided economic development benefits for New Hampshire as set forth in RSA 362-F:9, II(e).

Mr. McCluskey stated that since each of the PPA products can be purchased in existing organized markets, PSNH does not need the output of the facility in the sense that if the PPA was not approved it would fail to supply the loads of its customers and fail to meet its RPS obligations. Mr. McCluskey said that, even so, PSNH is generally able to use energy, capacity or RECs that are priced below what it would otherwise pay in the market. In his view, the question of need should begin with the question of whether the products are priced competitively; if they are, the next question he would ask is whether PSNH is physically able to utilize all the products offered to it, and if they are not, then PSNH's need for the output is constrained. Staff Exh. 1 at 3-4.

Mr. McCluskey estimated that the starting bundled PPA price for energy, capacity, and RECs is $143.50 per MWh in 2014, rising to $183.60 per MWh in the last year of the PPA. According to Mr. McCluskey, the levelized PPA bundled price is about $162 per MWh, which is

approximately twice the level of PSNH's current default service rate, which includes its total energy, capacity, and REC costs, when expressed on a MWh basis. In his calculations, Mr. McCluskey said he used a capacity factor of 87.5 % whereas PSNH used an 85% capacity factor. *Id.* at 6. Overall, Mr. McCluskey estimated that PSNH would pay Laidlaw approximately $1.6 billion, and possibly more, for the project's products over the term of the contract, with about one-third of the payments going toward the purchase of Class I RECs. *Id.* at 7.

Mr. McCluskey said that the additional revenue stream provided by REC payments to developers of renewable energy resources was expected to make it economically feasible for renewable resources to compete with conventional generating units. In his view, the REC price in an efficient market would always approach the uneconomic variable cost of renewable generation. He stated that under the PPA, the REC payments total approximately three-quarters the total cost of wood fuel, which suggested to him that wood is either a very uneconomic fuel for electricity generation or the negotiated prices are too high and would over stimulate biomass investment if they were made generally available. *Id.* at 10. Further, he expressed concern regarding section 5.1 of the PPA requiring PSNH to purchase all the output of the facility. He maintained that the above-market prices under the PPA may encourage Laidlaw to increase the output of the facility, resulting in PSNH paying for the incremental products at the PPA prices. *Id.* at 11. According to Mr. McCluskey, the absence of a definition in the Appendix A description of the facility for the terms "winter," "summer," and "standard conditions" and the vagueness of the word "approximately" created significant opportunities for future disagreements over the project's output. *Id.* at 12.

Mr. McCluskey further argued that section 5.1 is inconsistent with PSNH's Class I REC obligation under RSA 362-F for two reasons. First, the cost of "lost RECs" will be inappropriately borne by customers. *Id.* at 12-13. Second, when account is taken of the Class I

RECs already under contract to PSNH and the Class I RECs produced by Schiller Station, PSNH does not need to acquire additional Class I RECs until 2016 and even after 2016, the RECs delivered by Laidlaw will exceed PSNH's estimated need through 2023 based on an assumed migration rate of 31%. Mr. McCluskey contended that these facts conflict with the plain meaning of RSA 362-F:9, I which authorizes multi-year purchase agreements to acquire RECS "to meet reasonably projected renewable portfolio requirements." *Id.* at 13. He estimated that over the first 10 years of the PPA PSNH will be required to purchase from Laidlaw over 3 million RECs that it does not expect to need, which represents approximately one third of the RECs produced by the facility. Finally, Mr. McCluskey stated that, if the Wood IPPs are correct in arguing that there is no legal requirement for the purchase of RECs after 2025, PSNH will have taken on the very significant cost risk that the legislature will not extend the RPS beyond 2025, assuming that the Commission has authority to approve cost recovery of a non-existent REC obligation. Mr. McCluskey agreed that PSNH will likely be able to sell excess RECs to other buyers but not at the over-market prices paid for them. *Id.* at 14. He concluded that PSNH has committed to purchase more RECs from Laidlaw than it is likely to need during the term of the PPA, resulting in unnecessary additional costs for PSNH customers. *Id.* at 15.

As to the WPA provision of the PPA, Mr. McCluskey maintained that, in order to have a dollar-for-dollar pass-through of the cost associated with a change in the price of wood, the conversion factor would have to be 1.55 tons/MWh. He argued that since the PPA uses a conversion factor of 1.8 tons/MWh, the WPA will allow Laidlaw to collect through the WPA more than the actual incremental cost if wood prices rise above $34/ton. He estimated that Laidlaw would collect an additional $113,000 per year for every dollar increase in the price of wood as a result of the use of a 1.8 tons/MWh conversion factor. *Id.* at 16.

Mr. McCluskey disagreed with PSNH's assertion that the CRF would protect customers from paying PPA prices that exceed the market price. He said that PSNH is obligated to pay the PPA prices whether those prices are above-or below-market energy prices. In addition, Mr. McCluskey noted that the PPA contained no provision for the above-market payments to accumulate interest on the CRF balance. According to Mr. McCluskey, not accumulating interest is a detriment to customers and a benefit to PSNH because it requires PSNH to make a larger investment to acquire the facility and a consequent higher return on rate base. *Id.* at 19.

Further, Mr. McCluskey opined that there is a good chance that the facility will have little value after the PPA ends and that in a circumstance where the fair market value is low compared to the CRF balance, customers will not get back the full value of their over-market payments. At the end of the PPA term, he said the value of the facility will depend on whether it can effectively compete with the marginal generating units in the region, which are typically those fueled by natural gas, and on whether New Hampshire's RPS law continues in effect and if so whether REC market prices are high or low. *Id.* at 20. Finally, Mr. McCluskey argued that the CRF effectively aggregates over-market energy payments, and assuming that PSNH places PSNH's investment into rate base at the end of the PPA term by the exercise of the PPA, the CRF mechanism would allow PSNH to recover the costs of the project contrary to the ratemaking principle that prevents utilities from collecting through rates costs for investments that are not yet included in rate base. *Id.* at 21.

Mr. McCluskey testified that, based on the results of certain cost effectiveness tests he considered, the PPA is not a cost-effective means of acquiring the products that it is proposing to purchase from Laidlaw. *Id.* at 41 and 22 *et seq*. He noted that PSNH did not conduct a competitive solicitation for the products the Company proposes to purchase from Laidlaw. Absent competitive bids, he stated that PSNH had three options for determining whether the

negotiated PPA prices represent the best possible outcome for customers: comparison of the PPA prices with other comparable projects for the same products, comparison of those prices with market price projections, and financial analysis to determine whether the PPA produce a reasonable return for investors. *Id.* at 22. He noted that PSNH said it was not directly influenced by the price of other renewable projects in its negotiations with Laidlaw, even though PSNH had negotiated an agreement with the Lempster wind project for the purchase of energy, capacity, and RECs. According to Mr. McCluskey, the levelized price of comparable products under the Lempster agreement was about half the price PSNH has negotiated with Laidlaw. *Id.* at 24. Mr. McCluskey also stated that PSNH had received two unsolicited long term offers from CPD and Concord Steam, both of which offered more favorable prices than those contained in the Laidlaw PPA.[29] *Id.* at 25; *see also* Staff Closing Statement at 2.

Mr. McCluskey noted that PSNH had performed some market price projections in 2008, which indicated that on average the PPA energy prices were expected to be about 18% higher than the projections, and he criticized PSNH's failure to update these projections in the PPA to reflect current market conditions at the time of the filing. According to Mr. McCluskey, natural gas prices, the primary driver of wholesale energy prices, have fallen such that PPA energy prices had become about 30% higher than the market forecast. *Id.* at 25-26. PSNH did not review a long term forecast of REC prices to benchmark the PPA REC prices, *Id.* at 26, but Mr. McCluskey's REC price forecast, which is based on certain adjustments to data in a 2009 report prepared by Synapse on behalf of a group of New England gas and electric utilities, indicated future REC prices from a low of approximately $5 to a high of approximately $53 that contrast with PPA REC prices that vary from a low of approximately $49 to a high of $67. *Id.* at 28. Mr.

[29] He also stated that four existing biomass facilities had submitted offers but because of the circumstances in which the offers were made, he discounted their value as a measure of the reasonableness of the PPA prices. Staff Exhibit 1 at 25.

McCluskey stated he was unable to comment on the capacity prices due to insufficient time for review though he noted that over the 20 year PPA term, PSNH believes that PPA capacity prices are about 55% lower than projections developed by Errichetti and Levitan. *Id.*

Mr. McCluskey stated that PSNH's initial financial analysis indicated that net income from the Laidlaw project to NewCo would total $590 million compared to an assumed capital cost for the facility of only $96 million. *Id.* at 30, 31. Even though these sums are in nominal dollars, he opined that the initial set of product prices was very lucrative for NewCo.[30] He further maintained that most of the $550 million in REC revenues would go to the bottom line. *Id.* at 30. Mr. McCluskey argued that, based on the limited risks Laidlaw faces, an appropriate cost of equity for the Laidlaw project would be approximately 11% and he estimated that customers will pay approximately $160 million more in present value terms under the Laidlaw contract than if PSNH were to include in its rate base. *Id.* at 35. Based on his assumptions, Mr. McCluskey concluded that the equity returns for NewCo, net of annual interest and loan repayment and using the final PPA prices, are well outside the range of returns that developers of merchant power plants in the United States could reasonably expect. *Id.* at 37, 39-40.

Mr. McCluskey maintained that the PPA is inconsistent with RSA 362-F:9, I because it obligates PSNH to purchase substantially more RECs than it needs to meet its projected REC requirements. He also concluded that the PPA fails to meet the public interest test, applying the criteria in RSA 362-F:9, II. *Id.* at 40. Regarding the first criterion, efficiency and cost effectiveness, he argued that the negotiation process was not efficient and that the PPA is uneconomic based on all of the standard cost-effectiveness tests.

[30] He said that PSNH ultimately agreed to a set of product prices that produce about 10% less revenue for Laidlaw than the initial set of prices. *Id.* at 35.

Regarding whether the PPA is consistent with the restructuring policy principles of RSA 374-F:3, Mr. McCluskey said that the PPA was consistent with some of the principles and inconsistent with others. *Id.* at 42-45. He argued that the PPA is inconsistent with the requirement that generation services be subject to market competition and minimal economic regulation. For example, he said that Laidlaw would be shielded from market price and fuel price risks that are defining characteristics of merchant power plants. *Id.* at 42. In addition, he argued that because PSNH is proposing to collect the costs of the PPA from default service customers, the PPA becomes subject to the principle that such service be procured from the competitive market. Because PSNH did not issue a competitive solicitation for the products it proposes to purchase from Laidlaw or base the PPA prices on market prices, Mr. McCluskey said that the PPA is not consistent with RSA 374-F:3(V)(c). *Id.* at 43. He concluded that the PPA is not consistent with the principle that default service be designed to minimize customer risk, not unduly harm the development of competitive markets, and mitigate against price volatility without creating new deferred costs, referring to RSA 374-F:3(V)(e). *Id.* According to Mr. McCluskey, the use of fixed prices in the PPA shifts the market price risk for all three products from Laidlaw to PSNH's customers. Further, the PPA is detrimental to the development of a competitive market because it unfairly protects Laidlaw from the risks of market competition. Finally, while the pricing in the PPA reduces price volatility experienced by PSNH's default service customers, Mr. McCluskey argued that suppression of price volatility is achieved by requiring those same customers to bear significant above-market costs. *Id.* at 44.

Mr. McCluskey also said that the PPA is contrary to least cost planning principles as set forth in RSA 378:37 because pricing products over-market results in cost increases and higher rates for customers. *Id.* at 45. He also found the PPA to be contrary to the fourth statutory

criterion regarding administrative efficiency and the promotion of market-driven competitive innovation.

Mr. McCluskey concluded his testimony with five recommendations for the conditional approval of the PPA as follows: 1) eliminate the CRF and make the POA conditional on PSNH having the legal authority to acquire new generation; 2) base the PPA energy prices on hourly ISO-NE spot market energy prices with a floor to address volatility and financing concerns; 3) base the PPA capacity prices on the actual price realized in the ISO-NE's forward capacity market; 4) adjust the PPA REC prices such that NewCo is provided a reasonable opportunity to earn a reasonable return on its investment, taking into account the risks under the amended PPA; 5) amend the PPA such that PSNH is obligated to purchase no more RECs than needed to meet its RPS obligations; and 6) establish a specific output level for the facility expressed in MW above which PSNH would have no obligation to purchase. *Id.* at 47.

Mr. Frantz's testimony addressed the fifth public interest criterion in RSA 362-F:9, II and the economic impacts of the proposed project in particular. He recommended that the Commission take administrative notice of the Laidlaw proceeding before the SEC as to the environmental impact of the project. Staff Exh. 2, prefiled testimony of Thomas C. Frantz, at 2.

Mr. Frantz described the input-output (I/O) models that are commonly used to estimate the effects of a change in one sector of the economy on other sectors of the economy. Mr. Frantz explained that I/O analysis is based on the simple economic fact that a large proportion of economic activity, whether at the national, state or local level, is devoted to the production of intermediate goods and services that are ultimately required to meet the demand for final goods and services. Staff Exh. 2 at 2. Mr. Frantz said that RIMS II model used by Dr. Shapiro is the most commonly used I/O model for assessing the effects of small changes on a regional economy. Mr. Frantz explained that Dr. Shapiro used information Laidlaw provided to the SEC

as the basis for her economic analysis and the affected area for her study was the entire State. *Id.* at 4. He said that her estimate of 470 total jobs created is based on Laidlaw expending $70 million into the local economy during the 32 months it expects to build the project. *Id.* at 4-5. Mr. Frantz cautioned that, while the I/O models can be quite useful, they rely on a number of key assumptions and the violation of any one of the key assumptions could adversely affect the results of the model. In addition, the smaller the economic region, the more likely it is that the assumptions will be violated. *Id* at 5.

Mr. Frantz disagreed that the PPA would produce the economic benefits described by Dr. Shapiro because Dr. Shapiro makes no provision for the fact the PPA prices are over-market and will result in higher default service costs passed along to PSNH's energy service customers if approved by the Commission. *Id.* at 6. According to Mr. Frantz, if Mr. McCluskey's calculation of the over-market costs of the PPA, approximately $55 per MWh or an annual over- market cost of $26 million, are correct, the perceived economic benefits of the project are not benefits at all, but costs borne by PSNH ratepayers taking default service from PSNH, as well as indirectly by New Hampshire's businesses and households based on the inter-dependencies of the economy.[31] Mr. Frantz opined that creating a subsidy for this or any other project doesn't create wealth for the economy as a whole, it simply transfers wealth. *Id.* at 6.

In addition, Mr. Frantz said that another issue is the unknown effect of the project on other biomass generators currently operating in New Hampshire, especially those located closest to Berlin. If as a result of the PPA, one or more of those facilities were to close, Mr. Frantz asserted that the overall benefits of the projects would be further reduced. *Id.* at 7. Mr. Frantz

[31] According to Mr. Frantz, assuming that the PPA results in over-market costs of between $50 and $60 per MWh per year, an economic study performed in 2008 by Dr. Gittell, as cited by Dr. Shapiro, would indicate that a $10 million increase in electric rates would decrease Gross State Product by almost $5 million and reduce employment by approximately 65 jobs. Staff Exh. 2 at 7-8.

testified that the greater the above-market cost of the PPA, the more deleterious the economic impact of the State as a whole. He concluded by stating that he could not recommend that the Commission approve the PPA as filed. *Id.* at 8.

At hearing Mr. Frantz testified that he had no reason to believe that Laidlaw's direct economic impacts as used by Dr. Shapiro in her testimony were inaccurately stated. 2/9/11 Tr. at 93. He further testified that he had no reason to disagree with Dr. Shapiro's conclusion that the net economic benefits of the Laidlaw development more than offset negative impacts from the increase in rates above-market that he described in his testimony, other than the assumptions that went into her analysis. *Id.* at 93-94.

In its closing statement, Staff stated that once the PPA is approved, its terms would be incorporated into a FERC-jurisdictional tariff so the Commission should carefully review the PPA terms. Staff contended that PSNH had not met its burden to show that the PPA is necessary to meet reasonably projected REC requirements and default service needs, or that the PPA is in the public interest. Staff argued that the PPA is grossly over-priced. In particular, Staff maintained that although PSNH performed certain tests of cost effectiveness, they do not show that the PPA is cost effective. Staff Closing Statement at 1. Staff further complained that PSNH now denies that the tests have much value and relies instead on the "structure" of the PPA including the CRF and POA to support its case for approval of the PPA. *Id.* at 1-2. Moreover, Staff reiterated the results of Mr. McCluskey's assessment of the three cost effectiveness tests referred to in direct testimony. As to the first test, evidence that compared the PPA prices with prices for other renewable projects, Staff argued that PSNH could have received the same products that it is purchasing from Laidlaw from Concord Steam's and CPD's biomass projects at prices representing discounts of 12.6% and 8.5%, respectively, compared to the PPA. He said the cost savings of those discounts would be substantial as would a similar discount for

purchases from wind power resources based on an agreement such as the one with Lempster Wind. According to Staff, its second test, a comparison of the PPA energy and REC prices to long term market forecasts, showed that PSNH could pay Laidlaw $285 million in over-market energy costs and $280 million in over- market REC costs over the 20 year PPA term.

Staff further argued that the Ventyx forecast relied upon by the City of Berlin showed that at PPA prices PSNH will pay approximately $334 million more than if the products were purchased at Ventyx market forecast prices. *Id.* at 2. Finally, Staff said that its cash-flow analysis showed that after tax and after debt service returns to investors ranged from 60% to 106%, which are well outside a reasonable return for developers of merchant plants. Finally, under its base case analysis of the impact of the PPA on the 2014 energy service rate, Staff contended that the resulting rate impacts of the PPA are unacceptable, increasing the average residential customer energy service bill by $3.50 per month for the average residential customer, a 5% increase in the energy service bill. *Id.* at 3.

In addition, Staff argued that, because the PPA requires PSNH to purchase 100% of the project's Class I RECs, the Company would be purchasing more than its "reasonably projected renewable portfolio requirements" as specified in RSA 362-F:9, I. *Id.* at 4. Staff disagreed with PSNH's assertion that it must sell Schiller Station RECs to meet the requirements of the risk-sharing mechanism approved in that docket and urged the Commission to require PSNH to include the Class I RECs produced by the Schiller Station in its determination of the REC requirement whenever the PPA REC price exceeds the REC market price. *Id* at 4-5.

Staff also contended that the CRF does not add value to the PPA. Staff pointed to Staff Exhibit 16 as proof that had the PPA energy pricing formula been in effect during the 2007-2010 period, the PPA energy prices would have exceeded the average market prices, including in 2008 when market energy prices reached an all time high due to high natural gas prices. Staff argued

that the best that customers can hope to receive after 20 years is the sum of their nominal above-market energy payments. Of greater concern, according to Staff, is that customers will actually receive less than the sum of their nominal energy payments if the fair market value of the project turns out to be below the balance in the CRF at the end of the PPA's term, a strong possibility in Staff's view. Staff urged the Commission to reject the CRF and replace it with energy prices based on hourly ISO-NE spot market energy prices with a floor price to address volatility and financing concerns. *Id.* at 5.

Staff stated that the estimated economic effects of the PPA depend in large part on the project's effect on biomass prices and the amount of biomass purchased regionally. *Id.* Even though there is some uncertainty about those matters, Staff acknowledged that the project will have local economic benefits. Staff maintained, however, that the Commission should not allow the local benefits to over-ride the costly effects of the over-market payments on the general body of PSNH's customers. *Id.* at 5-6.

Staff asserted that the adjustments proposed in PSNH's Exh. 9-Rev. 1 fall short of addressing Staff's concerns regarding the high cost of the products and recommended that all the changes be rejected with the exception of item 2 to provide for the accrual of interest to the CRF. With regard to items 4 and 5 Staff said that under these adjustments to the Base Price and Wood Price Factor, the 1.8 conversion factor would be changed to 1.6, but only for deviations from the proposed new base fuel price of $30/ton. Staff argued that because the proposal uses the 1.8 conversion factor to set the new Base Price to $30/MWh, the item offers very little value to ratepayers. Staff also argued that increasing the project size to 67 MW would increase total revenue to Laidlaw by over $100 million, thereby increasing Laidlaw's net income.

Regarding item 2, the proposal to add interest to the CRF, Staff said the offer does not resolve its greater concern of capping recoupment of the above-market energy payments at the

value of the project at the end of the PPA term. Finally, Staff argued that the proposed addition of over-market REC values to the CRF, item 3, exacerbates Staff's concern about the value of the CRF. *Id.* at 6.

IV. COMMISSION ANALYSIS

A. Summary

The twenty-year PPA between PSNH and Laidlaw submitted in this proceeding pursuant to RSA 362-F:9 is not in the public interest as filed. Nonetheless, with conditions detailed below to satisfy the public interest, we approve the PPA and petition filed by PSNH. With regard to the PPA as filed, the evidence is persuasive that the base energy price is too high in the early years and the risk is great that over the term of the agreement customers will pay well over market prices for energy. With respect to the CRF, which is intended to mitigate the risk of over-market energy prices to customers, the mechanism is something of an improvement over the situation that existed with PSNH's past QF rate orders but, in its current form and with the filed prices, the protection is too limited and too remote. The evidence is also persuasive that the capacity price is too high in 2014 and 2015, the first and second years of the agreement, although reasonable over the remainder of the term. Similarly, the evidence is persuasive that the REC price to be paid as a percentage of the ACP is too high in the early years of the agreement, although reasonable over the remainder of the term. In addition, the volume of RECs purchased over the term is significantly higher than PSNH's reasonably projected renewable portfolio requirements over the term of the agreement. Furthermore, while the agreement would provide economic development benefits in and around the City of Berlin, as filed those benefits do not outweigh the considerable costs to PSNH's hundreds of thousands of other residential and business customers throughout the state. We discuss in detail below the evidence presented in this proceeding and explain the reasoning behind our conclusions. Finally, as

authorized by statute, we set forth the conditions necessary for us to find the agreement in the public interest and allow this project to move forward.

B. Background

Pursuant to RSA 362-F:9, we are asked to approve a multi-year agreement between PSNH and Laidlaw for PSNH's purchase of 100% of the energy, capacity and New Hampshire Class I RECs, produced by a new biomass facility. The facility will operate by converting the boiler of the now shuttered Burgess Mill in Berlin. PSNH's entry into the agreement is premised on our approving and allowing "full cost recovery of the rates, terms and conditions" of the PPA. The energy, capacity and REC purchases under the PPA would commence in 2014[32], the expected in service date of the facility, and continue for 20 years thereafter (that is, until 2034). PSNH proposes to recover PPA-related costs, which could be as much as $2 billion over the term of the PPA, through its default service rate. The Commission may authorize electric distribution companies to enter into multi-year purchase agreements with renewable energy sources for RECs

> ....in conjunction with or independent of purchased power agreements from such sources, to meet reasonably projected renewable portfolio requirements and default service needs to the extent of such requirements, if it finds such agreements or such an approach, as may be conditioned by the commission, to be in the public interest. RSA 362-F:9, I.

In determining the public interest, the Commission must find that the proposal is, on balance, substantially consistent with the following factors:

(a) The efficient and cost-effective realization of the purposes and goals of [RSA Ch. 362-F];

(b) The restructuring policy principles of RSA 374-F:3;

[32] Although the plant is currently expected to begin operation in 2014, we note that the actual In-Service Date and, hence, the effective date of the PPA is uncertain. In regard to the pricing terms we set forth *infra,* we adopt the definition of an "operating year" as defined in Section 1.45 of the PPA. In various instances in our analysis, certain pricing terms may be mentioned in connection with calendar year references. For purposes of clarification, the pricing terms for energy and capacity are intended to follow the "operating year" concept. With regard to RECs, the percentage of the ACP to be paid will also apply to operating years, while the ACP itself will change relative to calendar years.

(c) The extent to which such multi-year procurements are likely to create a reasonable mix of resources, in combination with the company's overall energy and capacity portfolio, in light of the energy policy set forth in RSA 378:37 and either the distribution company's integrated least cost resource plan pursuant to RSA 378:37-41, if applicable, or a portfolio management strategy for default service procurement that balances potential benefits and risks to default service customers;

(d) The extent to which such procurement is conducted in a manner that is administratively efficient and promotes market-driven competitive innovations and solutions; and

(e) Economic development and environmental benefits for New Hampshire. RSA 362-F:9, II(a)-(e)

C. Threshold Legal Issues

At the outset, we address a number of legal arguments raised in this proceeding. The Wood IPPs challenge the Commission's authority to approve the PPA and to provide for ratepayer recovery of the costs incurred under the PPA. Among other things, they contend that PSNH's obligation to purchase RECs does not persist after 2025 and they argue that the Commission may not approve contract provisions that would prevent a future Commission from altering prior orders under RSA 365:28. In addition, the OCA asserts that the CRF and the POA would violate RSA 378:30-a, while Staff contends that these provisions would violate the "used and useful" principle found in RSA 378:27 and 28. The OCA further contends that PSNH does not have the authority to directly purchase the Laidlaw facility.

1. Motion to Dismiss and Motion for Rehearing

Order No. 25,192 denied the Wood IPPs' motion to dismiss PSNH's petition for approval of the PPA. The Wood IPPs' motion for rehearing incorporated by reference their previously filed motion to dismiss. As framed in the motion for rehearing, the Commission lacks authority under RSA 362-F:9, I and RSA 374-F:3, V(c)[33] to allow PSNH's entry into the PPA and to provide

[33] In relevant part, RSA 374-F:3, V(c) provides that "[a]ny prudently incurred costs arising from compliance with the renewable portfolio standards of RSA 362-F for default service or purchased power agreements shall be recovered through the default service charge."

for recovery of the costs associated with the PPA through default service rates when the term of the PPA extends beyond 2025. The Wood IPPs argue that approval of the PPA would be an arrogation of legislative authority. Further, the Wood IPPs contend that the Commission lacks the statutory authority under RSA 365:28, which allows the Commission to alter its orders, to approve a PPA with change of law provisions that, according to the Wood IPPs, effectively prevents the Commission from revisiting its order approving the PPA and approving the pass-through of the associated costs.

In Order No. 25,192, we denied the Wood IPPs' motion to dismiss. The standard for ruling on such motions requires assuming all assertions made by the moving party are true and determining whether the requested relief may be granted. Decisions on motions to dismiss are made before a full factual record is developed. We pointed out in connection with our ruling that the Commission may condition its approval of the PPA and thus alter the operation of the PPA as well as PSNH's cost recovery under the PPA. While our ruling in Order No. 25,192 was, in procedural terms, preliminary, we do not conclude that it was incorrect.

a. Alteration of Commission Orders

In Order No. 25,192, we rejected the Wood IPPs' argument regarding the change in law provisions of the PPA and RSA 365:28. We find no "good reason," *see* RSA 541:1, to change our prior ruling. RSA 365:28 grants the Commission broad discretion in determining whether to alter its orders, but the Commission has never construed that grant of authority as a limitation on its authority to approve long term contracts. The Wood IPPs position would put every contract approved by the Commission at risk of being upended by a future Commission. The Wood IPPs cite no support for their position and we find no basis to adopt it for purposes of this case. Accordingly, we deny it.

b. Post 2025 Obligation

In their closing statement the Wood IPPs argue that:

> The Commission may only authorize entry into a contract that is designed to meet a reasonable projection of the purchasing utility's New Hampshire RPS compliance need as a function of the utility's reasonably projected default service load and the percentage compliance requirements explicitly set forth in RSA 362-F:3, and the Commission may only pre-approve prudently incurred costs incurred in meeting that compliance need. Wood IPPs Closing at 1.

The Wood IPPs maintain that under RSA 362-F:3 there is no REC requirement for a utility after 2025. *Id.* at 1-2. The Wood IPPs conclude that even if a distribution utility assumes that the Legislature will require utilities to purchase RECs after 2025, the distribution utility may not require its ratepayers to bear the risk of that assumption and the Commission has no authority under RSA 362-F:9, I to place such risk on ratepayers. According to the Wood IPPs, that risk must be borne by the utility or the developer.

PSNH, on the other hand, maintains that under RSA 362-F:3, the Class I REC standard for 2025 continues into the future unless changed. 1/25/11 Tr. at 46. According to PSNH, it does not make sense, from a business or legislative point of view, that the REC requirement would "hit a cliff" and go to zero in 2026 because that would essentially mean that renewable generation resources are not wanted when just the opposite was intended. PSNH further maintains that because RSA 362-F:3 contains a minimum RPS standard, it would be incongruous for the Legislature to provide, in effect that "[t]he minimum is this, and you can exceed this minimum, but we're going to make the minimum zero in 2026." Finally, according to PSNH, Item 3 of PSNH Exh. 9-Rev. 1 addresses the possibility that there might not be a requirement after 2025. PSNH also stated that a legislative change could be sought if the law is ambiguous and cannot otherwise be clarified. 1/26/11 PM Tr. at 40-41.

The minimum electric renewable portfolio standards are set forth in RSA 362-F:3:

> [f]or each year specified in the table below, each provider of electricity shall obtain and retire certificates sufficient in number and class type to meet or exceed the following percentages of total megawatt-hours of electricity supplied by the provider to its end-use customers that year, except to the extent that the provider makes payments to the renewable energy fund under RSA 362-F:10, II:
>
> | | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2025 |
> |---|---|---|---|---|---|---|---|---|---|
> | Class I | 0.0% | 0.5% | 1% | 2% | 3% | 4% | 5% | 6% | 16% (*) |
>
> . . .
> *Class I increases an additional one percent per year from 2015 through 2025.[34] . . .

On its face, RSA 362-F:3 does not specify the renewable portfolio percentages that would apply after 2025. Nor does RSA 362-F:9 limit the allowable term for a "multi-year purchase agreement" to meet RPS obligations. At the same time, RSA 362-F:5 requires that in 2011, 2018 and 2025 the Commission review the RPS program "in light of the purposes of this chapter and with due consideration of the importance of stable long-term policies," and report to the Legislature findings and recommendations on a number of issues, including "*increasing* the requirements relative to classes I and II beyond 2025" (emphasis added). RSA 362-F:5, IV.

In order to determine whether the Legislature intended that the obligation to obtain and retire certificates persists beyond 2025, we apply the principles of statutory interpretation employed by the New Hampshire Supreme Court. Inasmuch as RSA 362-F:3 does not contain an express RPS standard for the years after 2025, we are obliged to look elsewhere in RSA Chapter 362-F and to consider the words and phrases used, not in isolation, but rather within the context of the statute as a whole. *State v. Seymour*, No. 2009-678, 2011 WL 76770 at page 2 (N.H. March 1, 2011); *Petition of George,* 160 N.H. 699, 702 (2010); *Appeal of Pennichuck Water Works*, 160 N.H. 18, 27 (2010). We endeavor to give effect to the provisions of all parts

[34] In any year, if an electric service provider obtains and retires fewer RECs for a renewable energy class than the REC requirement calculated with reference to the specified percentages, the provider is obligated to pay an alternative compliance payment calculated with reference to the provisions of RSA 362-F:10, II-III.

of the statute, *Garand v. Town of Exeter*, 159 N.H. 136, 141 (2009), and we construe all parts of a statute together to effectuate its overall purpose and to avoid an absurd, illogical or unjust result or a result that would nullify to an appreciable extent the purpose of the statute. *In re Alex C.*, 13 A.3d 347, 350 (N.H. 2010); *Appeal of Johnson*, 13 A.3d 315, 318 (N.H. 2011); *Nashua School Dist. v. State*, 140 N.H. 457, 458 (1995). In addition, to the extent reasonably possible, we "construe the various statutory provisions harmoniously." *Nashua School Dist. v. State*, *supra* at 459.

We look first to the purpose of the statute:

> Renewable energy generation technologies can provide fuel diversity to the state and New England generation supply through use of local renewable fuels and resources that serve to displace and thereby lower regional dependence on fossil fuels. This has the potential to lower and stabilize future energy costs by reducing exposure to rising and volatile fossil fuel prices. The use of renewable energy technologies and fuels can also help to keep energy and investment dollars in the state to benefit our own economy. In addition, employing low emission forms of such technologies can reduce the amount of greenhouse gases, nitrogen oxides, and particulate matter emissions transported into New Hampshire and also generated in the state, thereby improving air quality and public health, and mitigating against the risks of climate change. It is therefore in the public interest to stimulate investment in low emission renewable energy generation technologies in New England and, in particular, New Hampshire, whether at new or existing facilities. RSA 362-F:1.

We must respect the purpose of the statute to "stimulate investment in low emission renewable energy generation technologies in . . . New Hampshire . . . at new . . . facilities" and the express legislative recognition of the "importance of stable long-term [RPS] policies." *See* RSA 362-F:5. The meaning and effect of these provisions are substantially undermined if we interpret the statute to mean that the Legislature, in enacting RSA 362-F in 2007, intended for the RPS program and the obligations of electric utilities thereunder to come to an abrupt halt in 2025. As 2025 approaches, the term of a multi-year purchase agreement could become so short that renewable energy projects could not realistically be financed and built. In addition, such an

interpretation would require reading into RSA 362-F:9, I a temporal restriction on multi-year agreements not stated therein, which would be inconsistent with the principle that statutes be interpreted as written without considering what the Legislature might have said and without adding language that the Legislature did not see fit to include. *State v. Seymour*, *supra*; *In re Alex C.*, *supra*.

Most persuasive as to legislative intent are the provisions in RSA 362-F:5 requiring Commission review of the RPS program in 2025 and reporting to the Legislature. If the Legislature intended that the obligations of electric utilities to obtain and retire certificates terminated in 2025, Commission review and reporting in 2025 would be a meaningless exercise. At the very least, it would be an illogical result to terminate the obligation given the stated purpose of the statute. Of special significance in RSA 362-F:5, moreover, is the phrasing of subsection IV, which requires the Commission to make a recommendation for a change to the class requirements relative to "increasing" the Class I and II percentages beyond 2025. The Commission is not instructed to make a recommendation concerning extending, reestablishing or lowering the Class I and II obligation to obtain and retire certificates but only to make a recommendation concerning increasing the level of the obligation. Similarly, subsection III talks of the "addition" of a thermal energy component and subsection V talks of the "introduction" of new classes; these and other subsections lead the reader to conclude that there is an ongoing obligation to obtain certificates and not that the program was intended to terminate in the absence of action by the Legislature. Consequently, the logical interpretation of the relevant statutory language is that the Class I and II percentages set forth for 2025 persist after 2025, subject to the prospect of the Legislature increasing the percentages based on the Commission's report and recommendation.

Inasmuch as RSA 362-F does not speak directly to the issue of whether the obligation to obtain and retire certificates persists beyond 2025, we look also to legislative history for guidance. *In re Juvenile 2005-212*, 154 N.H. 763, 765 (2007); *Hull v. Grafton County*, 160 N.H. 818, 824 (2010). We have not found legislative history dispositive on the specific issue, but we do observe certain statements, which suggest that the legislative debate was conducted in the context of achieving a goal of 25% renewables by 2025 and focused on the trajectory for achieving the Governor's "25 x 25" goal.

In her opening statement, Senator Martha Fuller Clark, one of the sponsors of HB 873, which created the RPS requirement, explained that the legislation "clearly fits in with the Governor's ["25 x 25"] plan to have us move our energy availability, in terms of generation, to come from . . . renewable resources." Senate Energy, Environment and Economic Development Committee Hearing Report, April 17, 2007, at 2. Prime sponsor Representative Suzanne Harvey then explained that the "RPS program starts at a baseline percentage of renewable required, starting in 2008, and goes out to 2025, going up in percent where we reach almost 24 percent of our energy coming from renewable." *Id.* at 4. There is nothing in the legislative history to suggest a legislative intent to terminate the obligation to obtain and retire certificates in 2025. Rather, there are references to the Commission reviews in 2011, 2018, and 2025 to make sure that the statute is doing what is expected, *Id.* at 7 (Department of Environmental Services Air Resources Director Robert Scott), and the recognition "that there may be the need to review this legislation in the future and make some changes or adjustments." *Id.* at 3 (Senator Fuller Clark). These statements are consistent with the view that the program and the percentage obligations set forth for 2025 persist unless and until the Legislature expressly acts to the contrary.

In conclusion, we find that PSNH could reasonably project that the Class I renewable portfolio requirement for 2025 will continue in effect thereafter unless and until changed. Such

an interpretation would achieve the greatest harmony in reconciling the statutory provisions. *In the Matter of Aldrich*, 156 N.H. 33, 35 (2007); *Soraghan v. Mt. Cranmore Ski Resort, Inc.*, 152 N.H. 399, 405 (2005).

2. RSA 378:27 and 28, 378:30-a, and Restructuring Law

The OCA asserted that because there is no matching of the customers who pay the over-market costs and those who benefit by the exercise of the POA, the CRF is akin to allowing construction work in progress (CWIP) in rates, *see* 2/1/11 Tr. at 141 and OCA Exh. 1 at 18. Under RSA 378:30-a, CWIP costs may not be allowed as an expense for ratemaking purposes until the construction project is actually providing service to customers. In addition, Staff argued that the CRF is contrary to the "used and useful" principle (*see* RSA 378:27-28) because, under the CRF, over-market payments are recovered through rates before the acquisition of the facility. 2/8/11 AM Tr. at 19-22; *see also* Staff Exh. 1 at 21-22. At hearing, Mr. McCluskey stated that the proposal to have customers pre-fund the purchase of the facility through payment of over-market energy costs violates the used and useful principle because customers would not receive any useful service from the asset until the end of the PPA term. *Id.* at 21.

The used and useful principle acts as a prohibition on what assets are included in rate base; even so, the Commission has discretion to decide what assets are "used and useful" under RSA 378:27 and 28. *Legislative Utilities Consumer Council v. Public Service Company of New Hampshire*, 119 NH 332, 343-344 (1979). Because we do not decide today whether the facility will or can be included in rate base or what its value in rate base should be, the used and useful principle is not implicated by the decision we make.

The statutory CWIP prohibition is related to but separate from the prohibition inherent in the used and useful principle. The anti-CWIP statute prohibits, among other things, the inclusion of CWIP in rate base and thus limits the Commission's discretion as a matter of law. *See*

Petition of Public Service Company of New Hampshire, 130 NH 265, 273-274 (1988). We do not view recovery from ratepayers of over-market costs as being equivalent to paying for CWIP or as contrary to a matching principle as a matter of law. Instead, the proper inquiry as to whether over-market costs should be allowed and, if so, to what extent, relates to the statutory public interest factors, addressed below.

The OCA also argued in its pre-filed direct testimony that under the State's restructuring law, PSNH does not have the legal authority to purchase the facility and, therefore, the law must be changed in order for customers to get any benefits from the CRF.[35] OCA Exh. 1 at 10. At hearing, however, the OCA witness conceded that if PSNH gets value from selling its rights under the POA and the CRF and never owns the plant, there would be no need to change the law. 2/1/11 Tr. at 180-181. We agree that because PSNH has the right under section 7.2.1 of the PPA to assign the POA and CRF for value to a PSNH affiliate or a third party, PSNH's exercise of the POA is not the only way for its customers to realize value from the CRF. Although PSNH's authority to exercise the POA and purchase the plant depends in part on the law in effect at the time of exercise, we do not conclude that the current restructuring law is a legal bar to approval of the PPA and the CRF.

D. Statutory Requirements and Factors

We next consider whether the PPA, either as currently proposed or as modified in accordance with the options listed in PSNH Exh 9-Rev. 1: (i) meets the reasonably projected renewable portfolio requirements and default service needs to the extent of such requirements as provided in RSA 362-F:9, I, and (ii) is, on balance, substantially consistent with the factors set forth in RSA 362-F:9, II. We must consider these factors because PSNH has requested approval

[35] At hearing, Mr. Long testified that the Company can purchase a generating facility and the issue is whether the facility can be included in rate base serving default service customers. 1/24/11 AM Tr. at 132.

of full ratepayer recovery of the costs of the rates, terms and conditions of the PPA. *See also Public Service Company of New Hampshire*, Order No. 24,965 at 17-18 (May 1, 2009) (Commission approval of the Company's agreement with Lempster Wind, LLC allowed PSNH to recover the prudently incurred costs of the agreement in its default service rates).

As explained below, the PPA meets PSNH's reasonably projected default service needs in terms of the amounts of the production of energy and capacity, but the amount of REC purchases to be made under the PPA exceeds PSNH's reasonably projected Class I REC requirements. The PPA, as currently proposed or with the modifications described in PSNH Exh. 9-Rev. 1, is not, on balance, substantially consistent with the factors set forth in RSA 362-F:9, II but, if properly conditioned, is substantially consistent with the statutory factors.

1. Renewable Portfolio Requirements and Default Service Needs

The Commission may approve a multi-year agreement for renewable energy and RECs if, among other things, the Commission finds the agreement meets the Company's "reasonably projected renewable portfolio requirements and default service needs..." RSA 362-F:9, I. The Wood IPPs argue in their post-hearing closing statement that PSNH failed to make a reasonable projection of its renewable portfolio requirements and default service needs for the period up to and including 2025 and did not make any projection of its renewable portfolio requirements and default service needs for the period 2025-2034 and thus did not meet its burden of proof. The Wood IPPs further maintain that no such projections are found in the record. Wood IPPs Closing Statement at 2. Staff argues as well that, as the petitioning party, PSNH has the burden of proof. Staff Closing Statement at 1. Staff focuses its argument on the projections of PSNH's renewable portfolio requirements. Staff Closing Statement at 3-5. Staff maintains that when the Class I RECs already under contract to PSNH and the Class I RECs produced by Schiller Station are taken into account, PSNH does not need to acquire additional RECs until 2016 to meet its

reasonably projected requirement. Staff points out that the PPA obligates PSNH to purchase all of the RECs produced by the facility as soon as it is operational which, Staff believes, could be as early as 2013. Staff contends that even after 2016, the RECs delivered by Laidlaw will exceed PSNH's "reasonably projected" requirement through 2023, assuming the rate of customer migration does not fall below the level just prior to the Company's filing. Staff asserts that during the first 10 years of the PPA, PSNH will purchase from Laidlaw 3 million more RECs than are needed to meet its RPS Class I obligation, a result that in its view will be very costly and not consistent with RSA 362-F:9, I.[36]

We find that there is sufficient evidence in the record for us to reach a conclusion regarding a reasonable projection of PSNH's Class I renewable portfolio requirement under RSA 362-F:9, I against which to weigh the REC obligations under the PPA. In so doing, we must estimate PSNH's default service needs.

a. Default Service Needs

Default service needs refer to the utility's need to supply its default service customers with power, i.e., energy and capacity, primarily. We first estimate the projected default service load, based on a delivery sales forecast, adjusted to reflect the "migration" of certain PSNH delivery service customers who elect to purchase their energy from competitive, third party suppliers and use PSNH for the delivery of electricity only. Next, we take into account the generation resources that PSNH owns or has under contract. Finally, we compare the projected energy load to the estimated energy and capacity purchases under the PPA.

Regarding the capacity needs of PSNH's default service customers, Wood IPPs Exh. 1 at 8 indicates that under all the scenarios presented, the PPA is not likely to result in any excess

[36] Staff contends that unlike the Lempster agreement, which provided for the sale of RECs to PSNH at favorable prices, the REC prices under the PPA are substantially above expected future market prices for Class I RECs and therefore PSNH is unlikely to be able to resell those RECs at compensatory prices.

capacity. As to default service needs, we accept the total of PSNH's delivery sales forecasts for the years 2010 through 2025, *see* Wood IPPs Exh. 1 at 9. To this we apply PSNH's growth rate of 0.5% for subsequent years.

We then apply a 31% migration rate to determine the default service load after migration of those customers who elect to buy energy from competitive suppliers. We find that 31% is reasonable, as it is based on data provided by PSNH and relied on by other parties in developing their testimony. In its initial filing, PSNH stated that the migration rate was approximately 30%. PSNH Exh. 4 at 4. In its pre-filed rebuttal testimony, PSNH stated that, as of July 2010, the migration rate being experienced was 31%. PSNH Exh. 7 at 24. PSNH criticized Staff's assumption that the migration level would continue to be 31% but offered no basis to conclude that the level would drop. Indeed, hearing testimony revealed that the migration levels had increased in the last quarter of 2010. According to a quarterly report recently filed with the Commission by PSNH, the actual migration rate was close to 35% in October, 34% in November, and 32% in December, 2010. 2/8/11 AM Tr. at 29. The City of Berlin's witness testified that, in his view, customer migration has peaked and will not continue to increase because the largest customers have already left and the cost to serve remaining customers is too great for competitive suppliers to be interested, 2/1/11 Tr. at 133-134. We do not conclude that these short-term fluctuations and projections are necessarily more representative of future conditions than the 31% migration rate and we thus accept 31% migration rate as reasonable for purposes of this case.

We rely on Wood IPPs Exh. 1 at 7, to estimate the amount of generation PSNH owns and that already under contract. The Wood IPPs' data was for 2014 and 2015; we assume for purposes of this order that PSNH will continue to own or have under contract this level of output for the years 2016 through 2034.

The projected output of the Facility depends on certain assumptions regarding the Facility's size and capacity factor, that is, how efficiently it operates over time. The record contains numerous permutations on these points, but the bulk of the testimony and cross examination focused on a plant of 63 MW net output with 80% capacity factor and a plant of 67.5 MW with 87.5% capacity factor. The lower assumptions produce 441,504 MWh per year or approximately 8,830,000 MWh over the 20 year term; the higher assumptions produce 517,388 MWh per year, or approximately 10,350,000 MWh over the 20 year term.

The resulting calculations for the period 2014-2034 are:

Total delivery sales	171,000,000 MWh
Energy service load with 31% migration	118,000,000 MWh
PSNH's owned/contracted generation	96,600,000 MWh
PSNH's need for energy before Laidlaw	21,400,000 MWh
Output at 63 MW/80% capacity factor	8,830,000 MWh
Output at 67.5 MW/87.5% capacity factor	10,350,000 MWh

Under either set of assumptions regarding output, PSNH needs to acquire significant amounts of energy from other sources. The PPA does not require PSNH to purchase energy in excess of its needs over the entire 2014-2034 period; nor does it require purchase of excess energy in any one year during this period. Accordingly, we find that the amount of PSNH's energy purchases under the PPA meets reasonably projected default service needs during the time the PPA is in effect.

b. Renewable Portfolio Requirements

We are also required to assess whether the Class I REC purchases to be made under the PPA "meet reasonably projected renewable portfolio requirements" which necessitates a similar analysis.[37] The projection starts with a forecast of PSNH's delivery service sales over the period

[37] For the projections, we rely on the following exhibits: Wood IPPs Exhibit 1 and Exhibit GRM-6 attached to Staff member George R. McCluskey's pre-filed direct testimony, Staff Exh. 1.

of time during which REC purchases are expected to be made under the PPA. Because renewable portfolio requirements are based on the total megawatt-hours of electricity supplied by PSNH to its end-use customers, pursuant to RSA 362-F:3, the delivery service sales must again be reduced to reflect 31% migration of PSNH delivery service customers who obtain energy from competitive third party suppliers. We multiply the projected MWhs of electricity to be supplied by PSNH to its default service customers in each of the forecast years by the Class I percentage specified in the table for each year to reach Class I REC requirements year by year as well as the total over the 20-year period.

We then account for the RECs otherwise available to PSNH to satisfy its RPS obligations. There are three sources of Class I RECs now available to PSNH: the Lempster Wind facility under a PPA with PSNH and the Smith Hydro and Schiller Station biomass facilities, both of which are owned by PSNH.

The parties disagree as to whether Class I RECs produced by PSNH's Schiller Station can be used to satisfy PSNH's Class I REC obligation. PSNH asserts that the RECs produced by Schiller Station cannot be used because the Commission, in *Public Service Company of New Hampshire*, Order No. 24,327 (May 14, 2004), approved a risk sharing mechanism[38] that, in its view, requires PSNH to sell the Schiller Station RECs to other market participants. PSNH Exh. 7 at 23-24; 1/24/11 AM Tr. at 85-86; 1/25/11 Tr. at 50-51 (Schiller Station RECs cannot be used for compliance with New Hampshire law until 2020, the end of the 15 year risk sharing mechanism); 1/26/11 AM Tr. at 64-67. The OCA and Staff disagree with PSNH's interpretation of Order No. 24,327, arguing that Schiller Station RECs are available to PSNH to meet New

[38] This mechanism provided a means for allocating, as between PSNH and ratepayers, the risks and rewards associated with the Schiller Stations incremental costs and incremental revenues. Order No. 24,327 was issued in response to a motion to reconsider Order No. 24,276 (February 6, 2004).

Hampshire Class I obligations at any time. 2/1/11 Tr. at 145-147; OCA Closing Statement at 3; 2/8/11 AM Tr. at 27-29; Staff Closing Statement at 4-5.

PSNH incorrectly interprets Order No. 24,327. The order does not require PSNH to sell the Schiller Station RECs to other market participants under all circumstances. Such a requirement is not an express term of the risk sharing mechanism and in fact the retention and retirement of the Schiller Station RECs is consistent with the express provision requiring "the sum of all incremental revenues, credits and cost avoidances achieved by PSNH, from all sources" to be included in the project's "annual incremental total revenue." Replacing a Class I REC that PSNH might have to purchase from Laidlaw under the PPA with one from Schiller Station is one type of "cost avoidance." *See* 2/1/11 Tr. at 146-147. Notably, although the mechanism expressly provided certain exclusions from "annual incremental total revenue," the cost avoidances from the use of Schiller Station Class I RECs are not among them. We thus regard the Schiller Station RECs as being available to satisfy PSNH's Class I renewable portfolio requirements.

In determining whether the Class I REC purchases to be made under the PPA "meet reasonably projected renewable portfolio requirements," there need not be an exact match in each year of the PPA between the Class I RECs expected to be produced by the Laidlaw facility and PSNH's unsatisfied renewable portfolio requirement. Doing so would not be realistic, as the REC requirement ramps up over time but a new facility brings on a large influx of renewable generation at the moment it becomes operational. REC agreements that limit purchases to the REC requirement for each particular year would make financing of these projects difficult and could, in effect, deter desirable renewable energy generation projects from being approved and built, a result that we find contrary to legislative intent. Instead, we view the REC requirement in the context of the 20-year period covered by the PPA.

To determine whether the PPA "meets" PSNH's Class I renewable portfolio requirements, then, the remaining REC obligation must be compared to the estimated Class I RECs produced by Laidlaw and which, under the PPA, must be purchased by PSNH. The number of RECs produced by the Facility depends upon its output, and we again look to the record, which focused primarily on a plant of 63 MW with 80% capacity factor, and a plant of 67.5 MW with 87.5% capacity factor.

The resulting calculations for the period 2014-2034 are:

Total delivery sales	171,000,000 MWh
Energy service load with 31% migration	118,000,000 MWh
Total Class I RECs needed	15,140,000 RECs
PSNH's Class I RECs from owned/contract generation	7,180,000 RECs
PSNH's need for Class I RECs before Laidlaw	7,960,000 RECs
Class I RECs produced at 63 MW/80% capacity factor	8,830,000 RECs
Class I RECs produced at 67.5 MW/87.5% capacity factor	10,350,000 RECs

Under either set of assumptions as to output, the Class I RECs produced by the Laidlaw facility will be substantially in "excess" of PSNH's Class I REC obligation: 870,000 excess at the lower output and 2,390,000 excess at the higher output.[39]

2. Public Interest Factors

In assessing the provisions of the PPA against the statutory public interest factors set forth in RSA 362-F:9,II, we look at contract specifics as well as the overall proposal, in order to evaluate whether the PPA as a whole complies with the statute. We need not give equal weight to each of the five factors, nor are we required to balance the factors in the same way as we did in *Public Service Company of New Hampshire*, Order No. 24,965 (2009) (approving Lempster Wind, LLC power purchase agreement) and *Public Service Company of New Hampshire*, Order No. 24,839 (2008) (approving Pinetree Power, Inc. and Pinetree Power-Tamworth, Inc. power

[39] The questions of what is an acceptable REC output for ratepayer recovery and a specific determination of the amount of "excess" Class I RECs are separate questions which we take up later on in our analysis.

purchase agreements). The energy and REC production from the Laidlaw facility will be much larger, the contract term longer, and the potential for ratepayer harm greater than was the case with the power purchase agreements we approved in those dockets. We find, as explained below that, on balance and subject to the conditions described in Section E., the PPA is substantially consistent with the following factors.

a. The efficient and cost-effective realization of the purposes and goals of RSA 362-F

This provision focuses on whether the proposed PPA efficiently and cost-effectively realizes the *purposes and goals* of the RPS statute; ultimately it is a balancing test that requires a weighing of the benefits of the PPA against its costs. We agree with PSNH and City of Berlin that the PPA efficiently realizes the statute's goals in that it provides fuel diversity to the generation supply through use of local renewable fuels and resources that serve to displace and lower regional dependence on fossil fuels, one of the goals stated in RSA 362-F:1. We also agree that the PPA, like other renewable resource projects, has the potential to act as a hedge against volatile fossil fuel prices, another goal set forth in the statute. Further, use of biomass technology will bring environmental and public health benefits to the state, as called for in RSA 362-F:1 while supporting the statutory goal of keeping "energy and investment dollars in the state to benefit our own economy."

The significant question for us is whether the PPA is a cost-effective way of serving these goals, given the potential for high contractual prices relative to the market. We conclude that, as filed, the agreement's energy price, capacity price in early years, REC price, and number of RECs PSNH must purchase pose too great a risk to PSNH's default service customers. Thus, we cannot find that the PPA as filed is a cost-effective means to achieve the statute's purposes. With the conditions set forth herein, however, the PPA would meet this test.

b. The restructuring policy principles of RSA 374-F:3

The PPA is consistent with the following restructuring policy principles set forth at RSA 374-F:3, notably system reliability (subsection I), open access to the transmission system (IV), environmental improvement (VIII), and increased commitment to renewable energy (IX). Many of the principles are not directly relevant to the PPA, such as customer choice (II), unbundling (III), energy efficiency(X), stranded costs (XII), regionalism (XIII), the Commission's processes (XIV) and competition timetable (XV). To the extent they are tangentially related, the PPA is certainly consistent with them.

The restructuring principles that raise greater concern are those implicated by the high rates contained in the PPA: benefits accruing to all customers (VI) and near term rate relief (XI).[40] The PPA raises the potential for significant rate increases relative to what they would be in future years without the PPA. Because all costs of the PPA are to be borne by default service customers alone, pursuant to RSA 362-F, there is potential that the rate consequences of the PPA as filed will encourage more customers to seek competitive supply, if the PPA prices are over-market, leaving the default service customers with an ever growing burden. We are not persuaded that the CRF provides adequate protection against these risks. The PPA as filed, therefore, is inconsistent with the restructuring principles of benefits to all customers and near term rate relief. With the conditions described in Section E, however, the PPA would be consistent with these principles.

c. The extent to which such multi-year procurements are likely to create a reasonable mix of resources, in combination with the company's overall energy and capacity portfolio, in light of the energy policy set forth in RSA 378:37 and either the distribution company's integrated least cost resource plan pursuant to RSA 378:37-41, if applicable, or a portfolio

[40] The principles addressing market forces in procuring default service (V) and full and fair competition (VII) are addressed at section D. 2(d) below.

management strategy for default service procurement that balances potential benefits and risks to default service customers

The focus of this provision is the extent to which the PPA is likely to create a mix of resources "in combination with the company's overall energy and capacity portfolio" and "in light of the energy policy set forth in RSA 378:37." PSNH's owned resources include the Merrimack coal units, the Newington oil unit, the Schiller Station coal and wood units, and several hydroelectric units. PSNH also purchases energy and capacity from hydroelectric, wood-fired and wind generators and from the market to meet its default service requirements. The addition of what will be the largest wood-fired facility in New Hampshire to PSNH's energy and capacity portfolio, which is largely dependent on fossil plants, serves the goal of energy diversity.

New Hampshire energy policy pursuant to RSA 378:37 is "to meet the energy needs of the citizens and businesses of the state at the lowest reasonable cost while providing for the reliability and diversity of energy sources; the protection of the safety and health of the citizens, the physical environment of the state, and the future supplies of nonrenewable resources; and consideration of the financial stability of the state's utilities." We find that the PPA is consistent with this policy insofar as it concerns the reliability and diversity of energy sources, safety and health, the physical environment, future supplies of nonrenewable resources and the financial stability of the state's utilities. We also find that the PPA is consistent with the Company's least cost plan, which expressly provides for the negotiation of a purchase power agreement under certain circumstances. As discussed below, however, the pricing provisions of the PPA as filed are not the lowest reasonable cost and our approval of the PPA is conditioned on changes to pricing terms that will render the PPA consistent with state energy policy.

d. The extent to which such procurement is conducted in a manner that is administratively efficient and promotes market-driven competitive innovations and solutions

The focus of this provision is administrative efficiency and promotion of competitive solutions. In Order No. 24,965 (May 1, 2009) in Docket No. DE 08-077, concerning PSNH's purchase power agreement with the Lempster wind facility, the Commission concluded that RSA 363-F:9 does not mandate the use of a Request for Proposals to acquire power and found the Lempster agreement, which was the product of negotiations between PSNH and Lempster Wind, LLC, to be consistent with RSA 362-F:9, II,(d). Similarly, we find the PPA in this proceeding, insofar as it is a product of negotiations between the parties, to be consistent with the statute. We note as well that, to the extent the PPA results in the use of an existing boiler and provides a vehicle for the development of community combined heat and power installations, it promotes efficient and innovative solutions.

e. Economic development and environmental benefits for New Hampshire

In addition to the environmental benefits for New Hampshire discussed above in connection with RSA 362-F:9, II(b) and (c), as the City of Berlin noted, the Laidlaw project will revitalize a shuttered mill in downtown Berlin. We find that cleaning and managing an industrial site that is now abandoned constitutes an environmental as well as an economic benefit of the project. The evidence also demonstrates that the PPA is likely to bring economic development benefits to Berlin and surrounding local areas, particularly in the form of direct, indirect and induced jobs. Edrest contested this point by citing potential harms from the Laidlaw project, including negative impacts on the value of city assets, tourism and existing Class III REC facilities, and the risk of fire but we find the evidence offered by the economic expert testifying on behalf of PSNH, together with that presented by the City of Berlin, to be more persuasive. The evidence is less clear regarding significant economic development benefits to the rest of

New Hampshire, particularly in light of the risk to PSNH's default service ratepayers statewide under the PPA as filed.

The risks to ratepayers are a function of over-market PPA pricing and REC volumes that are too high. As filed, the costs of the PPA outweigh the economic development and environmental benefits of the project. However, in light of conditions we impose that reduce ratepayer exposure to over-market pricing and unneeded REC purchases, the PPA is consistent with this factor.

E. Conclusions and Conditions

The essential pricing terms of the PPA as filed, i.e., the prices for energy, capacity, and RECs are not reasonable based on the evidence presented. Furthermore, the open-ended obligation to purchase RECs exceeds PSNH's reasonably projected needs while the absence of a ceiling on the facility's output poses additional risks for ratepayers. Weighing and balancing the costs of the PPA as filed, which could be as much as $2 billion over the term of the PPA, against its benefits, we conclude that the costs to PSNH's hundreds of thousands of residential and business default service customers throughout the state outweigh the environmental and economic development benefits. Accordingly we are unable to find that the PPA as filed is in the public interest. We would, however, approve a modified PPA complying with certain conditions that mitigate risk to PSNH's default service customers and reduce total payments to approximately $1.3 billion over the term of the PPA. We explain below our decisions on the terms of the PPA and set forth the conditions relevant to those terms.

1. Base Energy Price

We find that the PPA base energy price of $83 per MWh is too high in the early years and the risk is great that, over the term of the PPA, customers will pay well above market prices for energy. PSNH did not vouch for the reasonableness of the PPA base energy price by offering

forecasts or projections of market energy prices, though it did prepare an energy price analysis in 2008 for the purpose of evaluating the POA. That analysis included a market energy price projection of $66.63 per MWh for 2014. Staff Exh. 1 at 25-26.

PSNH relied on the structure of the PPA, and the CRF and POA in particular, to protect customers from the risk of over-market energy payments. Staff, on the other hand, provided a long-term market energy price projection that assumed $53.12 per MWh for 2014, the first year of the PPA. Attachment GRM-12 to Staff Exh. 1.[41] The consultant for the City of Berlin prepared his testimony relying in part on a Ventyx Fall 2010 Power Reference Case/Electricity and Fuel Price Outlook energy price forecast for the Northeast Region, [42] which included an average annual market energy clearing price, in constant 2010 dollars, for the Northeast market area for 2014 which, in nominal dollars, is close to Staff's energy price projection. Staff Exh.12C, Table B-4.[43] We find these forecasts of near-term market energy prices to be a good indicator of the market in the short term, against which to assess the reasonableness of the base Energy price.

Item 4 of PSNH Exh. 9-Rev. 1 sets forth a base energy price of $75.80 per MWh, which is the product of a calculation employing a $30 per ton base wood fuel price, down from $34, and a wood price conversion factor of 1.6, down from 1.8, after the initial year. We find that lowering the base wood fuel price per ton from $34 as set forth in the PPA to $30, as identified in PSNH Exh. 9-Rev. 1, is reasonable and we condition our approval of the PPA on its adoption. This more closely approximates the current price of wood at Schiller Station. 1/24/11 AM Tr. at 94. We also find that lowering the wood price conversion factor from 1.8 to 1.6, as indicated in

[41] Staff's projections were based on the same approach PSNH used in its 2009 analysis, i.e., NYMEX forward energy and natural gas prices. 2/8/11 AM Tr. at 31.
[42] We note that the City of Berlin's witness, using a selection of forecasts of different vintages and from different sources, was able to construct a case that the PPA could, under certain circumstances, be under-market.
[43] The figures in Table B-4 are based on 2010 constant dollars. This conclusion remains accurate even assuming a reasonable inflation rate of 2.5%.

PSNH Exh. 9-Rev. 1, is reasonable,[44] but, in order to be consistent, a 1.6 conversion factor should also be used to establish the initial base energy price. We find that the resulting base energy price of $69.80, which represents a 16% reduction from the base energy price of $83 per ton set forth in the PPA, is just and reasonable over time inasmuch as it comports with long-term forecasts in the record. We condition our approval of the PPA on its adoption and use of the 1.6 conversion factor going forward.

The OCA and the Wood IPPs both argued that the Commission should reject the WPA mechanism that is part of the energy pricing provision set forth in section 6.1.2 of the PPA. The OCA argued that the WPA is not a true market-based price because it relies on the prices paid by just one buyer in the market, PSNH, for use at its Schiller Station. The OCA also expressed concern that a WPA based on Schiller Station prices could put upward pressure on wood prices generally and increase costs of energy at both Schiller Station and the Laidlaw facility. OCA Exh. 1 at 11. The Wood IPPs similarly contended that there is no connection between the cost of fuel at Schiller Station and the cost of wood fuel at the Laidlaw facility and, therefore, little connection between the WPA and its purpose of compensating Laidlaw for changes in its fuel costs. The Wood IPPs maintained that Laidlaw is able to manage its own fuel risk and does not need the WPA. Wood IPPs Closing Statement at 6.

Fuel adjustment provisions are commonplace in the energy utility business. While the WPA may not track wood prices actually paid at the Laidlaw facility, it is a reasonable proxy inasmuch as the wood market "basket" from which wood for both Schiller Station and the Laidlaw facility are drawn are reasonably proximate and potentially overlapping. In addition, the wood prices paid by PSNH at Schiller Station are subject to the full procurement control of

[44] Staff stated that the 1.8 conversion factor does not accurately reflect the operating characteristics of the facility. 2/1/11 Tr. at 227.

PSNH under the Commission's general supervision. Consequently, we accept the use of the WPA in calculating the energy price. Because the WPA insulates Laidlaw from a certain level of risk it also serves as an additional basis for our reduction to the base energy price.

We further find that the CRF, which is intended to mitigate the risk of over-market energy prices to default service customers, is an improvement over the situation that existed with PSNH's past QF rate orders but, in its current form and with the filed prices, nevertheless provides protection to PSNH's default service customers that is too limited and too remote. The fair market value of the facility at the time the purchase option may be exercised acts as a cap on the value of net over-market energy costs paid by PSNH's default service customers to be returned to them through the CRF. The risk to PSNH's default service customers is that if the amount of over-market payments in the fund is greater than the fair market value of the facility, customers would not in fact realize the full benefit intended to be captured by the CRF. Item 3 of PSNH Exh. 9-Rev. 1, which would include the net value of "Excess NH Class I RECs" in the calculation of the CRF, does not adequately mitigate this risk.

PSNH did not present any projection of what the fair market value might be and acknowledged that the fair market value at the end of the 20-year term could turn out to be zero, *see* 1/24/11 AM Tr. at 82-83, although PSNH thought that very unlikely. *Id.* at 138. PSNH pointed to future conditions in the energy markets, the facility's value as a renewable generator, and its capacity factor as being important determinants of fair market value. *Id.* at 135-136. It is clear that the future state of competition in the electricity generation markets and legislative developments regarding environmental attributes and carbon reductions will have an important bearing on fair market value. Staff Exh. 1 at 20. Other factors such as the future level of taxation of the facility and its physical condition could also affect its fair market value. In Section 6 below we describe a condition that builds on the CRF as proposed.

2. Capacity Prices

PSNH had available long term capacity price projections prepared by David Errichetti, an employee of a Northeast Utilities affiliate, and Levitan and Associates, a consultant on the Company's behalf during its negotiations with Laidlaw, that indicated a projected capacity price based on Forward Capacity Market auctions of $2.95 per kW-month. Attachment GRM-14 to Staff Exh. 1. We find these forecasts of near term market capacity prices to be a good indicator of the market prices for capacity against which to assess the reasonableness of the capacity price in 2014 and 2015.

We find that the PPA capacity prices are reasonable over time but that $4.25 per kW-month in 2014 and 2015 set forth in the PPA is too high, in light of testimony regarding the ISO-NE Forward Capacity Market auctions. Accordingly, we find it reasonable to condition our approval of the PPA by requiring that the capacity prices be lowered to $2.95 per kW-month for the first two years following the In-Service Date.

3. REC Prices

The REC prices in the PPA, which are discounted from the ACP, are reasonable over time, but a discount to 80% of the ACP in 2014 and 2015 is not supported by the evidence. Paying 80% of the ACP results in an estimated NH Class I REC price of $67.29 in 2014 and $68.97 in 2015.[45] These prices are much higher than the current market price for NH Class I RECs of approximately $20 per REC. *See* OCA Exh. 1 at 5-6 and Attachments KET 5,6, and 7; *see also* 1/24/11 PM Tr. at 28 and Wood IPPs Exh. 17. If one escalates that $20 price by 2.5% per year through the year 2015, as PSNH did in October 2010 in Docket No. DE 08-103 (*see* Wood IPPs Exh. 17), the PPA REC prices for 2014 and 2015 are still much higher than

[45] These figures are derived by applying the PPA discount to the 2010 New Hampshire Class I ACP of $60.93, see www.puc.nh.gov/Sustainable%20Energy/Renewable_Portfolio_Standard_Program.htm and OCA pre-filed direct testimony at 5, inflated by 2.5% per year for four and five years.

anticipated near term market prices. While we accept that, all else being equal, New Hampshire Class I REC prices may increase in the future due to supply and demand conditions in the REC markets, the PPA REC pricing for 2014 and 2015 is, nevertheless, unreasonable.

Accordingly, we condition our approval of the PPA on an adjustment of the schedule of proposed discounts such that the payment will be 50% of the ACP in years 1 and 2, followed by five years at 80%, five years at 75%, five years at 70%, and the last three years at 50%. We are not persuaded that New Hampshire Class I REC prices will be significantly above current market amounts for some time, hence our decision with respect to years 1 and 2. However, it is reasonable to conclude from the record that REC prices will tend toward the ACP over time and, in that context, the discounts from the ACP proposed in the PPA after the first two years are reasonable and redound to the benefit of ratepayers.

4. REC Volume

As discussed *supra,* PSNH's reasonably projected Class I REC requirement is 7,960,000, or approximately 8 million certificates, over the 20-year term of the PPA. Given the increasing REC obligation over time, in the early years of the agreement the RECs generated by the project will be in excess of the statutory requirement while in the later years the RECs generated by the project will be less than the statutory requirement. We find that it is in the public interest pursuant to RSA 362-F:9 to approve a multi-year purchase agreement that levelizes the REC purchase requirement over time. Accordingly, we condition our approval on establishment of the annual REC purchase obligation at a ceiling of 400,000 certificates, which we derive by dividing the 8 million total certificates needed by the 20-year term of the PPA. Additional RECs produced by Laidlaw could be purchased by any entity requiring RECs, at market prices or pursuant to a separate contract that Laidlaw might negotiate with a buyer.

5. Energy Output

The PPA as filed is effectively an outputs contract that requires PSNH to purchase the entire output that Laidlaw generates. While the PPA sets forth summer and winter capacity ratings, it does not expressly limit the output PSNH must purchase. In order to limit ratepayer exposure, we find it reasonable to specify PSNH's annual obligation to purchase energy.

We accept the maximum net contract quantity set forth in PSNH Exh. 9-Rev. 1 of 67.5 MW. As for the capacity factor, there were a number of figures used in the record, ranging most often from 80% to 87.5%, for purposes of various calculations. Of course, over time the capacity factor will be determined by actual results and it would not be unexpected to see a capacity factor in excess of 90% at times. It is not our purpose to forecast an actual capacity factor but to select a capacity factor for purposes of setting the ceiling on the annual energy output that PSNH is obliged to purchase from Laidlaw under the PPA. The 85% capacity factor used by PSNH in various analyses of the PPA[46] is within the range of the capacity factors used by the analysts in this proceeding and is reasonable to adopt for these purposes. A net capacity of 67.5 MW and a capacity factor of 85% would yield energy production of 517,388 MWh per year. Given the likely variations in net output and capacity factor under actual operating conditions, and to constrain the potential impact on ratepayers, we condition approval of the PPA on an annual output purchase obligation of 500,000 MWh. Additional output could be purchased by any market participant, at market prices or pursuant to a separate contract that Laidlaw might negotiate with a buyer.

[46] Large pre-filed direct testimony at 5,13; Staff Exh. 7, Attachments 3-7; and OCA Exh.1, Attachment KET-15, Bates page 45, line entitled, "Annual Energy Production (MWh) 85% CF".

6. Cumulative Reduction Factor

As discussed above, the CRF is a step in the right direction in terms of mitigating risk to customers and seeking to avoid the situation that occurred with rate orders approved by the Commission in the 1980s, which resulted in PSNH customers paying rates over two decades that were more than $1 billion over market prices, but the protection is too limited and too remote as proposed. In addition to the conditions relative to energy, capacity and REC prices, and limitations on the quantity of energy and RECs that PSNH is required to purchase, we find it necessary to impose an additional condition, one that reasonably assures that PSNH's customers will receive, through the CRF under Article 6.1.3 of the PPA, the value of the facility anticipated through PSNH's purchase option under Article 7 of the PPA.

As discussed during the hearings, the level of CRF at the end of year 20 could be greater than the fair market value of the facility at that time, in which case PSNH customers would not be fully "compensated" under PSNH's approach for the over-market payments over the term of the agreement. To better protect the interests of customers, we will cap the level of the CRF on a cumulative annual basis at $100 million, a level that reasonably compares to testimony in the record as to the potential future value of the facility.[47] To the extent that the accumulated account exceeds $100 million in any year, the overage will be credited against the energy price paid in the following year. This mechanism has the salutary impact of reducing risk to customers over time in the event PPA prices are well above market prices by effectively matching the level of the CRF to a prospective value of the facility. Further, through this mechanism customers would see the benefit of mid-course or late-course downward adjustments in the energy price if it turns out that the PPA is significantly over-market.

[47] At hearing a range of future values of the Facility was discussed, from the possibility of no value, *see* 1/24/11 AM Tr. at 82-83, to $120-$135 million depending on the capacity rating assumed, *see* 2/1/11 Tr. at 21-22.

7. Retention of Commission Jurisdiction

According to PSNH, the PPA is a wholesale power agreement subject to FERC jurisdiction and will be filed as a FERC tariff. PSNH also requests a Commission decision "approving and allowing for full cost recovery of the rates, terms and conditions" of the PPA. This raises the question of the extent to which such full cost recovery by PSNH would be self executing and beyond the authority of the Commission to regulate in the future. PSNH has stated that Commission approval of the PPA would authorize PSNH to administer routine matters under the PPA without further approval by the Commission. Nonetheless, PSNH has assured us that to the extent there are material discretionary actions to be taken by PSNH in performing under the PPA, such as PSNH's exercise or transfer of the POA, transfer of the CRF, transfer of the Right of First Refusal,[48] or incurrence of expenditures under Article 8 of the PPA, PSNH's actions regarding such discretionary actions would remain subject to traditional Commission oversight to ensure the prudence of the Company's actions. *See also* RSA 374-F:3,V(c) (acknowledging recovery of *prudently incurred* costs regarding purchased power agreements through the default service charge). To avoid doubt about whether PSNH's assurance on these points is enforceable, we require as a condition of our approval that the PPA be revised to add a provision that expressly recognizes the Commission's retention of such traditional regulatory authority in such circumstances.

8. Identification of substituted parties to the PPA and POA

The new Laidlaw-related entities proposed to be substituted for the parties currently identified in the PPA should, of course, be correctly identified in a revised PPA, as appropriate.

[48] PSNH's exercise of the Right of First Refusal would be a similar discretionary act that requires the Commission's approval.

F. Pending Procedural Issues

1. Copyright and Confidentiality Issues Regarding Publications Used by Mr. Sansoucy

During the course of the hearings, there was debate over the proper treatment of two publications involving market protections relied on by City of Berlin witness George E. Sansoucy. The two publications are "Power Reference Case, Electricity & Fuel Price Outlook, Northeast Region, Fall 2010" by Ventyx Advisors and "Natural Gas Price Outlook" by Energy Solutions, Inc. After protracted debate, the documents were distributed to the Commission, parties and Staff but under restrictions requested by the City of Berlin based on copyright concerns, such as numbered copies to be returned at the conclusion of the proceeding and a prohibition against photocopying. The data and portions of the text of the Ventyx Fall 2010 study, which was marked for identification as Staff Exhibit 12C, was the subject of both written and oral testimony for which counsel for the City of Berlin did not request a sealed record.

At the close of the hearings, the OCA objected to the confidential treatment accorded Staff Exhibit 12C. The OCA argued that to the extent confidentiality might have been appropriate at the start, it appeared to have been waived by extensive excerpts of the report put into the public record. 2/9/11 Tr. at 144-145. Counsel to the City of Berlin argued that the excerpts in no way constituted a waiver of confidentiality, as he understood that the material was under copyright restrictions and could not be publicly disseminated in full. 2/9/11 Tr. at 150. The Commission instructed the parties and Staff to see if agreement could be reached on this issue, 2/9/11 Tr. at 145, but no resolution was reported.

In order to address whether Staff Exhibit 12C should be treated as a confidential document, it must be clear what is being requested, as in our view the request for confidential treatment is a misnomer, at least as it applies to Commission practice. The City of Berlin stated

that copyright restrictions were its concern, and that it was bound by terms imposed by the publisher not to disseminate the materials without permission. Though the City of Berlin suggested it was working to gain permission for release of the documents, counsel for the City could only relate that he believed his witness placed telephone calls, perhaps a week earlier and that in the past he understood such requests were not successful. 1/25/11 Tr. at 30-31. Though he continued to refer to a need for confidential treatment, counsel for the City of Berlin stated that the data and text within the report were not confidential, it was only the copyright restrictions that were of concern. 2/9/11 Tr. at 160.

We find that the use of the materials in written and oral testimony was appropriate and, because the City is not seeking to have the transcript records sealed, the OCA's request that the material not be deemed confidential is moot. Though we are not redacting the document or transcript references to the document, we will continue to protect the Ventyx report from public dissemination by prohibiting the photocopying of the report or posting it on our website. Further, to the extent that copies remain in the possession of parties, Staff or the Commission, they shall not be copied or further disseminated. To the extent parties have agreed to return copies to the City of Berlin, they shall do so at the conclusion of all appeals of this matter. Of course, one copy will remain in the Commission's official files. We will not, however, grant the City of Berlin's request that we block the public from reading the full report at the Commission. 2/9/11 Tr. at 160. Any person who seeks to come to the Commission and read any or all of the report is free to do so.

2. Confidentiality Issue Regarding Mr. Sansoucy's Files

Counsel for the City of Berlin requested confidential treatment of the personal files used by City of Berlin witness Mr. Sansoucy in preparing his testimony, which had been requested in discovery propounded by the Wood IPPs. We took the request under advisement. 1/24/11 AM

Tr. at 38. Because the files were never produced for *in camera* review, were not introduced as exhibits and were not referred to in cross-examination, the request is moot.

3. Motion to Strike Portions of Testimony of Mr. Sansoucy

At the start of the hearings, the OCA noted that it filed that morning a Motion to Strike significant portions of the rebuttal testimony of Mr. Sansoucy, City of Berlin GES Exh. 3, as in the OCA's view the testimony was not proper rebuttal and it had not been able to do discovery on the information contained, as the procedural schedule did not allow for discovery on rebuttal testimony. The Wood IPPs and Staff concurred in the OCA request; Staff offered that if the Commission were to allow the testimony, the parties and Staff would need a delay in the hearing to undertake discovery on Mr. Sansoucy's assertions. 1/24/11 AM Tr. at 43. PSNH argued that the testimony was perhaps duplicative of issues covered in Mr. Sansoucy's direct testimony but nevertheless was fair rebuttal and should be allowed. 1/24/11 AM Tr. at 45-46. Berlin also asserted that the testimony was proper rebuttal. 1/24/11 AM Tr. at 47.

The information requested to be stricken included Mr. Sansoucy's testimony supplementing his views regarding siting of the Laidlaw project, his critique of Staff's testimony regarding capacity markets, issues he believed the OCA and Staff should have addressed regarding energy pricing, his analysis of certain studies on natural gas and electric markets, his views regarding REC prices and obligations in the PPA, his view regarding the CRF, and his position on the intended output of the plant. After arguments, we took the matter under advisement and after a recess granted the Motion, with the exception of item 12E regarding natural gas and electric markets, which we held in abeyance pending further consideration. 1/24/11 PM Tr. at 8-10.

Our decision to strike the testimony delineated by the OCA was based on our need to adhere to a fair standard of conduct for all participants, and avoid unfair advantage or surprise by

a party who deviates from the process set forth at the outset of the proceeding. We further note that the proceeding was considerably delayed and made more contentious by Mr. Sansoucy's decision to include information in his rebuttal that was essentially direct testimony. Were he someone unfamiliar with the Commission's hearing process, the error might have been understandable and a remedy might have been crafted. Mr. Sansoucy holds himself out to be an expert in the state and federal energy regulatory issues, with experience in numerous jurisdictions. *See* Resume of Mr. Sansoucy, City of Berlin GES Exh. 2. In light of his years of participation before this Commission and similar regulatory bodies, it is unacceptable to allow Mr. Sansoucy to file what is effectively direct testimony, after the opportunity to put that testimony to the discovery process. For that reason we struck the testimony as detailed in the Motion of the OCA.

Item 12E, which we held in abeyance, addressed Mr. Sansoucy's opinions regarding natural gas and electric markets. As the hearing progressed, the issue of the future of electric and gas markets was a significant issue, and there was considerable discussion regarding the assumptions made by Mr. Sansoucy, Staff and PSNH regarding electric and gas market futures. Though the record would have been far clearer and the proceedings less contentious if Mr. Sansoucy had introduced these issues in a timely fashion, we nevertheless will allow the pages in question to be admitted because they are relevant and because there was an opportunity to explore them during hearing.

4. Requests to Take Administrative Notice

There were four requests that the Commission take "administrative notice" of certain documents during the course of this docket. Administrative notice, also referred to as official or judicial notice is governed by RSA 541-A:33, V and VI as well as N.H. Admin. Rule, Puc 203.27. The Commission took the requests under advisement.

Administrative notice is a tool that a tribunal may use to make a proceeding more efficient, by allowing certain facts, records or official codes to be made part of the record without requiring a witness to authenticate the information. The example often given is the fact that water freezes at 32 degrees F; if noticed, a party need not call a scientist to testify to the point at which water freezes, it simply becomes a fact on which the tribunal may rely. Notice of facts of this sort are authorized by RSA 541-A:33, V(c) and Puc 203.27(a)(3). The requests for administrative notice in this case, however, fall under Puc 203.27(a)(2) which requires us to take administrative notice when a party presents "the relevant portion of the record of the proceedings before the commission." We take the four requests in turn.

OCA had asked that the Commission take administrative notice of the SEC docket on the Laidlaw project, Docket No. 2009-02 though noted that it had been denied access to the confidential portions of that docket. 2/9/11 Tr. at 154. In its closing, the OCA specifically asked that the Commission not take administrative notice of the SEC proceedings because of its limited access to the record. OCA Closing Statement at 6. The SEC is a separate and distinct entity and thus we have no authority to take administrative notice of that docket, as the statute authorizes notice of "the record of proceedings before the agency." *See* RSA 541-A:33, V(b). Our rule is similar. Thus, we deny the request to take administrative notice of the SEC docket.

The OCA asked that the Commission take administrative notice of the proceedings in DE 08-077 regarding the PPA between PSNH and the Lempster wind project. 2/9/11 Tr. at 154. Counsel to the City of Berlin questioned the relevance of the docket, as Lempster was a wind and not a biomass project, but did not actually oppose the request. 2/9/11 Tr. at 155. The OCA has not asked us to take notice of a particular exhibit or portion of the record, as required by our rule, but rather to effectively admit the entire Lempster docket into this one. We find no requirement

to do so under our rules and no efficiency gained in admitting the entirety of the Lempster docket as an exhibit in this case. We therefore deny the request.

The OCA also asked that the Commission take administrative notice of the proceedings in DE 03-166, the docket in which the Commission approved PSNH's conversion of Schiller Station to biomass. 2/9/11 Tr. at 155. Again, the request is not for a particular portion of the docket but the entire file. For the reasons cited above, we deny the request.

Commission Staff suggested that the Commission may want to take administrative notice of a report prepared by Synapse entitled Avoided Energy Supply Costs in New England, 2009 Report. The report was referenced in these proceedings, and small portions were excerpted, though the full report was never introduced into evidence. The full report was made an exhibit in Docket DE 09-137 regarding distributed energy resources. 2/9/11 Tr. at 153. We find that the Synapse report constitutes a relevant portion of the record of another Commission proceeding and administrative efficiency is gained by noticing it in this docket. Pursuant to Puc 203.27(a)(2), we will take administrative notice of the Synapse Report.

5. Admissibility of Exhibits

There were challenges to the admissibility of three documents that had been marked for identification and discussed through the course of the hearings.

The OCA opposed the admission of City of Berlin Exhibit 3 attachment 11,[49] which is a table created by Mr. Sansoucy entitled Laidlaw Berlin Biopower PPA and Market Price Forecast. The OCA challenged the admission of the table on two grounds: it was late filed (revising a previous table) and Mr. Sansoucy testified he could no longer locate the data used to create the

[49] The page is variously referred to as City of Berlin Exhibit 10 (the heading Mr. Sansoucy typed at the top of the page), Exhibit 10 Revised (the handwritten heading the City of Berlin added to the top of the page), Exhibit 11, as a new table marked Exhibit 10 had been created by Mr. Sansoucy which was not the same as the initial Exhibit 10 or Exhibit 10 Revised. None of them, however, are exhibits, but rather are attachments to Mr. Sansoucy's rebuttal testimony, which is City of Berlin GES Exh. 3.

document and thus couldn't fully explain the calculations. The Wood IPPs and Staff supported the request. The City of Berlin conceded that the underlying data was not available but argued that the document should be admitted though the weight given it may be lessened as a result. PSNH stated that, in this and all challenges to exhibits, it was best to let everything into the record. 2/9/11 Tr. at 147-152.

We share the concerns of the OCA, Staff and the Wood IPPs regarding this document. The opportunity for meaningful cross-examination of a document is critical; without the ability to probe the basis for a witness's conclusions, particularly on complex matters such as these, there is no reason for submission of a document. Mr. Sansoucy has testified before numerous tribunals and should understand the need to demonstrate the sources and assumptions used in his calculations. Because he could not locate the data on which he developed attachment 11, we find the document provides no value and thus will not admit it into the record.

The OCA also opposed admission of Staff Exhibit 13C, which consists of Ventyx tables for certain market pricing for Fall 2009 and Spring 2010. The OCA argued that the tables are presented on a stand-alone basis, with no text to explain the assumptions contained therein. Staff concurred in the request, noting that it marked the document for identification but did not believe it should be introduced. 2/9/11 Tr. at 144-145. We have admitted similar evidence into the record but, without a witness who can set forth the assumptions that led to the results, there is a valid claim about the appropriate weight to be accorded such evidence. Thus, we will admit Staff Exhibit 13C and accord it the weight appropriate under the circumstances.

Staff objected to the admission of certain testimony of PSNH witness Dr. Shapiro regarding the news account that an unnamed business would likely locate at the Laidlaw project site, as well as a reprint from the *Berlin Daily Sun* regarding this company's plans, marked for identification as PSNH Exhibit 10. 2/9/11 Tr. at 142. Staff argued that there had been no

opportunity to probe the implications of the announcement or Dr. Shapiro's opinions regarding the announcement as the account contained little factual information. The OCA was not opposed to the *Berlin Daily Sun* article being admitted, though given little weight; the OCA supported Staff's request that Dr. Shapiro's testimony on this point be stricken. 2/9/11 Tr. at 143. We find no basis to block admission of the news account or Dr. Shapiro's testimony regarding the announcement. We recognize that the article cannot be relied upon as a guarantee that a new company will in fact operate on the site, but consider it relevant that at least one company may be considering locating next to the Laidlaw plant. The Staff request to strike portions of Dr. Shapiro's oral testimony and block admissibility of PSNH Exhibit 10 is denied.

6. Edrest Request to Reopen Record

On March 14, 2011, after the close of the record, Edrest filed a letter suggesting that the Commission should reopen the record and allow further discovery regarding the "ownership structure" of the Laidlaw project, Laidlaw's intention to expand the Project's capacity by "adding 5 MW" and plans to replace a used turbine with a new one. According to Edrest, the Commission should assess the revenue impacts to Laidlaw, inquire whether Laidlaw "has offered a newly structured price pertinent to the PPA" and explore whether the new turbine will result in the project having greater value at the end of the 20 years.

PSNH objected on March 15, 2011, noting that the possibility of a corporate reorganization and an increase in capacity were known and addressed during the Commission's hearings and do not warrant additional discovery. In addition, according to PSNH, Laidlaw's plan to purchase a new steam turbine rather than use the old one does not impact the Commission's analysis of the PPA.

We agree with PSNH that these issues do not warrant reopening of the Commission record. The capacity of the facility is relevant to consideration of the PPA but the potential 75

MW gross (67.5 MW net) output was explored in the hearings and is discussed in this order. Though corporate restructuring of the project was known to the Commission, it is not relevant to our determination as to whether the PPA is in the public interest. Further, while a new rather than used steam turbine may change the economics of the facility, our evaluation of the PPA is based on the public interest factors set forth in RSA 362-F:9, which do not include assessing the capital or operating costs of a renewable generation facility. Edrest's request to reopen the record, therefore, is denied.

Based upon the foregoing, it is hereby

ORDERED, that the PPA as filed is not in the public interest; and it is

FURTHER ORDERED, that, the PPA is approved on the condition that PSNH files a revised PPA complying with the terms set forth herein within 30 days of this order.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of April, 2011.

Thomas B. Getz
Chairman

Amy L. Ignatius
Commissioner

Attested by:

Lori A. Davis
Assistant Secretary

PUBLIC UTILITIES COMMISSION

DE 10-195

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

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

Order Granting Conditional Approval

Partial Dissenting and Concurring Opinion of Commissioner Below

While I largely agree with the analysis and conclusions of the Commission majority in this case, I respectfully dissent with regard the interpretation of RSA 362-F:3 and their conclusion that the percentage compliance obligation set forth in that statute persists beyond 2025, as well as the condition imposed by the majority with regard to the CRF. The majority has the Commission effectively inserting into RSA 362-F:3 the word "thereafter" for years beyond 2025, a word the legislature did not see fit to include. I cannot conclude that such a word needs to be written into the statute by the Commission in order to avoid an absurd, unjust, or illogical result when reading the statute as a whole.

The New Hampshire Supreme Court has recently summarized the applicable standard of statutory interpretation in its slip opinion in State of New Hampshire v. Horace W. Seymour, III, decided February 23, 2011, at p. 3:

> Resolving this issue requires that we engage in statutory interpretation, which presents a question of law that we review de novo. Petition of George, 160 N.H. 699, 702 (2010). When examining the language of a statute, we ascribe the plain and ordinary meaning to the words used. Id. We interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include. Id. We construe all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result. In re Alex C., 161 N.H. ___, ___ (decided November 30, 2010). Moreover, we do not consider the words and phrases in isolation, but rather within the context of the statute as a whole. Id.

The majority recognizes that "[o]n its face, RSA 362-F:3 does not specify renewable portfolio percentages that would apply after 2025." The plain and ordinary meaning of the words used in RSA 362-F:3 do not indicate any RPS compliance obligation beyond the year 2025. In relevant part RSA 362-F:3, "Minimum Electric Renewable Portfolio Standards," states: "[f]or each year specified in the table below, each provider of electricity shall obtain and retire certificates sufficient in number and class type to meet or exceed the following percentages of total megawatt-hours of electricity supplied by the provider to its end-use customers that year, ..." That lead-in description of the fundamental compliance obligation under this chapter is followed by a table with columns for years 2008 through 2015 and a column for 2025. Below the column headers are percentages for the four class types. A footnote in the table covers the years between 2015 and 2025 not shown as separate columns: "Class I increases an additional one percent per year from 2015 through 2025. Classes II-IV remain at the same percentages from 2015 ***through 2025***" (*emphasis added).

The plain language of this statute does not specify any year beyond 2025. While the Class I obligation percentage increases each year through 2025, the percentages for Classes II-IV level out in 2015 and the table footnote states that they "remain at the same percentages . . . through 2025." If the legislature had intended these obligations to persist after 2025 they might have labeled the last column, "2025," as "2025 and thereafter" or they might have added phrases in the footnote to the effect "and remain at the same percentages for each year thereafter," but they did not. The legislators who sponsored and introduced HB 873 in 2007, which created RSA 362-F, who were also sponsors of SB 314 in 2006, a predecessor bill to create an RPS that passed the Senate but not the House, namely Sen. Fuller Clark, Sen. Bragdon, and Rep. Harvey, did not choose to add another column after the last compliance year and percentages specified, simply labeled "thereafter," as the Senate had done just 10 months earlier when they amended

and passed SB 314 in 2006. *See* Senate Journal, March 9, 2006, at 159. Furthermore, three other New England states that had RPS requirements for new renewable resources in their statutes at the start of 2007, when HB 873 was introduced, explicitly dealt with the duration of the compliance obligation, such as by using the words "and each year thereafter,"[50] yet the New Hampshire legislature did not specify any compliance obligation beyond 2025. It is not for the Commission to, in effect, add words to the statute that the legislature did not see fit to include.

The New Hampshire Supreme Court has repeatedly stated that "[u]nless we find that the statutory language is ambiguous, we need not look to legislative intent." *Appeal of Verizon New England, Inc.,* 153 N.H. 50, 63 (2005) *citing DeLucca v. DeLucca,* 152 N.H. 100, 103 (2005), *see also, Appeal of Public Service Company of New Hampshire,* 125 N.H. 46, 52 (1984); *and Petition of Public Service Co. of N.H.,* 130 N.H. 265, 282-83 (1988). The majority looks to the statute as a whole to find ambiguity and conclude that it is logical to interpret the statute as a whole as creating a compliance obligation that persists after 2025 at the 2025 percentages. I do not disagree that it would be logical, and supportive of "stable long-term policies," as well as, arguably, better public policy, to have the 2025 compliance obligations persist indefinitely. That doesn't mean, however, that the purposes of the statute can't be realized or that an absurd,

[50] The relevant Rhode Island law in effect at the beginning of 2007 stated in relevant part: "In 2020 ***and each year thereafter,*** the minimum renewable energy standard established in 2019 shall be maintained unless the commission shall determine that such maintenance is no longer necessary for either amortization of investments in new renewable energy resources or for maintaining targets and objectives for renewable energy." R.I. Gen. Laws § 39-26-4(5) (2007). The relevant Massachusetts law in effect in 2007 provided in relevant part: "Every retail supplier shall provide a minimum percentage of kilowatt-hours sales to end-use customers in the commonwealth from new renewable energy generating sources, according to the following schedule: . . . (ii) an additional one-half of 1 per cent of sales each year thereafter until December 31, 2009; and (iii) an additional 1 per cent of sales ***every year thereafter*** until a date determined by the division of energy resources." Mass. Gen. L. ch. 25A, §11F(a), (2007, effective until July 2, 2008). The relevant Connecticut law in effect in 2007 stated in relevant part: "On ***and after*** January 1, 2020, not less than twenty per cent of the total output or services of any such supplier of distribution company shall be generated from Class I renewable energy sources and an additional three per cent of the total output or services shall be from Class I or Class II renewable energy sources. Conn. Gen. Stat. Ann. § 16-245a (15) (2007). (*Emphasis* added in each citation.) Maine first enacted an RPS for new renewable resources during its 2007 legislative session. Vermont did not, and still does not, have a comparable RPS statute.

illogical, or unjust consequence would result from reading the plain language of RSA 362-F:3 as not creating an RPS compliance obligation beyond 2025.

There are any number of reasons why legislators may have decided to punt the question of what the RPS requirements should be after 2025 to a later determination by the legislature. Some may have felt that renewable resources would be more cost competitive with conventional or non-renewable electric generation by 2025 and would not need the RPS policy support beyond that date. Others may have not wanted to create ratepayer obligations to pay a premium for renewable resources more than 18 years out into the future. Most probably did not think about it. The sponsors may have dropped reference to years after 2025 to broaden initial support for the bill. I agree with the majority that the legislative history is not dispositive. They cite to words of the prime sponsor of HB 873, Rep. Harvey, at the hearing on the bill in the Senate. Parsed to its relevant essence her testimony was that "our proposed RPS program . . . goes out to 2025,"[51] supporting the view that the statute does not create a compliance obligation beyond 2025.

The reference to "due consideration of the importance of stable long-term policies" is not in the purpose statement of the chapter (RSA 362-F:1) but rather in RSA 362-F:5, "Commission Review and Report," where the Commission is directed to review "the class requirements in RSA 362-F:3 and other aspects of the electric renewable portfolio standard program established by the chapter" and to "make a report of its findings to the general court by November 1, 2011, 2018, and 2025, respectively, including any recommendations for changes to the class requirements or other aspects of the . . . program." In light of the purposes of the "chapter and with due consideration of the importance of stable long-term policies" the commission is directed to review nine specific issues, including:

[51] Senate Energy, Environment and Economic Development Committee Hearing Report, April 17, 2007 at 4.

> II. The class requirements of all sources in light of existing and expected market conditions; . . .
>
> IV. Increasing the class requirements relative to classes I and II beyond 2025;
>
> V. The possible introduction of any new classes such as an energy efficiency class or the consolidation of existing ones;
>
> VI. The timeframe and manner in which new renewable class I and II sources might transition to and be treated as existing renewable sources and if appropriate, how corresponding portfolio standards of new and existing sources might be adjusted;
>
> VII. The experience with and an evaluation of the benefits and risks of using multi-year purchase agreements for certificates, along with purchased power, relative to meeting the purposes and goals of this chapter at the least cost to consumers and in consideration of the restructuring policy principles of RSA 374-F:3; . . .

While the language of paragraph IV, "[i]ncreasing the class requirement relative to classes I and II beyond 2025," hints at the idea that these requirements might otherwise persist at 2025 levels beyond 2025, read as a whole, RSA 362-F:5 makes clear that the legislature, in its enactment of the RPS statute, wants the opportunity to decide for itself, informed by a review and recommendations by the Commission, what, if any, mid-course corrections are appropriate to the RPS statute, starting with the Commission's mandated review this year, a full 14 years before 2025.[52]

I concur with the majority that the express language of RSA 362-F:9, especially in light of RSA 369-B:3, IV(b), does not constrain the Commission from approving multi-year power purchase agreements that may extend beyond 2025. I part company with the majority as to whether the commission can now obligate PSNH ratepayers to pay for REC purchase obligations under the proposed PPA beyond 2025 as "prudently incurred costs arising from compliance with the renewable portfolio standards of RSA 362-F . . . through the default service charge" as provided for in RSA 374-F:3, V(c), in light of the plain language of RSA 362-F:3, or at least its

[52] DES Air Resources Director testified at the Senate hearing on HB 873: "To assure again, that we get the percentages right, how we do this right, as mentioned, there are three required review periods where the Public Utilities Commission is required to open a docket and look at the program and make sure it's doing what we expect it to do; make sure the percentages are correct, make sure the prices make sense for New Hampshire; the cost, if there are any, or the benefits. And that's required at three different times: 2011, 2018, and 2025; and they're required to make recommendations to the General Court. . . . again, we know this is probably not perfect." *Id.* at 7.

acknowledged ambiguity. To resolve this threshold issue I would either transfer the question of law, as to whether there is a compliance obligation under RSA 362-F that persists after 2025, to the New Hampshire Supreme Court for a decision pursuant to RSA 365:20, or condition the recovery of such costs on a future determination as to whether there is an actual RPS compliance obligation beyond 2025, either under current law, or under the RPS statute as it may be amended by the legislature to clarify this issue.

With regard to the CRF, while I think the proposed condition, to require credits back to PSNH and it ratepayers for accumulated net over-market payments that exceed $100 million, is generally reasonable, I am concerned that the resulting uncertainty, as to whether the Laidlaw plant may be able to continue to operate in the black and cover its debt service under some future scenarios, may create an insurmountable obstacle to securing financing for the project. I would add a further provision to this condition that in the event such credits would create persistent negative cash flow for Laidlaw, they would have the option of seeking, through a Commission proceeding, a minimum revenue at cost of service on a going forward basis, like a conventionally rate base regulated generation source.

Finally, I note that in light of recent migration rates and the risk of increased migration of default service load if PSNH's default service costs end up being even higher compared with competitive providers than they have been over the past year, the condition limiting the quantity of RECs to be purchased at the prices set under the PPA is reasonable. This condition, however, would not be needed, and the compliance obligation going forward would be much more predictable, if the legislature choose to put the RPS compliance obligation on electric distribution companies, recovered through the distribution charge, instead of placing it on electricity suppliers, recovered through default service or competitive energy supply rates, as the current statute does.

CHAPTER 362-F

ELECTRIC RENEWABLE PORTFOLIO STANDARD

Section

CROSS REFERENCES

Competitive electricity supplier requirements, electric utility restructuring, see RSA 374-F:7.
Rate filing, authorization, electric utility investment in distributed energy resources, see RSA 374-G:5.
Restructuring policy principles, electric utility restructuring, see RSA 374-F:3.

362-F:1 Purpose. Renewable energy generation technologies can provide fuel diversity to the state and New England generation supply through use of local renewable fuels and resources that serve to displace and thereby lower regional dependence on fossil fuels. This has the potential to lower and stabilize future energy costs by reducing exposure to rising and volatile fossil fuel prices. The use of renewable energy technologies and fuels can also help to keep energy and investment dollars in the state to benefit our own economy. In addition, employing low emission forms of such technologies can reduce the amount of greenhouse gases, nitrogen oxides, and particulate matter emissions transported into New Hampshire and also generated in the state, thereby improving air quality and public health, and mitigating against the risks of climate change. It is therefore in the public interest to stimulate investment in low emission renewable energy generation technologies in New England and, in particular, New Hampshire, whether at new or existing facilities.

HISTORY

Source. 2007, 26:2, eff. July 10, 2007.

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CROSS REFERENCES

Purpose, electric utility investment in distributed energy resources, see RSA 374–G:1.

362–F:2 Definitions. In this chapter:

I. "Begun operation" means the date that a facility, or a capital addition thereto, for the purpose of repowering to renewable energy is first placed in service for purposes of the implementing regulations of the Internal Revenue Code of 1986, as amended.

II. "Biomass fuels" means plant-derived fuel including clean and untreated wood such as brush, stumps, lumber ends and trimmings, wood pallets, bark, wood chips or pellets, shavings, sawdust and slash, agricultural crops, biogas, or liquid biofuels, but shall exclude any materials derived in whole or in part from construction and demolition debris.

III. "Certificate" means the record that identifies and represents each megawatt-hour generated by a renewable energy generating source under RSA 362–F:6.

IV. "Commission" means public utilities commission.

V. "Customer-sited source" means a source that is interconnected on the end-use customer's side of the retail electricity meter in such a manner that it displaces all or part of the metered consumption of the end-use customer.

VI. "Default service" means electricity supply that is available to retail customers who are otherwise without an electricity supplier as defined in RSA 374–F:2, I–a.

VII. "Department" means the department of environmental services.

VIII. "Eligible biomass technologies" means generating technologies that use biomass fuels as their primary fuel, provided that the generation unit:

(a) Has a quarterly average nitrogen oxide (NOx) emission rate of less than or equal to 0.075 pounds/million British thermal units (lbs/Mmbtu), and an average particulate emission rate of less than or equal to 0.02 lbs/Mmbtu as measured and verified under RSA 362–F:12; and

(b) Uses any fuel other than the primary fuel only for start-up, maintenance, or other required internal needs.

IX. "End-use customer" means any person or entity that purchases electricity supply at retail in New Hampshire from another person or entity but shall not include:

(a) A generating facility taking station service at wholesale from the regional market administered by the independent system operator (ISO-New England) or self-supplying from its other generating stations; and

(b) Prior to January 1, 2010, a customer who purchases retail electricity supply, other than default service under a supply contract executed prior to January 1, 2007.

X. "Historical generation baseline" means:

(a) The average annual electrical production from a facility other than hydroelectric, stated in megawatt-hours, for the 3 years 2004 through 2006, or for the first 36 months after the facility began operation if that date is after December 31, 2001; provided that the historical generation baseline shall be measured regardless of whether or not the emissions from the facility during the baseline period meets emissions requirements of the class.

(b) The average annual production of a hydroelectric facility from the later of January 1, 1986 or the date of first commercial operation through December 31, 2005. If the hydroelectric facility experienced an upgrade or expansion during the historical generation baseline period, actual generation for that entire period shall be adjusted to estimate the average annual production that would have occurred had the upgrade or expansion been in effect during the entire historical generation baseline period.

XI. "Methane gas" means biologically derived methane gas from anaerobic digestion of organic materials from such sources as yard waste, food waste, animal waste, sewage sludge, septage, and landfill waste.

XII. "New England control area" means the term as defined in ISO-New England's transmission, markets and services tariff, FERC electric tariff no. 3, section II.

XIII. "Primary fuel" means a fuel or fuels, either singly or in combination, that comprises at least 90 percent of the total energy input into a generating unit.

XIV. "Provider of electricity" means a distribution company providing default service or an electricity supplier as defined in RSA 374-F:2, II, but does not include municipal suppliers.

XV. "Renewable energy source," "renewable source," or "source" means a class I, II, III, or IV source of electricity or electricity displacement by a class I source under RSA 362-F:4, I(g). An electrical generating facility, while selling its electrical output at long-term rates

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established before January 1, 2007 by orders of the commission under RSA 362–A:4, shall not be considered a renewable source.

XVI. "Year" means a calendar year beginning January 1 and ending December 31.

History

Source. 2007, 26:2. 2008, 113:5, eff. Aug. 2, 2008; 368:3, eff. July 11, 2008.

Amendments—2008. Paragraph V: Chapter 368 substituted "side" for "site".

Paragraph XIV: Chapter 113 added ", but does not include municipal suppliers" following "RSA 374–F:2, II".

Cross References

Electric generation equipment funded by public utility, requirements, electric utility investment in distributed energy resources, see RSA 374–G:3.

362–F:3 Minimum Electric Renewable Portfolio Standards. For each year specified in the table below, each provider of electricity shall obtain and retire certificates sufficient in number and class type to meet or exceed the following percentages of total megawatt-hours of electricity supplied by the provider to its end-use customers that year, except to the extent that the provider makes payments to the renewable energy fund under RSA 362–F:10, II:

	2008	2009	2010	2011	2012	2013	2014	2015	2025
Class I	0.0%	0.5%	1%	2%	3%	4%	5%	6%	16% (*)
Class II	0.0%	0.0%	0.04%	0.08%	0.15%	0.2%	0.3%	0.3%	0.3%
Class III	3.5%	4.5%	5.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%
Class IV	0.5%	1%	1%	1%	1%	1%	1%	1%	1%

* Class I increases an additional one percent per year from 2015 through 2025. Classes II–IV remain at the same percentages from 2015 through 2025 except as provided in RSA 362–F:4, V–VI.

History

Source. 2007, 26:2, eff. July 10, 2007.

Cross References

Commission review and report, electric renewable portfolio standard, see RSA 362–F:5.
Electric renewable energy classes, see RSA 362–F:4.
Investments in distributed energy resources, electric utility investment, see RSA 374–G:4.
Renewable energy fund, electric renewable portfolio standard, see RSA 362–F:10.
Sale, exchange and use of certificates, see RSA 362–F:7.

LIBRARY REFERENCES

West Key Number
Electricity ⇐8.6, 11(4).
Westlaw Topic
Westlaw Topic No. 145.

CJS
C.J.S. Electricity §§ 24, 28, 37.

362–F:4 Electric Renewable Energy Classes.

I. Class I (New) shall include the production of electricity from any of the following, provided the source began operation after January 1, 2006, except as noted below:

(a) Wind energy.

(b) Geothermal energy.

(c) Hydrogen derived from biomass fuels or methane gas.

(d) Ocean thermal, wave, current, or tidal energy.

(e) Methane gas.

(f) Eligible biomass technologies.

(g) The equivalent displacement of electricity, as determined by the commission, by end-use customers, from solar hot water heating systems used instead of electric hot water heating.

(h) Class II sources to the extent that they are not otherwise used to satisfy the minimum portfolio standards of other classes.

(i) The incremental new production of electricity in any year from an eligible biomass or methane source or any hydroelectric generating facility licensed or exempted by Federal Energy Regulatory Commission (FERC), regardless of gross nameplate capacity, over its historical generation baseline, provided the commission certifies demonstrable completion of capital investments attributable to the efficiency improvements, additions of capacity, or increased renewable energy output that are sufficient to, were intended to, and can be demonstrated to increase annual renewable electricity output. The determination of incremental production shall not be based on any operational changes at such facility but rather on capital investments in efficiency improvements or additions of capacity.

(j) The production of electricity from a class III or IV source that has begun operation as a new facility by demonstrating that 80 percent of its resulting tax basis of the source's plant and equipment, but not its property and intangible assets, is derived from capital investment directly related to restoring generation or increasing capacity including department permitting requirements for new plants. Such production shall not qualify for class III or IV certificates.

II. Class II (New Solar) shall include the production of electricity from solar technologies, provided the source began operation after January 1, 2006.

III. Class III (Existing Biomass/Methane) shall include the production of electricity from any of the following, provided the source began operation prior to January 1, 2006:

(a) Eligible biomass technologies having a gross nameplate capacity of 25 MWs or less.

(b) Methane gas.

IV. Class IV (Existing Small Hydroelectric) shall include the production of electricity from hydroelectric energy, provided the source began operation prior to January 1, 2006, has a gross nameplate capacity of 5 MWs or less, has installed upstream and downstream diadromous fish passages that have been required and approved under the terms of its license or exemption from the Federal Energy Regulatory Commission, and when required, has documented applicable state water quality certification pursuant to section 401 of the Clean Water Act for hydroelectric projects.

V. For good cause, and after notice and hearing, the commission may accelerate or delay by up to one year, any given year's incremental increase in class I or II renewable portfolio standards requirement under RSA 362–F:3.

VI. After notice and hearing, the commission may modify the class III and IV renewable portfolio standards requirements under RSA 362–F:3 for calendar years beginning January 1, 2012 such that the requirements are equal to an amount between 85 percent and 95 percent of the reasonably expected potential annual output of available eligible sources after taking into account demand from similar programs in other states.

History

Source. 2007, 26:2, eff. July 10, 2007.

Cross References

Definitions, electric renewable portfolio standard, see RSA 362–F:2.
Minimum electric renewable portfolio standards, see RSA 362–F:3.
Rulemaking, electric renewable portfolio standard, see RSA 362–F:13.

Library References

West Key Number	Westlaw Topic
Electricity ⇐8.6, 11(4).	Westlaw Topic No. 145.

CJS
C.J.S. Electricity §§ 24, 28, 37.

UNITED STATES CODE ANNOTATED

Small business investment, renewable fuel capital investment, see 15 U.S.C.A. § 690 et seq.

362–F:5 Commission Review and Report. Commencing in January 2011, 2018, and 2025 the commission shall conduct a review of the class requirements in RSA 362–F:3 and other aspects of the electric renewable portfolio standard program established by this chapter. Thereafter, the commission shall make a report of its findings to the general court by November 1, 2011, 2018, and 2025, respectively, including any recommendations for changes to the class requirements or other aspects of the electric renewable portfolio standard program. The commission shall review, in light of the purposes of this chapter and with due consideration of the importance of stable long-term policies:

I. The adequacy or potential adequacy of sources to meet the class requirements of RSA 362–F:3;

II. The class requirements of all sources in light of existing and expected market conditions;

III. The potential for addition of a thermal energy component to the electric renewable portfolio standard;

IV. Increasing the class requirements relative to classes I and II beyond 2025;

V. The possible introduction of any new classes such as an energy efficiency class or the consolidation of existing ones;

VI. The timeframe and manner in which new renewable class I and II sources might transition to and be treated as existing renewable sources and if appropriate, how corresponding portfolio standards of new and existing sources might be adjusted;

VII. The experience with and an evaluation of the benefits and risks of using multi-year purchase agreements for certificates, along with purchased power, relative to meeting the purposes and goals of this chapter at the least cost to consumers and in consideration of the restructuring policy principles of RSA 374–F:3; and

VIII. Alternative methods for renewable portfolio standard compliance, such as competitive procurement through a centralized entity on behalf of all consumers in all areas of the state.

IX. The distribution of the renewable energy fund established in RSA 362–F:10.

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HISTORY

Source. 2007, 26:2. 2008, 368:2, eff. July 11, 2008. **Amendments—2008.** Paragraph IX: Added.

LIBRARY REFERENCES

West Key Number
Electricity ⚖8.6, 11(4).
Westlaw Topic
Westlaw Topic No. 145.

CJS
C.J.S. Electricity §§ 24, 28, 37.

362-F:6 Renewable Energy Certificates.

I. The electric renewable portfolio standard program established in this chapter shall utilize the regional generation information system (GIS) of energy certificates administered by ISO-New England and the New England Power Pool (NEPOOL) or their successors. If the regional GIS certificate tracking program administered by the ISO-New England is no longer operational or accessible, the commission shall develop an alternative certificate program, after public notice and hearing, designed to provide at least the same information on the type and generation of renewable energy resources as the GIS certificate tracking program.

II. The commission shall establish procedures by which electricity production not tracked by ISO-New England from customer-sited sources, including behind the meter production, may be included within the certificate program, provided such sources are located in New Hampshire. The procedures may include the aggregation of sources and shall be compatible with procedures of the certificate program administrator. The production shall be monitored and verified by an independent entity designated by the commission, which may include electric distribution companies.

III. The commission shall designate in a timely manner New Hampshire eligible renewable sources together with any conditions pursuant to this chapter to the certificate program administrator under paragraph I, with such sources being the recipient of all certificates issued for purpose of this chapter.

IV. (a) Certificates issued for purposes of complying with this chapter shall come from sources within the New England control area unless the source is located in a control area adjacent to the New England control area and the energy produced by the source is actually delivered into the New England control area for consumption by New England customers. The delivery of such energy from the source into the New England control area shall be verified by:

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(1) A unit-specific bilateral contract for sale and delivery of a source's electrical energy to the New England control area that is in place for the time period during which renewable certificates are generated;

(2) Confirmation from ISO-New England that the sale of the renewable energy was actually settled in the ISO market system; and

(3) Confirmation through the North American Electric Reliability Corporation tagging system that the import of energy into the New England control area actually occurred.

(b) The commission may impose such other requirements as it deems appropriate, including methods of confirming actual delivery of the electrical energy into the New England control area.

History

Source. 2007, 26:2, eff. July 10, 2007.

Cross References

Application, electric renewable portfolio standard, see RSA 362–F:11.
Definitions, electric renewable portfolio standard, see RSA 362–F:2.
Verification of emissions from biomass sources, see RSA 362–F:12.

Library References

West Key Number
Electricity ⇐8.6, 11(4).
Westlaw Topic
Westlaw Topic No. 145.

CJS
C.J.S. Electricity §§ 24, 28, 37.

362–F:7 Sale, Exchange, and Use of Certificates.

I. A certificate may be sold or otherwise exchanged by the source to which it was initially issued or by any other person or entity that acquires the certificate. A certificate may only be used once for compliance with the requirements of this chapter. It may not be used for compliance with this chapter if it has been or will be used for compliance with any similar requirements of another non-federal jurisdiction, or otherwise sold, retired, claimed, or represented as part of any other electrical energy output or sale. Certificates shall only be used by providers of electricity for compliance with the requirements of RSA 362–F:3 in the year in which the generation represented by the certificate was produced, except that unused certificates of the proper class issued for production during the prior 2 years or the first quarter of the subsequent year may be used to meet up to 30 percent of a provider's requirements for a given class obligation in the current year of compliance.

II. Certificates from behind-the-meter distributed generation shall be initially issued to the owner of the customer-sited source or its designee, regardless of whether the source has received assistance from the renewable energy fund established in RSA 362–F:10.

HISTORY

Source. 2007, 26:2, eff. July 10, 2007.

LIBRARY REFERENCES

West Key Number
Electricity ⚿8.6, 11(4).
Westlaw Topic
Westlaw Topic No. 145.

CJS
C.J.S. Electricity §§ 24, 28, 37.

362–F:8 Information Collection. By July 1 of each year, each provider of electricity shall submit a report to the commission, in a form approved by the commission, documenting its compliance with the requirements of this chapter for the prior year. The commission may investigate compliance and collect any information necessary to verify and audit the information provided to the commission by providers of electricity.

HISTORY

Source. 2007, 26:2, eff. July 10, 2007.

CROSS REFERENCES

Renewable energy fund, electric renewable portfolio standard, see RSA 362–F:10.

LIBRARY REFERENCES

West Key Number
Electricity ⚿8.6, 11(4).
Westlaw Topic
Westlaw Topic No. 145.

CJS
C.J.S. Electricity §§ 24, 28, 37.

362–F:9 Purchased Power Agreements.

I. Upon the request of one or more electric distribution companies and after notice and hearing, the commission may authorize such company or companies to enter into multi-year purchase agreements with renewable energy sources for certificates, in conjunction with or independent of purchased power agreements from such sources, to meet reasonably projected renewable portfolio requirements and default service needs to the extent of such requirements, if it finds such agreements or such an approach, as may be conditioned by the commission, to be in the public interest.

II. In determining the public interest, the commission shall find that the proposal is, on balance, substantially consistent with the following factors:

(a) The efficient and cost-effective realization of the purposes and goals of this chapter;

(b) The restructuring policy principles of RSA 374–F:3;

(c) The extent to which such multi-year procurements are likely to create a reasonable mix of resources, in combination with the company's overall energy and capacity portfolio, in light of the energy policy set forth in RSA 378:37 and either the distribution company's integrated least cost resource plan pursuant to RSA 378:37–41, if applicable, or a portfolio management strategy for default service procurement that balances potential benefits and risks to default service customers;

(d) The extent to which such procurement is conducted in a manner that is administratively efficient and promotes market-driven competitive innovations and solutions; and

(e) Economic development and environmental benefits for New Hampshire.

III. The commission may authorize one or more distribution companies to coordinate or delegate procurement processes under this section.

IV. Rural electric cooperatives for which a certificate of deregulation is on file with the commission shall not be required to seek commission authorization for multi-year purchased power agreements or certificate purchase agreements under this section.

HISTORY

Source. 2007, 26:2, eff. July 10, 2007.

LIBRARY REFERENCES

West Key Number
Electricity ⚿8.6, 11(4).
Westlaw Topic
Westlaw Topic No. 145.

CJS
C.J.S. Electricity §§ 24, 28, 37.

362–F:10 Renewable Energy Fund.

I. There is hereby established a renewable energy fund. This nonlapsing, special fund shall be continually appropriated to the commission to be expended in accordance with this section. The state treasurer shall invest the moneys deposited therein as provided by law. Income received on investments made by the state treasurer shall also be credited to the fund. All payments to be made under this section shall be deposited in the fund. The moneys paid into the fund under

paragraph II of this section, excluding class II moneys, shall be used by the commission to support thermal and electrical renewable energy initiatives. Class II moneys shall only be used to support solar energy technologies in New Hampshire. All initiatives supported out of these funds shall be subject to audit by the commission as deemed necessary. All fund moneys including those from class II may be used to administer this chapter, but all new employee positions shall be approved by the fiscal committee of the general court.

II. In lieu of meeting the portfolio requirements of RSA 362-F:3 for a given year if, and to the extent sufficient certificates are not otherwise available at a price below the amounts specified in this paragraph, an electricity provider may, at the time of report submission for that year under RSA 362-F:8, make payment to the commission at the following rates for each megawatt-hour not met for a given class obligation through the acquisition of certificates:

(a) Class I—$57.12.

(b) Class II—$150.

(c) Class III—$28.

(d) Class IV—$28.

III. Beginning in 2008, the commission shall adjust these rates by January 31 of each year using the Consumer Price Index as published by the Bureau of Labor Statistics of the United States Department of Labor.

IV. The commission shall make an annual report by October 1 of each year, beginning in 2009, to the legislative oversight committee on electric utility restructuring under RSA 374-F:5 detailing how the renewable energy fund is being used and any recommended changes to such use.

V. The public utilities commission shall make and administer a one-time incentive payment of $3 per watt of nominal generation capacity up to a maximum payment of $6,000, or 50 percent of system costs, whichever is less, per facility to any residential owner of a small renewable generation facility, that would qualify as a Class I or Class II source of electricity, has a total peak generation capacity of less than 5 kilowatts, begins operation on or after July 1, 2008, and is located on or at the owner's residence.

VI. Such payments shall be allocated from the renewable energy fund established in paragraph I, to the extent funding is available, up to a maximum aggregate payment of 10 percent of the fund per year.

VII. The commission shall, after notice and hearing, by order or rule establish an application process for the incentive payment program established under paragraph V. The application process shall include

verification of costs for parts and labor, certification that the equipment used meets the applicable safety standards of the American National Standards Institute (ANSI) or Underwriters Laboratory (UL) or similar safety rating agency, and that the facility meets local zoning regulations, and receives any required inspections.

VIII. The commission may, after notice and hearing, by order or rule, establish additional incentive or rebate programs for customer-sited thermal and renewable energy projects.

IX. After December 31, 2010, for good cause the commission may, by rule, modify the program created by RSA 362-F:10, V.

HISTORY

Source. 2007, 26:2. 2008, 368:1, eff. July 11, 2008.

Amendments—2008. Added pars. V to IX.

Renewable Energy Fund; Payment Rates. 2008, 368:4 eff. July 11, 2008, provided: "Notwithstanding any law or rule to the contrary, the payment rates established under RSA 362-F:10, II and III, for calendar year 2008 shall be as follows:

(a) "Class I—$58.58.

(b) "Class II—$153.84.

(c) "Class III—$28.72.

(d) "Class IV—$28.72."

CROSS REFERENCES

Commission review and report, electric renewable portfolio standard, see RSA 362-F:5.
Minimum electric renewable portfolio standards, see RSA 362-F:3.
Sale, exchange, and use of certificates, see RSA 362-F:7.

LIBRARY REFERENCES

West Key Number
States ⚿127.
Westlaw Topic
Westlaw Topic No. 360.

CJS
C.J.S. States §§ 386 to 387.

362-F:11 Application.

I. The commission, in a non-adjudicative process, shall certify the classification of an existing or proposed generation facility by issuing a determination within 45 days of receiving from an applicant sufficient information to determine its classification. The application shall contain the following:

(a) Name and address of applicant.

(b) Facility location, ISO-New England asset identification number, and NEPOOL GIS facility code, if available.

(c) Description of the facility, including fuel type, gross generation capacity, initial commercial operation date, and, in the case of a biomass source, NOx and particulate matter emission rates and a description of pollution control equipment or practices proposed for

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compliance with applicable NOx and particulate matter emission rates.

(d) Such other information as the applicant may provide to assist in determining the classification of the generating facility.

II. The commission shall certify applications of customer-sited sources in a manner that is compatible with the procedures established for recognizing such production under RSA 362–F:6, II.

III. Biomass facilities otherwise meeting the requirements of a source shall be conditionally certified by the commission subject to compliance with the applicable NOx and particulate matter emission standards. Within 10 days of verification of compliance with emissions standards from the department, as provided in RSA 362–F:12, III, the commission, in a non-adjudicative process, shall designate the facility as eligible pursuant to RSA 362–F:6, III.

HISTORY

Source. 2007, 26:2, eff. July 10, 2007.

LIBRARY REFERENCES

West Key Number
Electricity ⇐8.6, 11(4).
Westlaw Topic
Westlaw Topic No. 145.

CJS
C.J.S. Electricity §§ 24, 28, 37.

362–F:12 Verification of Emissions From Biomass Sources. Any source seeking to qualify using an eligible biomass technology shall verify emissions in accordance with the following methods:

I. For nitrogen oxide emissions, the source shall install and operate a continuous emissions monitor that meets departmental standards as codified in rules.

II. For particulate matter emissions, the source shall conduct an annual stack test in accordance with methods approved by the department. Upon completion of 3 annual tests which demonstrate compliance, the source may request of the department for a decrease in the frequency of testing, but to not less than once every 3 years.

III. Each such source shall file with the department and the commission within 45 days of the end of each calendar quarter an affidavit and documentation attesting to the source's average NOx emission rate for such quarter and the most recent particulate matter stack test results. For purposes of initial certification under RSA 362–F:6, the results of a stack test may be filed with the department at any time to demonstrate compliance with both the particulate matter and nitrogen oxide emis-

sions standards. Within 30 days of a filing, the department shall provide verification of the emissions reported in the filing to the commission.

HISTORY

Source. 2007, 26:2, eff. July 10, 2007.

CROSS REFERENCES

Application, electric renewable portfolio standard, see RSA 362–F:11.
Definitions, electric renewable portfolio standard, see RSA 362–F:2.

LIBRARY REFERENCES

West Key Number
Electricity ⚿8.6, 11(4).

CJS
C.J.S. Electricity §§ 24, 28, 37.

Westlaw Topic
Westlaw Topic No. 145.

362–F:13 Rulemaking. The commission shall adopt rules, under RSA 541–A, to:

I. Administer the electric renewable portfolio standard program including the development of an alternative to the regional generation information system to the extent necessary.

II. Ascertain, monitor, and enforce compliance with the program to the extent not addressed in the department's rules.

III. Include within the program electric production not tracked by ISO-New England from eligible customer-sited sources.

IV. Administer the renewable energy fund and make expenditures from the fund.

V. Establish procedures for the classification of existing or proposed generation facilities, including a provision for a preliminary designation option, and to verify the completion of capital investments required of certain class I resources.

VI. Define when a repowered generation unit qualifies as a new class I source under RSA 362–F:4.

VII. Otherwise discharge the responsibilities delegated to the commission under this chapter.

HISTORY

Source. 2007, 26:2, eff. July 10, 2007.

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HISTORY

Source. 1915, 99:4. PL 238:24. RL 287:25. 1951, 203:11 par. 26, eff. Sept. 1, 1951.

CROSS REFERENCES

Altering orders, see RSA 365:28.

LIBRARY REFERENCES

West Key Number
Public Utilities ⇐169.1.

Westlaw Topic
Westlaw Topic No. 317A.

CJS
C.J.S. Public Utilities §§ 110, 118, 136 to 147, 228 to 237, 243.

New Hampshire Code of Administrative Rules
Rules of the Public Utilities Commission, Puc 102.01, New Hampshire Code of Administrative Rules.

365:27 Notice. Orders of the commission granting authority or permission to do any act or thing need not be served; but the exercise in any part of the authority or permission granted in any such order shall charge the party so exercising such authority or permission with full knowledge of said order; and such party shall comply with all requirements thereof, and fully conform thereto.

HISTORY

Source. 1915, 99:4. PL 238:25. RL 287:26. 1951, 203:11 par. 27, eff. Sept. 1, 1951.

CROSS REFERENCES

Service of orders, see RSA 365:31 et seq.

LIBRARY REFERENCES

West Key Number
Public Utilities ⇐169.1.

Westlaw Topic
Westlaw Topic No. 317A.

CJS
C.J.S. Public Utilities §§ 110, 118, 136 to 147, 228 to 237, 243.

New Hampshire Code of Administrative Rules
Rules of the Public Utilities Commission, Puc 102.01 et seq., New Hampshire Code of Administrative Rules.

365:28 Altering Orders. At any time after the making and entry thereof, the commission may, after notice and hearing, alter, amend, suspend, annul, set aside, or otherwise modify any order made by it. This hearing shall not be required when any prior order made by the commission was made under a provision of law that did not require a hearing and a hearing was, in fact, not held.

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(b) As competitive markets emerge, customers should have the option of stable and predictable ceiling electricity prices through a reasonable transition period, consistent with the near term rate relief principle of RSA 374-F:3, XI. Upon the implementation of retail choice, transition service should be available for at least one but not more than 5 years after competition has been certified to exist in at least 70 percent of the state pursuant to RSA 38:36, for customers who have not yet chosen a competitive electricity supplier. Transition service should be procured through competitive means and may be administered by independent third parties. The price of transition service should increase over time to encourage customers to choose a competitive electricity supplier during the transition period. Such transition service should be separate and distinct from default service.

(c) Default service should be designed to provide a safety net and to assure universal access and system integrity. Default service should be procured through the competitive market and may be administered by independent third parties. Any prudently incurred costs arising from compliance with the renewable portfolio standards of RSA 362-F for default service or purchased power agreements shall be recovered through the default service charge. The allocation of the costs of administering default service should be borne by the customers of default service in a manner approved by the commission. If the commission determines it to be in the public interest, the commission may implement measures to discourage misuse, or long-term use, of default service. Revenues, if any, generated from such measures should be used to defray stranded costs.

(d) The commission should establish transition and default service appropriate to the particular circumstances of each jurisdictional utility.

(e) Notwithstanding any provision of subparagraphs (b) and (c), as competitive markets develop, the commission may approve alternative means of providing transition or default services which are designed to minimize customer risk, not unduly harm the development of competitive markets, and mitigate against price volatility without creating new deferred costs, if the commission determines such means to be in the public interest.

(f) (1) A utility may, at its discretion, allow its customers to choose a renewable energy transition service option from one or more options, as approved by the commission. A renewable energy transition service option should have either all or a portion of its service attributable to a renewable energy component, with any remainder filled by standard transition service. Costs associated with the ren

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HOUSE RECORD

First Year of the 160th General Court
Calendar and Journal of the 2007 Session

Vol. 29 Concord, N.H. Thursday, April 5, 2007 No. 35

HOUSE JOURNAL No. 12 (cont.)

Wednesday, April 4, 2007

Rep. Wallner moved that the House adjourn.
Adopted.

HOUSE JOURNAL No. 13

Thursday, April 5, 2007

The House assembled at 10:00 a.m. and was called to order by the Speaker.

LEAVES OF ABSENCE

Reps. Ahlgren, Beauchesne, Clemons, Coughlin, Daler, Dumaine, Fesh, Fontas, Heald, Stephen Johnson, Laliberte, Benjamin Moore, Moran, Spaulding and Wood, the day, illness.
Reps. Arsenault, Beck, Jennifer Brown, Julie Brown, Brendon Browne, Russell Day, Stephanie Eaton, Ginsburg, Goodwin, Grassie, Haley, Hebert, Henson, Houde, Jean, Sally Kelly, John Knowles, Mary Ann Knowles, Lisle, Mack, Matheson, McCarthy, Evalyn Merrick, Scott Merrick, Merrow, Mesa, Mickelonis, Miller, Bennett Moore, O'Brien, Parkhurst, Pelkey, Priestly, Reed, Reever, Reeves, Reuschel, Gary Richardson, Serlin, Daniel Sullivan, Sysyn, Tahir and Wells, the day, important business.
Reps. Hofemann and Lovett, the day, illness in the family.

CLERK'S NOTE

When less than two-thirds of the elected membership is present, Part II, Article 20 of the state constitution requires the assent of two-thirds of those present and voting to render their acts and proceedings valid.

COMMITTEE REPORTS

SPECIAL ORDER

HB 777-FN-A, imposing a fee and a fine for certain changes to terrain alteration permits. **OUGHT TO PASS WITH AMENDMENT.**
Rep. Susan R. Kepner for Resources, Recreation and Development: This bill as amended clarifies agricultural exemptions for alteration of terrain permits and sets penalties for change of use to any other activity. The penalty shall be based on the amount of land changed and length of time before the change. It will be distributed as follows: forty percent to the Land and Community Heritage Investment Program; forty percent to the wetlands fund (RSA 482-A:14, III); and 20 percent to town conservation commissions, to be distributed to the other two if there is no commission. This mirrors the wetland mitigation program where penalties for disturbing wetlands fund a compensatory conservation of land. Vote 16-2.

Amendment (0862h)

Amend the title of the bill by replacing it with the following:

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	Hunter, Bruce	Infantine, William	Jasper, Shawn
Leishman, Peter	Lessard, Rudy	Mooney, Maureen	O'Connell, Timothy
Ober, Russell III	Peterson, Andy	Pilotte, Maurice	Price, Pamela
Renzullo, Andrew	Rowe, Robert	Shaw, Barbara	Shaw, Kimberly
Smith, David	Soucy, Connie	Stepanek, Stephen	Ulery, Jordan
Villeneuve, Maurice			

MERRIMACK

DeStefano, Stephen	Humphries, Charlie	Kidder, David	MacKay, James

ROCKINGHAM

Baldasaro, Alfred	Bedrick, Jason	Bettencourt, David	Bishop, Franklin
Buxton, Donald	Camm, Kevin	Carson, Sharon	Case, Frank
Charron, Gene	Dalrymple, David	Devine, James	Emiro, Frank
Flanders, John Sr	Flockhart, Eileen	Gould, Kenneth	Griffin, Mary
Guthrie, Joseph	Headd, James	Hutchinson, Karen	Ingram, Russell
Introne, Robert	Itse, Daniel	Katsakiores, George	Katsakiores, Phyllis
Kelley, Jane	Major, Norman	McMahon, Charles	Nowe, Ronald
Packard, Sherman	Pearson, Mark	Rausch, James	Reagan, John
Sanders, Elisabeth	Snow, Richard	Stiles, Nancy	Weare, Everett
Welch, David	Weyler, Kenneth	Wickson, Rick	Winchell, George

STRAFFORD

Watson, Robert

SULLIVAN

Rodeschin, Beverly

and the majority committee report was adopted.
Ordered to third reading.

HB 873-FN-L, establishing minimum renewable standards for energy portfolios. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Suzanne Harvey for Science, Technology and Energy: Twenty-three states have adopted a renewable portfolio standard (RPS), including every New England state except NH. HB 873 will require electric suppliers to obtain renewable energy certificates (RECs) for a certain percentage of their electricity supplied to NH customers. Eligible renewable resources include development of a broad range of new electricity generation as well as certain existing renewable generation common to NH. The purpose of the bill is to spur economic development, reduce our dependence on imported fuels, mitigate energy price and supply volatility, and reduce air emissions from our energy supply. An economic analysis by UNH's Whittemore School of Business & Economics showed a small short-term cost but a long-term economic gain from the positive effects on the energy market and in-state development. Over many months the bill's sponsors scheduled group meetings with the state's energy stakeholders, including the utilities, associations, and private companies, plus DES, the Office of Energy Planning, and the Public Utilities Commission, to listen to interests and concerns and develop a NH RPS that would satisfy the majority of parties. The committee held an all-day hearing at which members heard overwhelming support for an RPS. Vote 14-1.

Amendment (0857h)

Amend the bill by replacing all after the enacting clause with the following:

1 Findings. The general court finds that:

I. New Hampshire's electric utility restructuring policy principles in RSA 374-F:3, IX recognize that increased use of renewable resources can provide environmental, economic, and energy security benefits.

II. In 2005, 2.3 million megawatt hours of electricity was generated from renewable energy facilities, including hydroelectric, biomass, and landfill gas power plants, with a combined generating capacity of 576 megawatts. This equaled 10 percent of the total electricity generation and 20 percent of the total retail electricity sales in New Hampshire in 2005.

III. The 2002 state energy plan prepared by the governor's office of energy and community services pursuant to 2001, 121 recommended establishing a renewable portfolio standard to support indigenous renewable energy sources such as wood and hydroelectric, to encourage investments in new renewable power generation in the state, and to allow New Hampshire to benefit from the diversity, reliability, and economic benefits that come from clean power.

IV. The state energy policy commission, established by 2006, 257:1 identified in its December 1, 2006 interim report principles that the governor and general court should use to evaluate any new energy policy initiative. One principle is to increase the state's fuel diversity by reducing the fossil fuel component of the state's energy mix and promoting use of

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renewable energy resources to buffer against global instability.

V. The energy planning advisory board established by 2004, 164:2 received extensive comments supporting establishment of a state renewable portfolio standard during a stakeholder forum on energy policy held June 23, 2006.

VI. Governor Lynch has committed New Hampshire to a goal of meeting 25 percent of the state's energy needs from renewable energy resources by 2025. Enactment of a renewable portfolio standard in New Hampshire will be an important step in meeting this goal.

2 New Chapter; Electric Renewable Portfolio Standard. Amend RSA by inserting after chapter 362-E the following new chapter:

CHAPTER 362-F
ELECTRIC RENEWABLE PORTFOLIO STANDARD

362-F:1 Purpose. Renewable energy generation technologies can provide fuel diversity to the state and New England generation supply through use of local renewable fuels and resources that serve to displace and thereby lower regional dependence on fossil fuels. This has the potential to lower and stabilize future energy costs by reducing exposure to rising and volatile fossil fuel prices. The use of renewable energy technologies and fuels can also help to keep energy and investment dollars in the state to benefit our own economy. In addition, employing low emission forms of such technologies can reduce the amount of greenhouse gases, nitrogen oxides, and particulate matter emissions transported into New Hampshire and also generated in the state, thereby improving air quality, public health, and mitigating against the risks of climate change. It is therefore in the public interest to stimulate investment in low emission renewable energy generation technologies in New England and, in particular, New Hampshire, whether at new or existing facilities.

362-F:2 Definitions. In this chapter:

I. "Begun operation" means the date that a facility, or a capital addition thereto, for the purpose of repowering to renewable energy is first placed in service for purposes of the implementing regulations of the Internal Revenue Code of 1986, as amended.

II. "Biomass fuels" means plant-derived fuel including clean and untreated wood such as brush, stumps, lumber ends and trimmings, wood pallets, bark, wood chips or pellets, shavings, sawdust and slash, agricultural crops, biogas, or liquid biofuels, but shall exclude any materials derived in whole or in part from construction and demolition debris.

III. "Certificate" means the record that identifies and represents each megawatt-hour generated by a renewable energy generating source under RSA 362-F:6.

IV. "Commission" means public utilities commission.

V. "Customer-sited source" means a source that is interconnected on the end-use customer's site of the retail electricity meter in such a manner that it displaces all or part of the metered consumption of the end-use customer.

VI. "Default service" means electricity supply that is available to retail customers who are otherwise without an electricity supplier as defined in RSA 374-F:2, I-a.

VII. "Department" means the department of environmental services.

VIII. "Eligible biomass technologies" means generating technologies that use biomass fuels as their primary fuel, provided that the generation unit:

(a) Has a quarterly average nitrogen oxide (NOx) emission rate of less than or equal to 0.075 pounds/million British thermal units (lbs/Mmbtu), and an average particulate emission rate of less than or equal to 0.02 lbs/Mmbtu as measured and verified under RSA 362-F:12; and

(b) Uses any fuel other than the primary fuel only for start-up, maintenance, or other required internal needs.

IX. "End-use customer" means any person or entity that purchases electricity supply at retail in New Hampshire from another person or entity but shall not include:

(a) A generating facility taking station service at wholesale from the regional market administered by the independent system operator (ISO-New England) or self-supplying from its other generating stations; and

(b) Prior to January 1, 2010, a customer who purchases retail electricity supply, other than default service under a supply contract executed prior to January 1, 2007.

X. "Historical generation baseline" means:

(a) The average annual electrical production from a facility other than hydroelectric, stated in megawatt-hours, for the 3 years 2004 through 2006, or for the first 36 months after the facility began operation if that date is after December 31, 2001; provided that the historical generation baseline shall be measured regardless of whether or not the emissions from the facility during the baseline period meets emissions requirements of the class.

(b) The average annual production of a hydroelectric facility from the later of January 1, 1986 or the date of first commercial operation through December 31, 2005. If the hydroelectric facility experienced an upgrade or expansion during the historical generation baseline period, actual generation for that entire period shall be adjusted to estimate the average annual production that would have occurred had the upgrade or expansion been in effect during the entire historical generation baseline period.

XI. "Methane gas" means biologically derived methane gas from anaerobic digestion of organic materials from such sources as yard waste, food waste, animal waste, sewage sludge, septage, and landfill waste.

XII. "New England control area" means the term as defined in ISO-New England's transmission, markets and services tariff, FERC electric tariff no. 3, section II.

XIII. "Primary fuel" means a fuel or fuels, either singly or in combination, that comprises at least 90 percent of the

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total energy input into a generating unit.

XIV. "Provider of electricity" means a distribution company providing default service or an electricity supplier as defined in RSA 374-F:2, II.

XV. "Renewable energy source," "renewable source," or "source" means a class I, II, III, or IV source of electricity or electricity displacement by a class I source under RSA 362-F:4, I(g). An electrical generating facility, while selling its electrical output at long-term rates established before January 1, 2007 by orders of the commission under RSA 362-A:4, shall not be considered a renewable source.

XVI. "Year" means a calendar year beginning January 1 and ending December 31.

362-F:3 Minimum Electric Renewable Portfolio Standards. For each year specified in the table below, each provider of electricity shall obtain and retire certificates sufficient in number and class type to meet or exceed the following percentages of total megawatt-hours of electricity supplied by the provider to its end-use customer that year, except to the extent that the provider makes payments to the renewable energy fund under RSA 362-F:10, II:

	2008	2009	2010	2011	2012	2013	2014	2015	2025
Class I	0.0%	0.5%	1%	2%	3%	4%	5%	6%	16%(*)
Class II	0.0%	0.0%	0.04%	0.08%	0.15%	0.2%	0.3%	0.3%	0.3%
Class III	3.5%	4.5%	5.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%
Class IV	0.5%	1%	1%	1%	1%	1%	1%	1%	1%

* Class I increases an additional one percent per year from 2015 through 2025. Classes II-IV remain at the same percentages from 2015 through 2025 except as provided in RSA 362-F:4, V-VI.

362-F:4 Electric Renewable Energy Classes.

I. Class I (New) shall include the production of electricity from any of the following, provided the source began operation after January 1, 2006, except as noted below:

(a) Wind energy.

(b) Geothermal energy.

(c) Hydrogen derived from biomass fuels or methane gas.

(d) Ocean thermal, wave, current, or tidal energy.

(e) Methane gas.

(f) Eligible biomass technologies.

(g) The equivalent displacement of electricity, as determined by the commission, by end-use customers, from solar hot water heating systems used instead of electric hot water heating.

(h) Class II sources to the extent that they are not otherwise used to satisfy the minimum portfolio standards of other classes.

(i) The incremental new production of electricity in any year from an eligible biomass or methane source or any hydroelectric generating facility licensed or exempted by Federal Energy Regulatory Commission (FERC), regardless of gross nameplate capacity, over its historical generation baseline, provided the commission certifies demonstrable completion of capital investments attributable to the efficiency improvements, additions of capacity, or increased renewable energy output that are sufficient to, were intended to, and can be demonstrated to increase annual renewable electricity output. The determination of incremental production shall not be based on any operational changes at such facility but rather on capital investments in efficiency improvements or additions of capacity.

(j) The production of electricity from a class III or IV source that has begun operation as a new facility by demonstrating that 80 percent of its resulting tax basis of the source's plant and equipment, but not its property and intangible assets, is derived from capital investment directly related to restoring generation or increasing capacity including department permitting requirements for new plants. Such production shall not qualify for class III or IV certificates.

II. Class II (New Solar) shall include the production of electricity from solar technologies, provided the source began operation after January 1, 2006.

III. Class III (Existing Biomass/Methane) shall include the production of electricity from any of the following, provided the source began operation prior to January 1, 2006:

(a) Eligible biomass technologies having a gross nameplate capacity of 25 MWs or less.

(b) Methane gas.

IV. Class IV (Existing Small Hydroelectric) shall include the production of electricity from hydroelectric energy, provided the source began operation prior to January 1, 2006, has a gross nameplate capacity of 5 MWs or less, has installed upstream and downstream dianadromous fish passages that have been required and approved under the terms of its license or exemption from the Federal Energy Regulatory Commission, and when required, has documented applicable state water quality certification pursuant to section 401 of the Clean Water Act for hydroelectric projects.

V. For good cause, and after notice and hearing, the commission may accelerate or delay by up to one year, any given year's incremental increase in class I or II renewable portfolio standards requirement under RSA 362-F:3.

VI. After notice and hearing, the commission may modify the class III and IV renewable portfolio standards requirements under RSA 362-F:3 for calendar years beginning January 1, 2012 such that the requirements are equal to an amount between 85 percent and 95 percent of the reasonably expected potential annual output of available eligible sources after taking into account demand from similar programs in either states.

362-F:5 Commission Review and Report. Commencing in January 2011, 2018, and 2025 the commission shall conduct

a review of the class requirements in RSA 362-F:3 and other aspects of the electric renewable portfolio standard program established by this chapter. Thereafter, the commission shall make a report of its findings to the general court by November 1, 2011, 2018, and 2025, respectively, including any recommendations for changes to the class requirements or other aspects of the electric renewable portfolio standard program. The commission shall review, in light of the purposes of this chapter and with due consideration of the importance of stable long-term policies:

I. The adequacy or potential adequacy of sources to meet the class requirements of RSA 362-F:3;

II. The class requirements of all sources in light of existing and expected market conditions;

III. The potential for addition of a thermal energy component to the electric renewable portfolio standard;

IV. Increasing the class requirements relative to classes I and II beyond 2025;

V. The possible introduction of any new classes such as an energy efficiency class or the consolidation of existing ones;

VI. The timeframe and manner in which new renewable class I and II sources might transition to and be treated as existing renewable sources and if appropriate, how corresponding portfolio standards of new and existing sources might be adjusted;

VII. The experience with and an evaluation of the benefits and risks of using multi-year purchase agreements for certificates, along with purchased power, relative to meeting the purposes and goals of this chapter at the least cost to consumers and in consideration of the restructuring policy principles of RSA 374-F:3; and

VIII. Alternative methods for renewable portfolio standard compliance, such as competitive procurement through a centralized entity on behalf of all consumers in all areas of the state.

362-F:6 Renewable Energy Certificates.

I. The electric renewable portfolio standard program established in this chapter shall utilize the regional generation information system (GIS) of energy certificates administered by ISO-New England and the New England Power Pool (NEPOOL) or their successors. If the regional GIS certificate tracking program administered by the ISO-New England is no longer operational or accessible, the commission shall develop an alternative certificate program, after public notice and hearing, designed to provide at least the same information on the type and generation of renewable energy resources as the GIS certificate tracking program.

II. The commission shall establish procedures by which electricity production not tracked by ISO-New England from customer-sited sources, including behind the meter production, may be included within the certificate program, provided such sources are located in New Hampshire. The procedures may include the aggregation of sources and shall be compatible with procedures of the certificate program administrator. The production shall be monitored and verified by an independent entity designated by the commission, which may include electric distribution companies.

III. The commission shall designate in a timely manner New Hampshire eligible renewable sources together with any conditions pursuant to this chapter to the certificate program administrator under paragraph I, with such sources being the recipient of all certificates issued for purpose of this chapter.

IV.(a) Certificates issued for purposes of complying with this chapter shall come from sources within the New England control area unless the source is located in a control area adjacent to the New England control area and the energy produced by the source is actually delivered into the New England control area for consumption by New England customers. The delivery of such energy from the source into the New England control area shall be verified by:

(1) A unit-specific bilateral contract for sale and delivery of a source's electrical energy to the New England control area is in place for the time period during which renewable certificates are generated;

(2) Confirmation from ISO-New England that the sale of the renewable energy was actually settled in the ISO market system; and

(3) Confirmation through the North American Electric Reliability Corporation tagging system that the import of energy into the New England control area actually occurred.

(b) The commission may impose such other requirements as it deems appropriate, including methods of confirming actual delivery of the electrical energy into the New England control area.

362-F:7 Sale, Exchange, and Use of Certificates.

I. A certificate may be sold or otherwise exchanged by the source to which it was initially issued or by any other person or entity that acquires the certificate. A certificate may only be used once for compliance with the requirements of this chapter. It may not be used for compliance with this chapter if it has been or will be used for compliance with any similar requirements of another non-federal jurisdiction, or otherwise sold, retired, claimed, or represented as part of any other electrical energy output or sale. Certificates shall only be used by providers of electricity for compliance with the requirements of RSA 362-F:3 in the year in which the generation represented by the certificate was produced, except that unused certificates of the proper class issued for production during the prior 2 years or the first quarter of the subsequent year may be used to meet up to 30 percent of a provider's requirements for a given class obligation in the current year of compliance.

II. Certificates from behind-the-meter distributed generation shall be initially issued to the owner of the customer-sited source or their designee, regardless of whether the source has received assistance from the renewable energy fund established in RSA 362-F:10.

362-F:8 Information Collection. By July 1 of each year, each provider of electricity shall submit a report to the commission, in a form approved by the commission, documenting its compliance with the requirements of this chapter for the

prior year. The commission may investigate compliance and collect any information necessary to verify and audit the information provided to the commission by providers of electricity.

362-F:9 Purchased Power Agreements.

I. Upon the request of one or more electric distribution companies and after notice and hearing, the commission may authorize such company or companies to enter into multi-year purchase agreements with renewable energy sources for certificates, in conjunction with or independent of purchased power agreements from such sources, to meet reasonably projected renewable portfolio requirements and default service needs to the extent of such requirements, if it finds such agreements or such an approach, as may be conditioned by the commission, to be in the public interest.

II. In determining the public interest, the commission shall find that the proposal is substantially consistent with the following factors:

(a) The efficient and cost-effective realization of the purposes and goals of this chapter;

(b) The restructuring policy principles of RSA 374-F:3;

(c) The extent to which such multi-year procurements are likely to create a reasonable mix of resources, in combination with the company's overall energy and capacity portfolio, in light of the energy policy set forth in RSA 378:37 and either the distribution company's integrated least cost resource plan pursuant to RSA 378:37-41, if applicable, or a portfolio management strategy for default service procurement that balances potential benefits and risks to default service customers;

(d) The extent to which such procurement is conducted in a manner that is administratively efficient and promotes market-driven competitive innovations and solutions; and

(e) Economic development and environmental benefits for New Hampshire.

III. The commission may authorize one or more distribution companies to coordinate or delegate procurement processes under this section.

IV. Rural electric cooperatives for which a certificate of deregulation is on file with the commission shall not be required to seek commission authorization for multi-year purchased power agreements or certificate purchase agreements under this paragraph.

362-F:10 Renewable Energy Fund.

I. There is hereby established a renewable energy fund. This nonlapsing, special fund shall be continually appropriated to the commission to be expended in accordance with this section. The state treasurer shall invest the moneys deposited therein as provided by law. Income received on investments made by the state treasurer shall also be credited to the fund. All payments to be made under this section shall be deposited in the fund. The moneys paid into the fund under paragraph II of this section, excluding class II moneys, shall be used by the commission to support thermal and electrical renewable energy initiatives. Class II moneys shall only be used to support solar energy technologies in New Hampshire. All initiatives supported out of these funds shall be subject to audit by the commission as deemed necessary. All fund moneys including those from class II may be used to administer this chapter, but all new employee positions shall be approved by the fiscal committee of the general court.

II. In lieu of meeting the portfolio requirements of RSA 362-F:3 for a given year if, and to the extent sufficient certificates are not otherwise available at a price below the amounts specified in this paragraph, an electricity provider may, at the time of report submission for that year under RSA 362-F:8, make payment to the commission at the following rates for each megawatt-hour not met for a given class obligation through the acquisition of certificates:

(a) Class I- $57.12.

(b) Class II - $150.

(c) Class III - $28.

(d) Class IV - $28.

III. Beginning in 2008, the commission shall adjust these rates by January 31 of each year using the Consumer Price Index as published by the Bureau of Labor Statistics of the United States Department of Labor.

IV. The commission shall make an annual report by October 1 of each year, beginning in 2009, to the legislative oversight committee on electric utility restructuring under RSA 374-F:5 detailing how the renewable energy fund is being used and any recommended changes to such use.

362-F:11 Application.

I. The commission, in a non-adjudicative process, shall certify the classification of an existing or proposed generation facility by issuing a determination within 45 days of receiving from an applicant sufficient information to determine its classification. The application shall contain the following:

(a) Name and address of applicant.

(b) Facility location, ISO–New England asset identification number, and NEPOOL GIS facility code, if available.

(c) Description of the facility, including fuel type, gross generation capacity, initial commercial operation date, and, in the case of a biomass source, NOx and particulate matter emission rates and a description of pollution control equipment or practices proposed for compliance with applicable NOx and particulate matter emission rates.

(d) Such other information as the applicant may provide to assist in determining the classification of the generating facility.

II. The commission shall certify applications of customer-sited sources in a manner that is compatible with the procedures established for recognizing such production under RSA 362-F:6, II.

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III. Biomass facilities otherwise meeting the requirements of a source shall be conditionally certified by the commission subject to compliance with the applicable NOx and particulate matter emission standards. Within 10 days of verification of compliance with emissions standards from the department, as provided in RSA 362-F:12, III, the commission, in a non-adjudicative process, shall designate the facility as eligible pursuant to RSA 362-F:6, III.

362-F:12 Verification of Emissions From Biomass Sources. Any source seeking to qualify using an eligible biomass technology shall verify emissions in accordance with the following methods:

I. For nitrogen oxide emissions, the source shall install and operate a continuous emissions monitor that meets departmental standards as codified in rules.

II. For particulate matter emissions, the source shall conduct an annual stack test in accordance with methods approved by the department. Upon completion of 3 annual tests which demonstrate compliance, the source may request of the department for a decrease in the frequency of testing, but to not less than once every 3 years.

III. Each such source shall file with the department and the commission within 45 days of the end of each calendar quarter an affidavit and documentation attesting to the source's average NOx emission rate for such quarter and the most recent particulate matter stack test results. For purposes of initial certification under RSA 362-F:6, the results of a stack test may be filed with the department at any time to demonstrate compliance with both the particulate matter and nitrogen oxide emissions standards. Within 30 days of a filing, the department shall provide verification of the emissions reported in the filing to the commission.

362-F:13 Rulemaking. The commission shall adopt rules, under RSA 541-A to:

I. Administer the electric renewable portfolio standard program including the development of an alternative to the regional generation information system to the extent necessary.

II. Ascertain, monitor, and enforce compliance with the program to the extent not addressed in the department's rules.

III. Include within the program electric production not tracked by ISO-New England from eligible customer-sited sources.

IV. Administer the renewable energy fund and make expenditures from the fund.

V. Establish procedures for the classification of existing or proposed generation facilities, including a provision for a preliminary designation option, and to verify the completion of capital investments required of certain class I resources.

VI. Define when a repowered generation unit qualifies as a new class I source under RSA 362-F:4.

VII. Otherwise discharge the responsibilities delegated to the commission under this chapter.

3 New Subparagraph; Application of Receipts; Renewable Energy Fund. Amend RSA 6:12, I(b) by inserting after subparagraph 252 the following new subparagraph:

(253) Moneys deposited in the renewable energy fund established under RSA 362-F:10.

4 Default Service. Amend RSA 374-F:3, V(c) to read as follows:

(c) Default service should be designed to provide a safety net and to assure universal access and system integrity. Default service should be procured through the competitive market and may be administered by independent third parties. ***Any prudently incurred costs arising from compliance with the renewable portfolio standards of RSA 362-F for default service or purchased power agreements shall be recovered through the default service charge.*** The allocation of the costs of administering default service should be borne by the customers of default service in a manner approved by the commission. If the commission determines it to be in the public interest, the commission may implement measures to discourage misuse, or long-term use, of default service. Revenues, if any, generated from such measures should be used to defray stranded costs.

5 Competitive Electricity Supplier Requirement. Amend RSA 374-F:7, III to read as follows:

III. The commission is authorized to assess fines against, revoke the registration of, and prohibit from doing business in the state, any competitive electricity supplier which violates the requirements of this section ***or RSA 362-F.***

6 Thermal Renewable Study; Statement of Purpose.

I.(a) Thermal renewable energy technologies provide fuel diversity to New Hampshire and New England energy supply through use of local renewable fuels and resources and have the potential to lower and stabilize future energy costs by helping to minimize regional dependence on imported fossil fuels such as natural gas, propane, and oil for heating and cogeneration.

(b) The increased use in New Hampshire and New England of thermal energy generated using low emission, renewable energy technologies will help to reduce the amount of nitrogen oxide, sulfur dioxide, particulate matter, and greenhouse gas emissions transported into New Hampshire and also generated in the state, thereby improving air quality and public health.

(c) In addition to benefits stated above, it is in the public interest to stimulate economic development by investment in low emission thermal renewable energy technologies in New England and in particular, New Hampshire.

II.(a) The office of energy and planning in consultation with the energy planning advisory board established by 2004, 164 shall study, evaluate, and make recommendations including potential legislation on:

(1) A thermal renewable portfolio standard and other incentives or mechanisms that will promote the use of high efficiency low emission thermal renewable energy technology and fuels in residential, commercial, and industrial applications;

(2) Regulatory, technological, or other impediments to the rapid deployment of thermal renewable energy

systems; and

(3) Recommendations to the state and local governments on programs and actions that can be implemented to encourage residential, commercial, and industrial use of thermal renewable energy.

(b) The office of energy and planning shall solicit advice and expertise from members of the public representing thermal energy technology and fuels and may solicit the advice and expertise of any individual, state agency or organization, or state employee.

(c) The office of energy and planning shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 30, 2008.

7 Effective Date.

I. Sections 1-4 of this act shall take effect 60 days after its passage.

II. The remainder of this act shall take effect upon its passage.

AMENDED ANALYSIS

This bill:

I. Establishes minimum electric renewable portfolio standards.

II. Requires the commission to make reports to the general court.

III. Requires the use of renewable energy certificates.

IV. Requires the office of energy and planning to conduct a study of incentives to promote thermal renewable energy.

Amendment adopted.

Rep. Harvey offered floor amendment (1033h).

Floor Amendment (1033h)

Amend the introductory paragraph of RSA 362-F:9, II as inserted by section 2 of the bill by replacing it with the following:

II. In determining the public interest, the commission shall find that the proposal is, on balance, substantially consistent with the following factors:

Rep. Harvey spoke in favor.

Floor amendment (1033h) was adopted.

The question now being adoption of the committee report of Ought to Pass as amended.

Reps. Harvey and James Garrity spoke in favor and yielded to questions.

Reps. Itse and Gene Andersen spoke against.

Rep. Fargo spoke in favor.

On a division vote, 253 members having voted in the affirmative and 37 in the negative, the committee report was adopted.

Ordered to third reading.

Rep. Reardon declared a conflict of interest and did not participate.

UNANIMOUS CONSENT

Rep. Rowe addressed the House.

The House recessed at 12:35 p.m.

RECESS

(Speaker Norelli in the Chair)

The House reconvened at 1:50 p.m.

CLERK'S NOTE

When less than two-thirds of the elected membership is present, Part II, Article 20 of the state constitution requires the assent of two-thirds of those present and voting to render their acts and proceedings valid.

REGULAR CALENDAR (CONT'D)

HB 296, prohibiting the use of flatbed trailers with outrigger wheels in parades. **MAJORITY: OUGHT TO PASS. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Robert W. Williams for the Majority of Transportation: This bill simply states "no person may use any type of flatbed trailer with outrigger wheels in a parade." It removes the use of a dangerous vehicle which, when used, increases the possibility of serious injury or death if a person falls off a trailer in a parade. Vote 13-4.

Rep. Brenda L. Ferland for the Minority of Transportation: This bill came out of a tragic accident during a parade and although the minority sympathizes with what happened we feel this leads to the slippery slope of what will be banned next or if these parade vehicles are greatly modified at such a cost that most people or companies will not volunteer the use of their equipment. Most towns that have the permitting process for parades can and will continue to set limits of what can be done. There was so much publicity of this tragedy we feel modifications in future parade vehicles will take place without laws

HOUSE RECORD

Second Year of the 159th General Court
Calendar and Journal of the 2006 Session

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HOUSE JOURNAL No. 14 (cont.)

Wednesday, April 19, 2006

(Rep. Buco in the Chair)

ENROLLED BILLS REPORT

The Committee on Enrolled Bills has examined and found correctly enrolled House Bills numbered 254, 1125, 1128, 1132, 1154, 1179, 1185, 1188, 1217, 1222, 1362, 1418, 1484, 1497, 1498, 1517, 1579, 1609, 1636, 1646, and 1663, and Senate Bill numbered 344 and Senate Joint Resolution numbered 4.

Rep. Currier, Sen. D'Allesandro for the Committee

SENATE MESSAGE
CONCURRENCE

CACR 30, relating to limits on the taking of private property. Providing that a person's property shall not be taken by eminent domain if the taking is for private use.
HB 391, relative to election affidavits.
HB 688-FN, relative to the regulation of mental health practitioners and the procedures of the board of mental health.
HB 1111, designating the pumpkin as the New Hampshire state fruit.
HB 1172-FN, relative to registration of political committees.
HB 1174, requiring that voters who request a secret ballot be present at the town meeting.
HB 1215, relative to the winter maintenance of Diamond Pond Road in the towns of Colebrook and Stewartstown.
HB 1307, relative to application requirements for motor vehicle recycling yard licenses.
HB 1320, relative to penalties for planning and zoning violations.
HB 1330, clarifying the laws relative to municipal enrollment in the National Flood Insurance Program and relative to adopting flood insurance rate map amendments.
HB 1394, relative to determination of value of property in current use.
HB 1536, relative to bonds required from persons excavating or disturbing certain highways.
HB 1630-L, relative to land use change taxes imposed for certain road construction on rights-of-way.
HB 1634-FN, making technical changes to the law governing the New Hampshire retirement system.
HB 1652-FN, relative to certain insurance claims.
HB 1673-FN, relative to the reduction of mercury emissions.
HB 1709-FN, establishing an autism registry in the department of health and human services.
HB 1738-FN, prohibiting the use of surveillance devices to identify motor vehicles.
HB 1749-FN, relative to access to motor vehicle records by certain defense contractors.
HCR 20, a resolution commending the New Hampshire committee for Employer Support of the Guard and Reserve.
HJR 22, a resolution in recognition and support of New Hampshire's participation in the Experimental Program to Stimulate Competitive Research.
HJR 25, encouraging the United States Congress to propose an amendment to the Constitution concerning eminent domain.

NONCONCURRENCE

HB 501, relative to citizenship and domicile affidavits.
HB 1235-FN, establishing a criminal penalty for driving a commercial motor vehicle while violating an out-of-service order.
HB 1489, relative to school emergency response plans.
HB 1595-FN, relative to certification of electronic systems technicians by the electricians' board.
HB 1733-FN, establishing a reporting system for court decisions relative to residential responsibility under parenting plans.

RECESS

Rep. O'Neil moved that the House adjourn.
Adopted.

HOUSE JOURNAL No. 15

Wednesday, April 26, 2006

The House assembled at 10:00 a.m., the hour to which it stood adjourned, and was called to order by the Speaker.

His Excellency, Governor John H. Lynch, joined the Speaker on the rostrum for the day's opening ceremonies.

Prayer was offered by Guest Chaplain, Rep Frances D. Potter, retired Associate Rector of St. Paul's Episcopal Church in Concord.
O Holy and Gracious God, we ask Your blessing upon us as we gather here today. God who is Creator of all that is seen and unseen. We seek to protect the world that we live in. Guide us that we may see the needs of our streams and fields, and the people who work in them. We pray for Your compassion on all who do not have homes to live in or food to feed their children, or who are unable to move out of their homes. Be with them this morning and be with us as we think about all of those who we care about. Bring them joy. Bring us joy as we do Your work in this place. We pray in Your Holy Name. Amen.

Rep. Peter L. Batula, the member from Merrimack, led the Pledge of Allegiance.

The National Anthem was sung by Kathy Donahue from Contoocook.

LEAVES OF ABSENCE

Reps. Callaghan, Carew, Chabot, David Cote, Coughlin, Giuda, Gonzalez, Hunter, Putnam, Snyder, Thomas and Whiting, the day, illness.
Reps. Bridle, Casey, Clemons, Domingo, Donald Flanders, Forsing, Foster, Gilbert, Intone, Kobel, Stephen L'Heureux, Lary, Lasky, Lessard, Mason, Messier, Moran, Parker, Roberts, Carl Robertson, Rosen, Rous, Serlin, Stepanek, Tahir and Wiley, the day, important business.
Reps. MaryAnn Blanchard, Buhlman, Itse, Lund and Norelli, the day, illness in the family.

INTRODUCTION OF GUESTS

Jeff, Slattery and Cassidy, husband, son and daughter of today's singer, guests of the House.
Chloe Carlston, guest of Rep. Reeves. Rosalie Chase and Catriona Beck, mother and guest of Rep. Claudia Chase. Louise and Brianne Morneau, wife and daughter of Rep. Morneau. Klee Dienes, guest of Rep. Harvey. Members of Teen Pac Leadership School, guests of Rep. Mark Clark. Students and teachers from Towle Elementary School, Debra Beaupre, Elaine Heineman, Teriko McConnell and Stephanie Gilson, guests of the Newport delegation. David Babson III, son of Rep. Babson. Cory Lux, guest of Rep. Emerson. Cindy Bicknell and Craig Taft, wife and son of Rep. Bicknell. Captain Michael Tilton, son of Rep. Franklin Tilton. Allison, Christopher and David Scamman, daughter-in-law and grandsons of the Speaker and Rep. Stella Scamman.
Pages for the Day, Hannah Gomez, student from Litchfield and Melia Robinson, student from Merrimack High School.

SENATE MESSAGE
REQUEST FOR CONCURRENCE

HB 1238-FN, relative to centralized voter registration database information. (Amendments printed SJ 04/13/06)
Rep. Whalley moved that the House nonconcur and request a Committee of Conference.
Adopted.
The Speaker appointed Reps. Whalley, Biundo, Reeves and Claudia Chase.

COMMITTEE REPORTS
CONSENT CALENDAR

304

SB 314-FN-L, establishing minimum renewable standards for energy portfolios. **INEXPEDIENT TO LEGISLATE**
Rep. Roy D. Maxfield for Science, Technology and Energy: The bill establishes standards requiring the use of renewable energy resources by providers of electricity for sale to retail customers in New Hampshire. Our current energy policy supports the voluntary production and retail use of renewable energy. Several states have adopted mandatory renewable energy standards for renewable generation through energy certificates. The money to provide incentives for renewable generation was removed by the Senate. The majority of the committee was not comfortable with cost/benefit models or various classes of renewable energy as they apply to New Hampshire. The committee voted to ITL the bill and defer to HB 1146 that would study these issues before making recommendations. Vote 13-3.
Rep. Ross spoke in favor.
Committee report adopted.

SB 341, extending by one year the advisory-only period for OBD II testing. **OUGHT TO PASS WITH AMENDMENT**
Rep. Stephen H. Nedeau for Transportation: This bill was amended from a one year extension of the enforcement of repairs on OBD II to a phase in. Starting December 1, 2006 all 2002 or newer cars will be required to fix an OBD II failure. Starting July 1, 2007, all cars from 1996 up will be required to repair an OBD II failure. If by July 1, 2007 an exemption program has not been developed and approved by the OBD II Advisory Committee, section II of this bill, will not take effect. Vote 10-0.

Amendment (1872h)

Amend the title of the bill by replacing it with the following:
AN ACT relative to the applicability of OBD II testing requirements.
Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; Department of Safety; Duties of Commissioner; Repair Waiver Program. Amend RSA 21-P:4 by inserting after paragraph XII the following new paragraph:

XIII. Establish a program to waive the repair requirements of the OBD II testing program. Waivers shall be granted based on indigency or other urgent financial need. The waiver program required by this paragraph shall be consistent with the recommendations of the OBD II testing advisory committee established in RSA 266:59-b, VII and shall be implemented no later than February 1, 2007.

2 OBD II Testing; Applicability. Amend 2005, 296:4 to read as follows:

296:4 OBD II Testing; Applicability. Notwithstanding RSA 266:59-b, any EPA OBD II testing required by department of safety rules prior to [~~May~~] ***December*** 1, 2006 shall be advisory only. No inspection station shall deny an inspection sticker to any ***model year 2002 or newer*** vehicle because of OBD II failure prior to [~~May~~] ***December*** 1, 2006. ***No inspection station shall deny an inspection sticker to any model year 1996 through 2001 vehicle because of OBD II failure, except that a sticker may be denied to such vehicle after July 1, 2007 if the department has implemented a repair waiver program.***

3 Effective Date. This act shall take effect upon its passage.

AMENDED ANALYSIS

This bill requires the commissioner of safety to implement an OBD II repair waiver program by February 1, 2007. This bill also modifies the applicability of the OBD II inspection failure requirement.
Amendment adopted.
Committee report adopted ordered to third reading.

RESOLUTION

Rep. O'Neil offered the following: RESOLVED, that the House now adjourn from the early session, that the business of the late session be in order at the present time, that the reading of bills be by title only and resolutions by caption only and that all bills ordered to third reading be read a third time by this resolution, and that all titles of bills be the same as adopted, and that they be passed at the present time, and when the House adjourns today it be to meet Thursday, May 4, 2006 at 10:00 a.m.
Adopted.

LATE SESSION

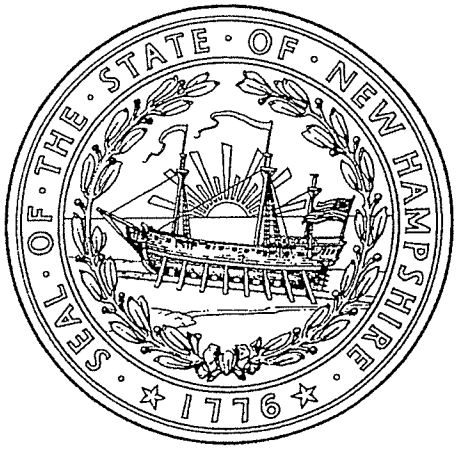
Third reading and final passage

SB 334, authorizing the use of a credit freeze as a means of deterring identity theft.
SB 369, relative to portability, availability, and renewability of health coverage.
SB 403, relative to verification of identity when a person registers or attempts to vote.
SB 255, establishing a committee to study the funding necessary to operate the hazardous materials program in New Hampshire.
SB 352-FN, relative to the regulation of real estate appraisers.
SB 359-FN, relative to the regulation of plumbers and water treatment technicians by the plumbers' board.
SB 336, relative to security deposits in landlord tenant matters.
SB 265, relative to workers' compensation requirements for out-of-state employers and employees.
SB 273, relative to reasonable accommodations for employees with disabilities.
SB 335, relative to funds of the department of resources and economic development used for snowmobile trail grooming equipment.
SB 244, relative to alternative regulation of small incumbent local exchange carriers and relative to unclaimed deposits for

March 9, 2006
Nos. 6 - 7

STATE OF NEW HAMPSHIRE

Web Site Address: www.gencourt.state.nh.us



Legislative

SENATE JOURNAL

ADJOURNMENT - FEBRUARY 23, 2006 SESSION
COMMENCEMENT - MARCH 9, 2006 SESSION

SB 240, relative to transmission poles or structures on public highways. Energy and Economic Development Committee. Inexpedient to Legislate, Vote 2-1. Senator Bragdon for the committee.

MOTION TO TABLE

Senator Bragdon moved to have SB 240 laid on the table.

Adopted.

LAID ON THE TABLE

SB 240, relative to transmission poles or structures on public highways.

SB 243, establishing a commission to study rural transit in New Hampshire. Energy and Economic Development Committee. Ought to Pass, Vote 3-0. Senator Burling for the committee.

MOTION TO TABLE

Senator Boyce moved to have SB 243 laid on the table.

Adopted.

LAID ON THE TABLE

SB 243, establishing a commission to study rural transit in New Hampshire.

SB 292-FN, relative to permits for combustion of certain waste. Energy and Economic Development Committee. Inexpedient to Legislate, Vote 2-1. Senator Odell for the committee.

MOTION TO TABLE

Senator Larsen moved to have SB 292-FN laid on the table.

Adopted.

LAID ON THE TABLE

SB 292-FN, relative to permits for combustion of certain waste.

SB 314-FN-L, establishing minimum renewable standards for energy portfolios. Energy and Economic Development Committee. Ought to pass with amendment, Vote 4-1. Senator Odell for the committee.

Energy and Economic Development
March 1, 2006
2006-1248s
06/09

Amendment to SB 314-FN-LOCAL

Amend the bill by replacing all after the enacting clause with the following:

1 Statement of Purpose. The general court finds that:

I. Increased use of renewable energy technologies and continued use of existing renewable energy technologies that decrease nitrogen oxide and particulate matter emission rates can reduce air pollution in the state and air pollution transported across state lines, and thereby improve air quality and help advance long-term climate change strategies.

II. Renewable energy technologies provide fuel diversity to the state and New England generation supply and have the potential to lower and stabilize future energy costs by reducing the region's dependence on imported fossil fuels such as natural gas and oil.

III. It is in the public interest to stimulate investment in new, lower emission, renewable energy technologies and investments in improving air emission quality from existing renewable energy technologies.

IV. It is in the public interest to support incentives to reduce New Hampshire's consumption of fossil fuels consistent with regional, national, and international policy on promoting renewable energy and which also have the potential of reducing the long-term cost of energy.

2 New Subparagraph; Application of Receipts; Compliance Fund. Amend RSA 6:12, I(b) by inserting after subparagraph (242) the following new subparagraph:

(243) Moneys deposited in the compliance fund established under RSA 374-G:6.

3 Default Service. Amend RSA 374-F:3, V(c) to read as follows:

(c) Default service should be designed to provide a safety net and to assure universal access and system integrity. Default service should be procured through the competitive market and may be administered by independent third parties. ***The default service so procured shall include any renewable energy certificates the utility is obliged to purchase pursuant to RSA 374-G, with the cost of such certificates or alternative compliance payments recovered through the default service charge.*** The allocation of the costs of administering default service should be borne by the customers of default service in a manner approved by the commission. If the commission determines it to be in the public interest, the commission may implement measures to discourage misuse, or long-term use, of default service. Revenues, if any, generated from such measures should be used to defray stranded costs.

4 New Chapter; Electric Provider Renewable Energy Requirement. Amend RSA by inserting after chapter 374-F the following new chapter:

CHAPTER 374-G

ELECTRIC PROVIDER RENEWABLE ENERGY REQUIREMENT

374-G:1 Definitions. In this chapter:

I. "Certificate" means the electronic record produced by the New England Power Pool Generation Information System (GIS) its designee or successor, identifying each mega-watt hour generated by a renewable energy resource or any successor mechanism that represents each megawatt-hour generated by a renewable energy resource, or such alternative documentation evidencing the same if the GIS is no longer maintained and no successor mechanism has been established.

II. "Commission" means the public utilities commission.

III. "Compliance year" means a calendar year beginning January 1 and ending December 31, for which a provider of electricity must demonstrate that it has met the requirements of this chapter.

IV. "Eligible biomass technologies" means biomass technologies using as their primary fuel source non-construction and demolition debris derived material such as brush, stumps, lumber ends and trimmings, wood pallets, bark, wood chips, shavings, sawdust, and slash; and energy crops, biogas, or biodiesel; provided that the generation unit has a quarterly average nitrogen oxide (NOx) emission rate of less than or equal to 0.075 pounds/million British thermal units (lbs/Mmbtu), and a quarterly average particulate emission rate of less than or equal to 0.02 lbs/Mmbtu. The term "primary fuel source" means at least 90 percent of the total energy input into the generating unit, on an Mmbtu basis.

V. "End-use customer" means any person or entity in New Hampshire that purchases electrical energy at retail.

VI. "Historical generation baseline" means the average annual electrical production from the eligible renewable energy resources, stated in megawatt-hours (MWhrs), for the 3 calendar years 1995 through 1997, or for the first 36 months after the commercial operation date if that date is after December 31, 1994 (the "baseline period"); provided however, that the historical generation baseline shall be measured regardless of whether or not the average annual electrical production during the baseline period meets the eligible requirements of this paragraph.

VII. "Provider of electricity" means a provider of electricity to any end-use customer located in this state, including, without limitation, the local distribution company providing default service or similar service under state law, including RSA 374-F, but shall not include:

(a) A person who provides his or her own electricity from on-site generation which supplies electricity exclusively from renewable energy resources, qualifying small power production facilities, and qualifying cogeneration facilities as defined in RSA 362-A:1-a; or

(b) The provision of the internal electrical needs of any electrical generating station from its generation or from affiliate generation.

VIII. "Renewable energy resources" means new renewable energy resources – class I, incremental renewable energy resources – class I, or existing renewable energy resources – class II. An electrical generating facility selling its electrical output at long-term rates established before January 1, 2006 by orders of the commission under RSA 362-A:4 shall not be a renewable energy resource – class II, until the date on which it ceases to sell its electrical output at those original long-term rates.

IX. "Renewable energy resources – new-class IA" means the production of electricity from any of the following, provided the resource has a commercial operation date after January 1, 2006:

(a) Solar photovoltaic or solar thermal electric energy;

(b) Wind energy;

(c) Geothermal energy;

(d) Fuel cells utilizing renewable fuels;

(e) Ocean thermal, wave, or tidal energy;

(f) Biologically derived methane gas from anaerobic digestion of organic materials from such sources as yard waste, food waste, animal waste, sewage sludge, and septage, and landfill waste; and

(g) Eligible biomass technologies having a gross nameplate capacity of 50 megawatts (MW) or less, including any biomass unit whose primary fuel source was coal prior to January 1, 2006.

X. "Renewable energy resource – new-class IB" means the production of electricity from solar photovoltaic or solar thermal energy and an operation date after January 1, 2006.

XI. "Renewable energy resource – new incremental (class IC)" means the incremental output in any compliance year over the historical generation baseline, provided that such existing renewable energy resource (class II) was certified by the commission to have demonstrably completed capital investments after January 1, 2006 attributable to the efficiency improvements or additions of capacity that are sufficient to, were intended to, and can be demonstrated to increase annual electricity output. The determination of incremental production shall not be based on any operational changes at such facility not directly associated with the efficiency improvements or additions of capacity.

XII. "Renewable energy resources - existing (class IIA)" means the production of electricity from any of the following, provided the resource has a commercial operation date for electrical generation before January 1, 2006:

(a) Biologically derived methane gas from anaerobic digestion of organic materials from such things as yard waste, food waste, animal waste, sewage sludge and septage, and landfill waste;

(b) Eligible biomass technologies having a gross nameplate capacity of 25 MWs or less; and

(c) Municipal solid waste combustion technologies subject to RSA 125-M.

XIII. "Renewable energy resources – existing (class IIB)" means the production of electricity from hydroelectric energy that has a gross nameplate capacity of 5 MWs or less and are constricted in their operation by fish ladders or other similar fish facilities.

374-G:2 Minimum Renewable Standards for Energy Portfolios.

I. Providers of electricity in this state shall obtain renewable energy certificates from renewable energy resources to meet the minimum renewable standards for its energy portfolio established by this section.

II. For the period of January 1 through December 31, 2007, during that calendar year and in each subsequent calendar year through December 31, 2013 and as provided in RSA 374-G:4 of this chapter, a provider of electricity shall obtain renewable energy certificates from the various classes of renewable energy resources, defined in RSA 374-G:1, representing the following percentages of its total kilowatt-hours of electricity supplied to its end-use customers unless modified by the provisions in paragraph IV:

	2007	2008	2009	2010	2011	2012	2013	Thereafter
Class IA +/or C	0.5%	1%	1%	1%	2%	3%	4%	4%
Class IB	0.01%	0.02%	0.04%	0.08%	0.15%	0.20%	0.30%	0.3%
Class IIA	3%	4%	5%	6%	6%	6%	6%	6%
Class IIB	1%	1:5%	1.5%	1.5%	1.5%	1.5%	1.5%	1.5%

III. On or about January 1, 2010, the commission shall open a docket to conduct a review of the requirements in paragraph II and make recommendations for any changes to the legislature to be effective after July 1, 2011. In the docket the commission may also determine the adequacy or potential adequacy of re-

newable energy resources to meet the percentage requirements of paragraphs II and III of this section. If the commission determines an inadequacy or potential inadequacy of supplies for the required percentages, the commission shall recommend to the general court a revised schedule of required percentages to achieve the purposes of this chapter.

IV. If a provider of electricity represents to an end-use customer that the provider of electricity is selling to the retail customer energy that includes renewable energy resources, such representation shall include a statement of the minimum renewable standard for the provider of electricity established in paragraph II. The minimum renewable energy percentages set forth in RSA 374-G:2, II shall be met for each electrical energy product offered to end-use customers, in a manner that ensures that the amount of renewable energy to end-use customers voluntarily purchasing renewable energy is not counted toward meeting such percentages.

V. Wholesale and retail electric suppliers under supply contracts executed by providers of electricity as of the effective date of this chapter shall be exempt from the requirements of paragraphs II-IV, provided however, that no exemption shall extend beyond 36 months after the effective date of this chapter. Under no condition during this transition period shall a minimum renewal standard obligation be shifted to another customer or customer class in order to compensate for a delay in implementation of the minimum renewal standard to another customer or customer class due to this exemption.

374-G:3 Renewable Energy Certificates.

I. The renewable energy program established in this chapter shall utilize the regional generation information system (GIS) of energy certificates administered by the Independent System Operator-New England, Inc. (ISO-New England) and the New England Power Pool (NEPOOL) or their successors. If the regional GIS certificate tracking system administered by the ISO-New England is no longer operational or accessible, the commission shall develop an alternative certificate program, after public notice and hearing, designed to be as comparable to the GIS certificate tracking system as possible.

II. The commission shall designate in a timely manner New Hampshire eligible renewable resources to the ISO-New England.

III. Certificates obtained for purposes of complying with this chapter shall come from renewable energy resources within the ISO-New England region unless an external unit contract for delivery of the energy to the ISO-New England control area is executed and such contract includes associated transmission rights for delivery of the generation unit's electrical energy over the ties from an adjacent control area to the ISO-New England control area.

374-G:4 Sale or Exchange of Certificates. A certificate may be sold or otherwise exchanged by the renewable energy resource to which it was initially issued or by any other person or entity that acquires the certificate; however, the certificate may only be used once for compliance with the requirements of this chapter and may not be used for compliance with this chapter if used for compliance with any requirements of another jurisdiction. Except as otherwise provided in paragraphs II and III, certificates shall be used by providers of electricity for compliance with the requirements of RSA 374-G:2 in the calendar year in which the generation represented by the certificate was produced. Compliance with each year's RSA 374-G:2 requirement shall be determined with certificates issued in the certificate trading periods associated with the calendar year of compliance.

II. A provider of electricity may use certificates associated with renewable energy resource production during one calendar year for compliance with the requirements of this chapter in either of the 2 subsequent calendar years, provided such certificates:

(a) Have not been used for compliance in another jurisdiction and are used only once;

(b) Were in excess of those needed for compliance with this chapter in the year in which they were generated;

(c) Have not otherwise been, nor will be, sold, retired, claimed, or represented as part of electrical energy output or sale, or used to satisfy obligations in jurisdictions other than New Hampshire, demonstrated by retiring banked certificates in the compliance year in which they were generated; and

(d) Used by a provider of electricity do not exceed 30 percent of the provider's obligations under this chapter for the calendar year in which such certificates are used.

III. In addition to certificates produced in calendar year 2007, a provider of electricity may use renewable energy resources class I or class II certificates associated with generation during calendar year 2006 and those associated with generation during the first calendar quarter of 2008 for compliance with its calendar year 2007 obligations under RSA 374-G:2, provided:

(a) Renewable energy resources class I certificates are used for calendar 2007 class I obligations and renewable energy resources class II certificates are used for calendar year 2007 class II obligations; and

(b) No more than 30 percent of the 2007 calendar year obligation under RSA 374-G:2 of this chapter is met with such certificates.

374-G:5 Information Collection. Within 180 days of the end of each calendar year, each provider of electricity shall submit a report to the commission, in a form approved by the commission, documenting its compliance with the requirements of this chapter. The commission may investigate compliance and collect any information necessary to verify and audit the information provided to the commission by providers of electricity.

374-G:6 Alternative Compliance.

I. There is hereby established a compliance fund. This nonlapsing revolving special fund shall be continually appropriated to be expended by the commission in accordance with this section. The state treasurer shall invest the moneys deposited therein as provided by law. Interest received on investments made by the state treasurer shall also be credited to the fund. All payments to be made under this section shall be deposited in the fund. The moneys paid into the fund under paragraph II of this section shall be used and administered by the commission for the following purposes: supporting thermal and electrical renewable energy initiatives, energy efficiency, and demand-side management including programs that reduce demand for both electricity and non-renewable fuels used in heat production and transportation, with the exception of funds collected relative to compliance with class IB. The moneys paid into the fund relative to compliance with class IB production of electricity from solar photovoltaic or solar thermal energy shall be used by and administered by the commission for supporting solar energy resources.

II. An electricity provider shall discharge any annual class IA or IC, or both, shortfall in its portfolio requirements by making a payment into the fund of $50 per megawatt-hour of renewable energy obligation in 2007 dollars, adjusted annually by the annual change in the United States Bureau of Labor Statistics Consumer Price Index, which may be made instead of standard means of compliance with the statute. The revised rate per megawatt-hour shall be published by the commission by January 31 of each year.

III. An electricity provider shall discharge any annual class IB shortfall in its portfolio requirements by making a payment into the fund of $200 per megawatt-hour of renewable energy obligation in 2007 dollars, adjusted annually by the annual change in the United States Bureau of Labor Statistics Consumer Price Index, which may be made instead of standard means of compliance with this chapter. The commission by January 31 of each year shall publish the revised rate per megawatt-hour.

IV. An electricity provider shall discharge any annual class II shortfall in its portfolio requirements by making a payment into the fund of $25 per megawatt-hour of renewable energy obligation in 2007 dollars, adjusted annually by the annual change in the United States Bureau of Labor Statistics Consumer Price Index, which may be made instead of standard means of compliance with this statute. The commission by January 31 of each year shall publish the revised rate per megawatt-hour.

374-G:7 Application.

I. The commission shall certify generation facilities as either renewable energy resources class I or class II by issuing a determination within 45 days of receipt of an application. The application shall contain the following:

(a) Name and address of applicant;

(b) Facility location and NEPOOL GIS identification number;

(c) Description of the facility, including fuel type, gross generation capacity, commercial operation date, and, in the case of a biomass renewable energy resource, NOx and particulate matter emission rates and a description of pollution control equipment or practices proposed for compliance with applicable NOx and particulate matter emission rates; and

(d) Such other information as the applicant may provide to assist in the determination of the generating facility as a renewable energy resource.

II. Biomass facilities otherwise meeting the requirements of a renewable energy resource shall be certified by the commission subject to compliance with the applicable NOx and particulate matter emission

standards. Each such renewable energy resource shall file with the commission within 45 days of the end of each calendar quarter an affidavit attesting to the renewable energy resources average NOx emission rate in lbs/Mmbtu for such quarter and the particulate matter emission rate test results, in lbs/Mmbtu produced in accordance with RSA 374-G:8. Upon receipt of verification of emissions from the department of environmental services, the commission shall notify the GIS of such renewable energy resource's eligibility for certificates and trading as a renewable energy resource in New Hampshire.

374-G:8 Verification of Emissions. Any source seeking to qualify as an eligible biomass technology shall verify emissions in accordance with the following methods:

I. For nitrogen oxide emissions, the source shall install and operate continuous emissions monitors which meet department of environmental services' standards as codified in rules.

II. For particulate matter emissions, the source shall conduct stack tests in accordance with the New Hampshire department of environmental services' approved methods. Such tests shall be conducted annually for a period of 3 years. Upon completion of 3 annual tests which demonstrate compliance with the particulate matter emission rate specified in RSA 374-G:1, IV, the source may request, subject to New Hampshire department of environmental services' approval, to revise the particulate matter stack testing frequency to once every 3 years.

374-G:9 Rulemaking. The commission shall adopt rules as necessary, pursuant to RSA 541-A, to implement this program.

5 Effective Date. This act shall take effect 60 days after its passage.

Amendment adopted.

The question is on the adoption of the bill as amended.

A roll call was requested by Senator Bragdon.

Seconded by Senator Barnes.

The following Senators voted Yes: Gallus, Kenney, Burling, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Barnes, Martel, Letourneau, D'Allesandro, Estabrook, Hassan, Fuller Clark.

The following Senators voted No: Boyce, Gatsas, Morse.

Yeas: 20 - Nays: 3

Adopted.

Referred to the Finance Committee (Rule #26).

HB 653-FN-L, relative to bonds for construction, development, improvement, and acquisition of broadband facilities. Energy and Economic Development Committee. Ought to Pass, Vote 2-1. Senator Burling for the committee.

Senator Bragdon offered a floor amendment.

Sen. Bragdon, Dist. 11
March 7, 2006
2006-1288s
08/09

Floor Amendment to HB 653-FN-LOCAL

Amend RSA 33:3-g, I as inserted by section 3 of the bill by replacing it with the following:

I. A municipality may issue bonds for the purpose of financing the development, construction, reconstruction, renovation, improvement, and acquisition of broadband infrastructure in areas not served by an existing broadband carrier or provider that would be provided at a fee to broadband carriers that provide broadband services. Without limiting the foregoing, broadband infrastructure may be the subject of public-private partnerships established in accordance with the provisions of RSA 33:3. No bond proceeds shall be used for the development, construction, renovation, improvement, or acquisition of a broadband infrastruc-