

Before the New Hampshire Public Utilities Commission

DE 11-184

Joint Petition for Approval of Power Purchase Agreements with
Settlement Agreement

**OFFICE OF THE CONSUMER ADVOCATE'S OBJECTION TO WOOD IPPs'
MOTION FOR CONFIDENTIAL TREATMENT OF PPA PRICING**

NOW COMES the Office of the Consumer Advocate (OCA) and objects to the Wood IPPs' Motion for Confidential Treatment of Power Purchase Agreement (PPA) pricing and related information, and in support thereof, states as follows:

1. On August 23, 2011 Public Service Company of New Hampshire (PSNH), the Wood IPPs,¹ the New Hampshire Department of Resources and Economic Development (DRED) and certain members of the Staff of the Commission (the Advocate Staff) (collectively, the Joint Petitioners) filed a petition for approval of: five power purchase agreements (Wood PPAs) between PSNH and five of the Wood IPPs pursuant to RSA 374:57 and the Public Utilities Regulatory Policies Act, 16 U.S.C. 824a-3; certain agreements between PSNH, the Wood IPPs and Berlin Station, LLC, Laidlaw Berlin BioPower, LLC (Laidlaw) and Cate Street Capital, Inc.; and a proposal for ratemaking treatment relating to the costs of the Wood PPAs (Joint Petitioners' Filing).²
2. The PPAs include, according to the Joint Petitioners, above market prices for electricity. Joint Petition at p. 5, 8 and 9; Testimony of Thomas C. Frantz at pp. 4, 6, and 7; and Testimony of Richard C. Labrecque at pp. 5, 6, 7 and 8. Mr. Frantz estimates that the

¹ The Wood IPPs are six independent wood-fired power producers in New Hampshire: 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-Alexandria, LLC.

² Order of Notice dated August 25, 2011.

PPAs could be \$20 million over market, “assuming no changes in the energy price due to changes in wood prices.” Frantz Testimony at p. 7.

3. The Joint Petitioners, in addition to seeking approval of PPAs that are over market, also seek unprecedented ratemaking treatment of the over market costs resulting from the PPAs. Specifically, the Joint Petitioners seek to shift up to \$8.5 million annually in over market costs from PSNH’s default energy service rate to PSNH’s distribution rate.³ The Joint Petitioners also propose to defer any additional amounts to future years, which is akin to creating new stranded costs. See Joint Petition at p. 5.
4. Also on August 23, 2011 the Wood IPPs filed a motion for confidential treatment of certain information contained within the Joint Petitioners’ Filing, including the over market pricing of the five proposed PPAs (Wood IPP motion).
5. In DE 10-195, the recent case involving the Berlin PPA (previously referred to as the Laidlaw PPA), the Commission required the disclosure of similar information to the public. The Wood IPPs were parties to that proceeding and supported that information being made public in that case. See Order No. 25,258 (October 15, 2010) (Berlin PPA Confidentiality Order) and Order No. 25,168 (November 12, 2010) (Berlin PPA Rehearing Order).
6. Contrary to the Wood IPPs’ vague assertions that “[t]he public’s interest in the pricing information in the PPAs is limited,” as in the Berlin PPA case, “the disclosure of this information is central to the public’s understanding of how the Commission evaluates” these PPAs. Berlin PPA Confidentiality Order at p. 12. As in that case, the Commission’s evaluation will include whether the PPAs meet the applicable legal standards, whether they are consistent with PSNH’s least cost integrated resource plan

³ Order of Notice dated August 25, 2011.

(RSA 378:38 et seq.), and whether the resulting rates are reasonable and in the public interest (RSA 374:57).

7. Similarly, “absent disclosure of the pricing terms and details, the public’s ability to understand how the Commission reaches a finding” regarding the PPAs “would be diminished [and d]isclosure of the pricing terms would permit a fully transparent review of the costs” of the PPAs. Berlin PPA Confidentiality Order at p. 13.
8. As the Wood IPPs themselves argued in the Berlin PPA case, “the pricing terms and costs of the PPA will be at the core of the Commission’s review” in this case as well. Berlin PPA Rehearing Order at p. 7. Similarly, “[a]bsent knowledge of pricing terms and costs, the public simply will not understand how the Commission came to either approve or disapprove this PPA, on balance, as a cost-effective realization” of the state’s relevant energy policies, “as a way to meet the energy needs of the citizens and businesses of the state at the lowest reasonable cost, or as being consistent with portfolio management that balances the benefits and risks to default service customers.” Wood IPPs Objection to PSNH’s Motion for Rehearing in DE 10-195 (October 29, 2010) at p. 2 (emphasis added). The Wood IPPs are estopped and barred from taking a different position on these issues in the present case.
9. It is important to note that in this case the interests of all of PSNH’s customers are implicated because the Joint Petitioners propose to shift a portion of the over market costs into PSNH’s distribution rate, which is paid by all customers even if they have left PSNH’s default service and migrated to a competitive supplier. Consequently, public disclosure is even more important in this case.
10. The Wood IPPs argue that the size and duration of the IPPs (as well as the lack of

renewable energy certificates) means that the public's interest in understanding how the Commission makes its determinations on the Joint Petitioners Filing "is limited." See, e.g., Wood IPP motion at pp. 3-4, paragraph 9. The OCA disagrees that harm in the amount of \$20 million is not significant, and urges the Commission to be guided in its ruling on the motion by the principles of openness and broad disclosure underlying RSA 91-A.

11. "Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people." RSA 91-A:1. The Supreme Court "resolve[s] questions regarding the [Right-to-Know] law with a view to providing the utmost information in order to best effectuate the statutory and constitutional objective of facilitating access to all public documents." WMUR v. N.H. Dept. of Fish and Game, 154 N.H. 46 (2006) (quoting Goode v. N.H. Legislative Budget Assistant, 148 N.H. 551, 553 (2002)). "[W]hile the statute does not provide for unrestricted access to public records, provisions favoring disclosure are broadly construed and exemptions are interpreted restrictively." Union Leader Corp. v. New Hampshire Hous. Fin. Auth., 142 N.H. 540 (1997).
12. In making its determination to disclose similar information in the Berlin PPA case, the Commission recognized and abided by these important guiding principles. "[W]e resolve questions regarding the Right-to-Know law with a view to providing the utmost information to the public." Berlin PPA Rehearing Order at p. 16.
13. If the Commission approves the PPAs, the public has a right to know the basis for such approval, especially when PPAs are *designed* to be over market. This is true regardless

of the length of the PPAs, the magnitude of the over market pricing, or whether (or not) the PPAs include renewable energy certificates.

14. In this case the Joint Petitioners have also claimed that the proposed PPAs achieve certain “public interest interests.” Joint Petition at p. 2. This was also asserted in the Berlin IPP case. However, as the Wood IPPs themselves argued in the Berlin IPP case, “PSNH cannot claim to be the instrument of a statewide public policy and ask the Commission to approve its implementation of those statewide public policies on the one hand and, on the other hand, claim that the public has no interest in the cost of that implementation.” Berlin PPA Rehearing Order at p. 8. The same is true in this case.
15. In addition, as in the Berlin PPA case, if there is any possibility of harm to the Wood IPPs from disclosure of the information, the possibility of such harm does not outweigh “the public interest in being informed of the pricing terms of the contract.” *Id.* at 13.
16. Any such harm that the Wood IPPs allege is minimal, if it exists at all. Because the Joint Petitioners admit that the PPAs are over market, and testimony in the docket even provide estimates of how much they could be over market, it is highly unlikely that public knowledge of the pricing terms of the PPAs would impact the Wood IPPs’ ability to negotiate PPAs in the future. Future negotiators of PPAs with the Wood IPPs are highly unlikely to be offering over market prices, or using information about these proposed over market prices as a bargaining tool against the Wood IPPs. In addition, any suggestion that disclosure would harm PSNH’s ability to negotiate PPAs on its customers’ behalf in the future is ironic.
17. Therefore, for many of the same reasons articulated by the Wood IPPs in the Berlin PPA case, the Commission must deny the motion for confidential treatment as it relates to

pricing information in the PPAs, consistent with its ruling in DE 10-195.

WHEREFORE, the OCA respectfully requests the Commission:

- A. Deny the Wood IPPs motion for confidential treatment; as it relates to the pricing information in the proposed PPAs; and
- B. Grant such other relief as justice may require.

Respectfully submitted,



Meredith A. Hatfield, Esq.
Consumer Advocate
Office of Consumer Advocate
21 S. Fruit St., Ste. 18
Concord, N.H. 03301
(603) 271-1172
meredith.a.hatfield@oca.nh.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of this pleading was forwarded this day to the parties on the service list in this docket by electronic mail.

September 16, 2011



Meredith A. Hatfield, Esq.