

THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DE 10-195

PETITION OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY
FOR APPROVAL OF A POWER PURCHASE AGREEMENT WITH
LIDLAW BERLIN BIOPOWER, LLC

PETITION TO INTERVENE
ON BEHALF OF BERLIN STATION, LLC

NOW COMES Berlin Station, LLC (“Berlin Station”) and pursuant to RSA 541-A:32 and N.H. Code Admin. Rule Puc 203.17, hereby petitions the New Hampshire Public Utilities Commission (“Commission”) for intervention in the above-captioned proceeding. In support of this petition, Berlin Stations states as follows:

1. By Petition dated July 26, 2010, Public Service Company of New Hampshire (“PSNH”) petitioned the Commission, under the provisions of RSA 362-F:9, for approval of a multi-year power purchase agreement (“PPA”) with Laidlaw Berlin BioPower, LLC (“Laidlaw”), a Class I renewable energy source.¹ The PPA provided for the purchase of approximately 67.5 megawatts of energy and capacity, along with the associated renewable energy certificates, to meet PSNH’s reasonably projected renewable portfolio requirements and its default service needs.

2. By Final Order 25,213 (April 18, 2011) (“Final Order”), the Commission approved the PPA.

¹ See RSA 362-F:4.

3. Prior to the issuance of the Final Order, the ownership structure of the biomass facility changed; Berlin Station became the new owner, and succeeded to some of Laidlaw's interests and specifically those under the PPA. *See* Final Order at 17 & n.19 (Commission recognizing change in ownership from Laidlaw to Berlin Station).

4. On June 28, 2018, Governor Chris Sununu signed SB 577 into law (Laws of 2018, ch. 340), which legislation specifically recognized the importance of the Berlin Station to the energy infrastructure of New Hampshire and its importance in enabling the State to achieve its energy policy goals related to the renewable portfolio standards, fuel diversity, capacity and sustainability. In support of achieving these policy objectives, the legislation directs the Commission both to reopen docket DE-10-195 and to modify certain terms of the original PPA, specifically, those related to the cap on the cumulative reduction factor ("CRF").

5. By this Petition, Berlin Station hereby seeks to intervene in the above-referenced proceeding pursuant to N.H. Code Admin. Rule Puc 203.17 and New Hampshire RSA 541 - A:32. The Commission's Rule Puc 203.17 provides that the "Commission shall grant one or more petitions to intervene in accordance with the standards of RSA 541-A:32." *N.H. Code Admin. Rule Puc 203.17*. RSA 541-A:32 provides for so-called "mandatory intervention" if the petition "states facts demonstrating that the petitioner's 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, (b)*. The statute also sets forth a standard for "permissive intervention," when "the presiding officer determines that the interest of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention." *RSA 541-A:32, I, (c)*. As discussed more fully below, Berlin Station satisfies both intervention standards and warrants status as an intervenor in this proceeding.

6. Berlin Station is a limited liability company organized under the laws Delaware that now owns, operates and maintains the biomass-fueled electrical generation facility located in Berlin. As previously noted, with respect to rights under the PPA, Berlin Station is the successor in interest to Laidlaw, the original counterparty to the PPA with PSNH that was approved by the Commission in this docket in its Final Order.

7. As the current counterparty to the PPA, Berlin Station's "rights, duties, privileges, immunities and other substantial interests" are clearly and directly affected by this proceeding in that any decision by this Commission that modifies in any way the terms of the PPA, including but not limited to the operation of the CRF, necessarily implicates Berlin Station's "rights, duties, privileges [and] immunities."

8. The Commission itself has previously recognized that the counterparty to the PPA's "rights, duties, privileges, immunities and other substantial interests" are directly affected when it granted Laidlaw, the prior plant owner and original counterparty to the PPA, intervenor status. *See* DE 10-195, Order 25,158 (October 15, 2010) at 9 ("Laidlaw, as a party to the PPA, has interests directly affected by this proceeding and its intervention is therefore granted."). While Laidlaw initially participated in the proceeding, it ultimately withdrew as an intervenor because the Commission rules did not require the counterparty to the PPA to participate as a party in the proceeding. While Commission rules did not then and do not now *require* the presence of Berlin Station in this proceeding, Berlin Station now asserts that its direct and substantial interests can only be protected by its full intervention.

9. Separate and apart from meeting the standard for mandatory intervention, Berlin Station also meets the requirements for permissive intervention. The interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing by Berlin

Station to participate in the proceeding as an intervenor. Indeed, Berlin Station's participation may well aid the Commission in this docket, since Berlin Station, and not PSNH, will have information in its possession regarding operation of the plant that may be relevant to the proceeding.

10. Accordingly, since Berlin Station has met the standards set forth in RSA 541-A:32, the Commission should approve its request for intervention.

11. Petitioner PSNH supports the relief requested in this Petition.

WHEREFORE, Berlin Station respectfully requests that this Commission:

- A. Grant it intervenor status; and
- B. Grant such further relief as may be just and proper.

Respectfully Submitted,

BERLIN STATION, LLC,
By its attorneys,



Carol J. Holahan, Esq.
NH Bar No. 6584

Aaron F. Lang, Esq.
NH Bar No. 267,664

FOLEY HOAG LLP

155 Seaport Boulevard

Boston, Mass. 02210-2600

617-832-1000

cholahan@foleyhoag.com

alang@foleyhoag.com

Dated: August 30, 2018

Certificate of Service

I hereby certify that a copy of the foregoing Petition to Intervene on behalf of Berlin Station, LLC, has on this 30th day of August, 2018 been sent to the Public Utilities Commission by first-class mail and by electronic mail to the service list in DE 10-195.

By: 
Carol J. Holahan