

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

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**

May 2, 2011

**ORDER ON MOTIONS TO INTERVENE AND
FURTHER PROCEDURAL ORDER**

Background and Procedural Order

On November 9, 2010, the New Hampshire Site Evaluation Committee (Committee) issued a Certificate of Site and Facility (Certificate) to Laidlaw Berlin BioPower, LLC, for the siting, construction, and operation of a 70 MW biomass fueled power facility located in Berlin, Coos County, New Hampshire (Facility).

On March 9, 2011, Laidlaw Berlin BioPower, LLC, and Berlin Station, LLC (Joint Applicants), filed a joint motion to amend the Certificate, to transfer the Certificate to Berlin Station, LLC, and to notify the Committee of a change in major contractors (Joint Motion.) The Joint Applicants propose to transfer the Certificate to Berlin Station, LLC. Berlin Station LLC, is a special purpose entity whose members are BBP Holdings 1, LLC (99%) and BBP Holdings 2, LLC (1%). BBP Holdings 1, LLC, is an indirect subsidiary of Newco Energy, LLC. BBP Holdings 2, LLC, is a subsidiary of CSC Group Holdings, LLC. Berlin Station, LLC, intends to execute a right of use agreement with Burgess BioPower, LLC, an indirect subsidiary of Newco Energy, LLC, permitting Burgess BioPower LLC to lease and manage the facility and all certificates, licenses and contracts pertaining thereto. In addition, the Joint Applicants seek to amend the Certificate to permit operation at 75 MW rather than 70 MW. The increase in output is asserted to be achieved through design efficiencies and will not require additional fuel. The Joint Applicants further request that the Certificate be amended to permit a change in the fuel supply contractor. In the Joint Motion, the Joint Applicants also notify the Committee of a change in major engineering and construction contractors.

On April 6, 2011, the Committee received a letter from Thomas Maniscalco moving to intervene in this docket. On April 15, 2011 the Committee received a motion to intervene from Edrest Properties LLC. On April 19, 2011, the City of Berlin filed an unopposed motion to intervene in the proceedings. The Joint Applicants object to the motions to intervene filed by Thomas Maniscalco and Edrest Properties LLC. The Joint Applicants did not object to the motion of the City of Berlin.

On April 18, 2011, Counsel for the Public filed a response to the Joint Motion. In his response, Counsel for the Public asserted that "appropriate procedural protections in the development of a complete record" are necessary. Counsel for the Public further requested discovery and a further procedural order for the purpose of adjudicating the matter.

On April 22, 2011, the Committee held a properly noticed public meeting. At the public meeting, the Joint Applicants provided an overview of the Joint Motion and the reasons they seek relief. At the public meeting, the Committee also heard arguments regarding the motions to intervene. At the public meeting, the Committee was advised that the Joint Applicants and Counsel for the Public had reached an agreement with respect to a procedural schedule. Before the close of the public meeting, an informal scheduling conference was conducted. The Joint Applicants, Counsel for the Public, and Edrest Properties, LLC, participated in the informal conference. The parties agreed to the following procedural schedule:

All data requests to be propounded:	May 4, 2011
Responses to Data requests due:	May 11, 2011
Technical Session:	May 13, 2011 (Time and place TBD)
Adjudicatory Hearing:	May 18, 2011, 10:00 A.M. Office of the Public Utilities Commission 21 South Fruit Street, Suite 10 Concord NH 03301

The schedule proposed by the parties is acceptable to the Committee and will become the procedural order in this docket. The Parties should consult and comply with the Committee's administrative regulations, Site 200 *et seq.*, to the extent that they do not conflict with the procedural schedule.

Motions To Intervene

Standard for Intervention

The New Hampshire Administrative Procedure Act provides when an administrative agency must allow intervention. See, RSA 541-A:32, I. The statute also sets forth circumstances under which an administrative agency may allow intervention, but is not required to do so. See, RSA 541-A:32, II.

RSA 541-A:32, I, requires that a petition for intervention be granted if:

- (a) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's notice of the hearing, at least 3 days before the hearing;

(b) The petition states facts demonstrating that the petitioner's rights, duties, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and

(c) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

The statute also permits the presiding officer to allow intervention "at any time upon determining 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.

Similarly, New Hampshire Code of Administrative Rules, Site 202.11, requires that a petition to intervene be granted if:

(1) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's order of notice of the hearing, at least 3 days before the hearing;

(2) The petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests might be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and,

(3) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

The rules also provide that the presiding officer shall grant one or more late-filed petitions to intervene upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the hearings.

The Administrative Procedure Act and the Committee's procedural rules thus provide that intervention is mandatory in those cases where the party can 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. The statute and the rule also provide for permissive intervention in those cases where the presiding officer determines that intervention is in the interests of justice and does not interfere with the prompt and orderly conduct of the proceeding.

Importantly, the Administrative Procedure Act and our procedural rules also allow the presiding officer to place limits on an intervenor's participation. See, RSA 541-A:32, III and N.H. Code of Administrative Rules, Site 202.11(d). The presiding officer may limit the issues pertaining to a particular intervenor, limit the procedures in which a particular intervenor may participate, or combine intervenors and other parties for the

purposes of the proceeding so long as the limitations placed on intervenors do not prevent the intervenor from protecting an interest that formed the basis of intervention.

Analysis of Motions to Intervene

Motions to intervene in this matter have been filed by Thomas Maniscalco and Edrest Properties LLC. The Joint Applicants object to both motions. Each motion will be addressed separately.

Thomas Maniscalco

On April 6, 2011, the Committee received a handwritten letter from Thomas Maniscalco of Gorham, New Hampshire. In his letter, Mr. Maniscalco asked the Committee to allow him to intervene in this docket and to advise him if there was any change in the scheduled date or time of hearing. Mr. Maniscalco did not provide any other facts or information that would support his request to intervene. The Joint Applicants objects to Mr. Maniscalco's intervention.

Other than identifying a home address in Gorham, Mr. Maniscalco's letter does not state any facts or information establishing that any of his rights, duties, privileges, or other substantial interests would be affected by these proceedings. Therefore, Mr. Maniscalco's motion to intervene in these proceedings is denied.

Edrest Properties LLC

On April 15, 2011, the Committee received a motion to intervene from Edrest Properties, LLC (Edrest). The motion was filed by Edrest's manager, Jonathan Edwards. In its initial motion to intervene, Edrest asserted that it had a substantial interest in these proceedings because of the effect that the Laidlaw facility would have on the cost and supply of biomass in the region, and because Edrest owned or leased properties that purchased electricity.

The Joint Applicants objected to the motion to intervene filed by Edrest. The Joint Applicants' objection noted that Jonathan Edwards had previously attempted to intervene in the underlying certification docket as an individual, and his request for intervention was denied because he failed to establish that he had a substantial interest in the outcome of the proceedings. The objection claims that Edrest has no vested interest in the biomass industry and that its claim to be an electric utility ratepayer does not establish a substantial interest that is different than the interest of the general public. As a result, the Joint Applicants objected to Edrest's motion to intervene.

On April 21, 2011, Edrest filed a response to the Joint Applicants' objection. For the first time, Edrest asserted that it owned, leased or managed properties that were situated within 200 feet of the facility and directly along truck routes for the delivery of biomass to the facility. At the hearing on April 22, 2011, Jonathan Edwards appeared

on behalf of Edrest. Mr. Edwards, in response to questions from the Committee, told the Committee that in addition to its partners or members owning or leasing or managing properties in close proximity to the facility, Edrest was in the process of consolidating the ownership of those properties as assets of Edrest Properties, LLC. In its response, and again at the hearing, Edrest also reiterated its concern regarding the effect of the Facility on the biomass industry, the health of the northern forest, and the economy of the Berlin area.

While it seems unusual that Edrest did not disclose its partnership interest and future ownership interest of properties within 200 feet of the Berlin mill in its initial motion, the Committee sees no reason to doubt the representations made by Mr. Edwards regarding Edrest's property interests. While Edrest's concerns about electricity rates, the economy of the Berlin area, and the health of the northern forest would not, in and of themselves, establish a basis for intervention, Edrest's ownership and contingent ownership of properties near the Facility do establish a substantial interest that supports Edrest's request for intervention in this docket. However, Edrest and Mr. Edwards are cautioned that Edrest's intervention is limited to the issues that arise as a result of the filing of the petition in this docket. Edrest's intervention in this docket is not a cause to re-litigate the granting of the certificate of site and facility or other issues that are not raised in this proceeding. Edrest's participation in this docket is limited to the four issues raised in the petition that is now pending before the committee. See, RSA 541-A:32, III, N.H. CODE OF ADMINISTRATIVE REGULATIONS, Site 202.11 (d).

Order

It is hereby ordered that the unopposed Motion of the City of Berlin to Intervene is hereby granted; and,

It is hereby further ordered that the motion of Thomas Maniscalco seeking to intervene in this docket is denied; and,

It is hereby further ordered that the Motion of Edrest Properties, LLC to Intervene is hereby granted subject to the limitations stated herein; and

It is hereby further ordered that the Committee adopts the procedural schedule set forth above.

By Order of the Site Evaluation Committee this 2nd day of May, 2011.


New Hampshire Site Evaluation Committee
Thomas S. Burack, Chairman