

STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE  
SEC DOCKET NO. 2011-01

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

NOW COMES Edrest Properties, LLC and hereby responds to the objection of Laidlaw Berlin BioPower/Berlin Station to Edrest Properties Petition For Intervention, in support hereof, Edrest Properties says as follows: Laidlaw/Berlin Station contends that Edrest Properties does not have "standing" to intervene since it cannot allege any specific harm to it that would result from this proceeding, and that Edrest Properties seeks to raise issues that will already be adequately addressed, and are no different from the concerns of the public at large.

1. Laidlaw/Berlin Station's contentions are inaccurate and misleading.

2. Laidlaw/Berlin Station inaccurately merge the standard for intervention in an administrative proceeding with standing to take an appeal in a court of law. R.S.A. 541-A: 32, I, requires that a petition for intervention must state "facts demonstrating that the petitioner's rights, duties, immunities or other substantial interests may be affected by the proceeding." (Emphasis added.) In contrast, in order to have standing in a court proceeding, a party must demonstrate an actual or immediate injury. Therefore the standard for intervention in an administrative proceeding is very different from the standard for determining standing for taking an appeal. Edrest Properties certainly "may" be affected by this proceeding.

3. In two different dockets pertinent to biomass in northern NH, the NH Public Utilities Commission has granted Edrest Properties and/or their managing partner Jonathan Edwards intervention status as a party substantially effected by this proposed facility. There is no question that Edrest Properties has a substantial interest that may be affected by this proceeding. Such interest is not limited to narrow issues concerning the orderly development of the region but concerns the broader issue of whether the Applicant should receive transfer of a Certificate with the significant changes that have been made that can impact monopolization of wood price, supply and other relative issues that can impact Edrest Properties directly. Endangering the existing biomass industry with a huge plant which has a revenue adjustment based on the price of wood, an adjustment the existing industry does not have, should not necessarily be construed as orderly development. Perhaps Edrest Properties and expert witness for Edrest Properties should have a right to intervene with discovery and cross examination to defend direct concerns that can directly effect Edrest Properties as a result of changes to the initial application.

4. Edrest properties does indeed have an inherent interest that is different from the public at large because Edrest Properties' partners own, lease and/or manage properties within 200 yards of the facility and within feet of the truck routes leading to the facility. These properties are effected by a depreciation zone formulation by the city of Berlin's assessing firm as a result of close proximity to the Laidlaw/ Berlin Station site. The Applicant states that the city of Berlin and/or the Consumer advocate will represent the issues pertaining to Berlin citizens and/or consumers. However neither the City nor the OCA have addressed this depreciation. Edrest properties contends that significantly more truck traffic as a result of more output requested can indeed negatively impact this depreciation zone further and based on decades of practice in the the real estate field, Edrest's managing partner strongly believes that the increased revenue from the proposed biomass facility can be significantly offset by the negative influence this plant can have on the city's tax base, along with the potential loss of Coos County tax base through the existing biomass industry being placed in serious jeopardy. The applicant could impact hundreds of jobs and falling values of some of the largest tax revenue producing facilities in abutting towns.

5. In addition to allowing intervention when a party states facts demonstrating a substantial interest which may be affected by the proceeding, the Committee may also permit intervention by any party when the presiding officer determines that such intervention would be in the interests of justice: ." See, RSA 541-A: 32, II and N.H. CODE OF ADMINISTRATIVE RULES, Site 202.11. Id. at 5.

6. Given the facts stated in Edrest's Petition to Intervene and the extensive involvement already provided to Edrest Properties by the NHPUC, it would likewise be in the interests of justice to allow Edrest Properties to intervene before the NHSEC and would not be duplicative or disruptive to the hearing process.

7. The applicants' claim that Edrest has no interest in the forest industry is completely inaccurate. The economy of the north country depends heavily on the appropriate use of the forest. The applicants' new wood provider changes the impact on the low grade wood market and on Laidlaw's PPA. The low grade wood market has significantly changed since the initial docket on this began, as the majority of the existing biomass industry are now operating precariously without any type of long or short term contract. The Laidlaw project and this transfer further jeopardizes the existence of a well established biomass industry representing hundreds of workers that have recently submitted over five hundred letters and held meetings sponsored by the NH Timberland Owners Association fighting for the industry's existence. The applicant's claim that no further wood will be used despite further output should not be a topic without discovery and cross examination. The transfer that has been requested should be reviewed as relevant and significantly in NH's interest as the third most forested state in the country.

April, 21, 2011  
Respectfully Submitted,

Edrest Properties

Jonathan Edwards  
Managing Partner