



McLane, Graf,
Raulerson & Middleton
Professional Association

11 South Main Street, Suite 500 | Concord, NH 03301
Tel: 603.226.0400 | www.mclane.com

OFFICES IN:
MANCHESTER
CONCORD
PORTSMOUTH
WOBURN, MA

BARRY NEEDLEMAN
Email: barry.needleman@mclane.com
Licensed in NH and MA

April 18, 2011

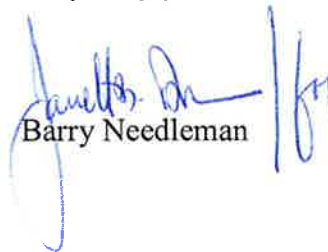
Thomas S. Burack, Chairman
Site Evaluation Committee
N.H. Department of Environmental Services
29 Hazen Drive
Concord, NH 03302

Re: Berlin Station, LLC – SEC Docket 2011-01

Dear Chairman Burack:

I enclose the original and 18 copies of Laidlaw Berlin BioPower, LLC and Berlin Station, LLC's Objection to Petition for Intervention of Edrest Properties, LLC and Objection to Petition for Intervention of Thomas Maniscalco. Please do not hesitate to contact me if you have any questions.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Barry Needleman". To the right of the signature is a vertical line with a checkmark-like symbol at the top, possibly indicating a copy or a specific action.
Barry Needleman

Enclosures
cc: Service List

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

SEC DOCKET NO. 2011-01

**Joint Motion of Laidlaw Berlin BioPower, LLC and Berlin Station, LLC
for Transfer and Amendment of the Certificate of Site and
Facility Issued to Laidlaw Berlin BioPower, LLC and
Notice of Change of Major Contractor**

**OBJECTION TO PETITION FOR INTERVENTION
OF EDREST PROPERTIES, LLC**

NOW COME Laidlaw Berlin BioPower, LLC (“Laidlaw”) and Berlin Station, LLC (“Berlin Station”) and submit this Objection to Petition for Intervention of Edrest Properties, LLC (“Edrest”).

1. On March 9, 2011, Laidlaw and Berlin Station filed a Joint Motion for Transfer and Amendment of the Certificate of Site and Facility Issued to Laidlaw Berlin BioPower, LLC and Notice of Change of Major Contractors. The SEC docketed the Joint Motion as Docket Number 2011-01.

2. On April 15, 2011, Edrest Properties, LLC¹ petitioned to intervene in this matter.

3. The standard for intervention is set forth in the New Hampshire Administrative Procedure Act and the New Hampshire Code of Administrative Rules. RSA 542-A:32, I and Site 202.11.

4. Pursuant to RSA 541-A:32 and Site 202.11, the requirements for intervention are (1) the petitioner must properly file a petition, (2) the petitioner must establish that it has a right, duty, privilege, immunity or other substantial interest that may be affected by the determination

¹ Jonathan Edwards is the Managing Partner of Edrest Properties, LLC. Mr. Edwards sought to intervene in SEC Docket No. 2009-02, Laidlaw’s Application for Certificate of Site and Facility and his petition for intervention and subsequent motion for rehearing were denied. See March 24, 2010 Order on Pending Motions at 5-6; April 6, 2010 Order Denying Motion for Rehearing of Jonathan Edwards. Via Edrest, Mr. Edwards makes many of the same arguments in support on intervention here as were previously rejected by the Committee.

of the issues in the proceeding, and (3) the petitioner must show intervention will not impair the interests of justice and the orderly and prompt conduct of the proceedings.

5. Edrest's Petition is fatally deficient on its face because it has not articulated any "right, duty, privilege, immunity or other substantial interest that may be affected by the determination of the issues in the proceeding." RSA 541-A:32. Despite its bald assertion to the contrary, Edrest does not have a substantial interest which may be affected by the issues before the Committee. Rather, Edrest simply provides a list of concerns, many of which are not at issue in this proceeding, that are common to the public at large and in no way unique to Edrest.

6. Indeed, the majority of Edrest's Petition focuses on wood consumption but Edrest has no interest in the forest industry. Likewise, Edrest claims the cost of electricity and the North Country economy may be affected by the Laidlaw Project. Aside from the fact the SEC already examined those issues extensively, issues related to North Country's economy and electricity rates are common to the public at large and precisely within the purview of Public Counsel.

7. Even if the Committee views Edrest's Petition broadly, the alleged interests identified are still an insufficient basis for granting the Petition because Edrest cannot meet the standing requirement under New Hampshire Law.

8. Edrest has not and cannot allege any specific injury that it has suffered or will suffer that would provide a basis for standing *with respect to the issues in this proceeding*, and its alleged interests in these proceedings are no different than the interests of the public in general. *Blanchard v. Railroad*, 86 N.H. 263, 264 (1933) (quoting *Bennet v. Tuftonborough*, 72 N.H. 63, 64 (1903) (standing is conferred only to parties "who [are] interested in or affected by the proceedings in some manner different from the public, citizens, and taxpayers generally..."));

Appeal of Richards, 134 N.H. 148, 156 (1991) (where a party is unable to demonstrate an actual or immediate injury, there is no standing). Standing does not exist if a party alleges “nothing distinguishing [its] right and interest from that of other citizens and taxpayers.” *Blanchard*, 86 N.H. at 264.

9. “The [Counsel for the Public] shall represent the public in seeking to protect the quality of the environment and in seeking to assure an adequate supply of energy.” RSA 162-H:9. Where Counsel for the Public already represents Edrest’s alleged interests, Edrest has no standing. *Appeal of Richards*, 134 N.H. at 156 (“[n]o individual or group of individuals has standing to appeal when the alleged injury caused by the administrative agency’s action affects the public in general, particularly when the affected public interest is represented by an authorized official or agent of the state”).

10. Likewise, being a ratepayer does not create an interest sufficient to confer standing. *Appeal of Stonyfield Farms*, 159 N.H. 227, 231 (2009); *Appeal of Campaign for Ratepayers Rights*, 142 N.H. 629 (1998).

11. Moreover, the issues raised in Edrest’s Petition to Intervene are not currently before the Committee. The Committee has already issued to Laidlaw a Certificate of Site and Facility. Laidlaw and Berlin Station’s Joint Motion is limited to four discrete issues: (1) the transfer of the Certificate of Site and Facility to Berlin Station; (2) notice of change in major contractors providing construction and operation services; (3) the amendment of the Certificate to permit Laidlaw/Berlin Station to contract with an entity other than Cousineau Forest Products to serve as its fuel supplier; and (4) the amendment of the Certificate to reflect an increase in the facility’s gross power generating rate from 70 MW to 75MW.

12. Edrest's Petition raises issues that are beyond the scope of the Motion pending before the Committee and that have already been resolved by the Committee's Decision Granting Certificate of Site and Facility with Conditions.² The Committee determined "there is an adequate supply of biomass in the region to fuel the proposed facility" (Decision at 65) and any fuel supplier for the facility will be bound by the sustainability conditions set forth in the Certificate. Similarly, the Committee has already considered the project's effect on the local economy. *Id* at 54-62. Issues related to electricity rates are being addressed by the Public Utilities Commissions, which is reviewing the Power Purchase Agreement. Accordingly, the issues raised by Edrest are not currently before this Committee.

13. For all of the reasons set forth herein, Edrest's Petition should be denied because it fails to articulate a substantial interest that will be affected by the determination of the issues in this proceeding, because it lacks standing, and because the issues raised in the Petition have already been resolved by the Committee.

Respectfully submitted,

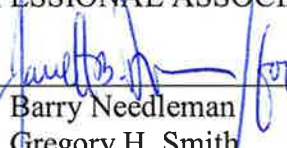
Laidlaw Berlin BioPower, LLC and Berlin Station, LLC

By Their Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

Date: April 18, 2011

By:


Barry Needleman NH Bar No. 9446
Gregory H. Smith NH Bar No. 2373
Cathryn E. Vaughn NH Bar No. 16508
Eleven South Main Street
Concord, NH 03301
Telephone (603) 226-0400

NH Bar No 17683

² Specifically, Edrest raises the following issues in his Petition that have already been addressed by the Committee: (1) wood consumption; (2) fuel availability; and (3) the effect of the Laidlaw project on competitors in the region.

Certificate of Service

A copy of this Objection to Petition for Intervention has been served by electronic mail on this 18th day of April, 2011 to each of the parties on this matter's service list and by first class mail to the New Hampshire Attorney General's Office.



Barry Needleman

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

SEC DOCKET NO. 2011-01

**Joint Motion of Laidlaw Berlin BioPower, LLC and Berlin Station, LLC
for Transfer and Amendment of the Certificate of Site and
Facility Issued to Laidlaw Berlin BioPower, LLC and
Notice of Change of Major Contractor**

**OBJECTION TO PETITION FOR INTERVENTION
OF THOMAS MANISCALCO**

NOW COME Laidlaw Berlin BioPower, LLC (“Laidlaw”) and Berlin Station, LLC (“Berlin Station”) and submit this Objection to Petition for Intervention of Thomas Maniscalco.

1. On March 9, 2011, Laidlaw and Berlin Station filed a Joint Motion for Transfer and Amendment of the Certificate of Site and Facility Issued to Laidlaw Berlin BioPower, LLC and Notice of Change of Major Contractors. The SEC docketed the Joint Motion as Docket Number 2011-01.

2. On April 6, 2011, Mr. Maniscalco sent a letter to the Site Evaluation Committee seeking to intervene in this matter.

3. The standard for intervention is set forth in the New Hampshire Administrative Procedure Act and the New Hampshire Code of Administrative Rules. RSA 542-A:32, I and Site 202.11.

4. Pursuant to RSA 541-A:32 and Site 202.11, the requirements for intervention are (1) the petitioner must properly file a petition, (2) the petitioner must establish that it has a right, duty, privilege, immunity or other substantial interest that may be affected by the determination of the issues in the proceeding, and (3) the petitioner must show intervention will not impair the interests of justice and the orderly and prompt conduct of the proceedings.

5. Mr. Maniscalco fails to establish "a right, duty, privilege, immunity or other substantial interest that may be affected by the determination of the issues in the proceeding". Indeed, he does not state the basis for intervention in his letter at all. As such, Mr. Maniscalco's petition to intervene should be denied.¹

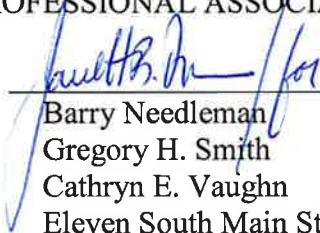
Respectfully submitted,

Laidlaw Berlin BioPower, LLC and Berlin Station, LLC

By Their Attorneys,

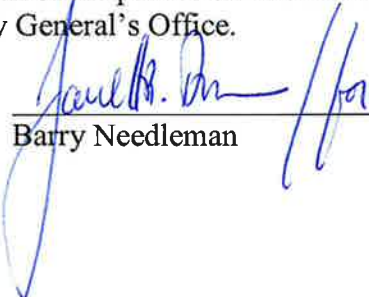
McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

Date: April 18, 2011

By:  for NH Bar No 17683
Barry Needleman NH Bar No. 9446
Gregory H. Smith NH Bar No. 2373
Cathryn E. Vaughn NH Bar No. 16508
Eleven South Main Street
Concord, NH 03301
Telephone (603) 226-0400

Certificate of Service

A copy of this Objection to Petition for Intervention has been served by electronic mail on this 18th day of April, 2011 to each of the parties on this matter's service list and by first class mail to the New Hampshire Attorney General's Office.



Barry Needleman

¹ Similarly, Mr. Maniscalco's letter fails to set forth his basis for standing in this matter. Therefore, Mr. Maniscalco should be denied intervenor status.