

**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 27, 2011

**ORDER ON MOTIONS FOR PROTECTIVE ORDER AND CONFIDENTIAL
TREATMENT (INTERCONNECTION REQUEST AND FUEL SUPPLY AGREEMENT)**

Background

On November 8, 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 electric 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).

On March 9, 2011, the Joint Applicants also filed a Motion for Protective Order and Confidential Treatment for ISO-New England Interconnection Request. No party has objected to the motion.

Subsequently, on May 11, 2011, the Joint Applicants filed a Motion for Protective Order and Confidential Treatment of Fuel Supply Agreement. To date, no party has objected to the relief requested in the May 11, 2011, motion.

On May 18, 2011, an adjudicatory hearing was held on the Joint Motion. At the hearing, Counsel for the Public sought to introduce several exhibits and advised the Committee that they may be confidential, commercial and financial documents in which the Joint Applicants may have a privacy interest. The Joint Applicants then orally moved for a protective order and confidential treatment of the proposed exhibits. The exhibits for which the protective order is sought are: PC 2, a document entitled "Confidential Response to Number 8" containing a listing of the nature of the debt and equity investment in the project; PC 3, a pro forma statement listing expected revenues and costs for the project based on sales pursuant to a power purchase agreement; PC 3.1, a pro forma statement listing expected revenues and costs for the project based on

sales pursuant to a power purchase agreement and additional market based revenue; and, PC 6, an unaudited balance sheet for Newco Energy LLC reflecting assets, liabilities and owner's equity as of December 31, 2009, 2010 and April 30, 2011. No party objected to the oral motion for a protective order and confidential treatment.

Standard of Review

RSA 91-A is the state's Right-to-Know law. In general, RSA 91-A provides that governmental proceedings and governmental records must be open and available to the public. The Right-to-Know law does contain exemptions from the public availability requirement. RSA 91-A: 5, IV, in pertinent part, exempts records that contain "confidential, commercial or financial" information.

In *Lamy v. New Hampshire Public Utilities Commission*, 152 N.H. 106 (2005), the New Hampshire Supreme Court described the three-step analysis used to determine whether information should be protected from public disclosure pursuant to the Right-to-Know law. See, RSA 91-A. The first prong of the analysis is to determine if the Applicant has identified a privacy interest. If a privacy interest is invoked, then the agency must assess whether there is a public interest in disclosure. Disclosure should inform the public of the activities and conduct of the government. If disclosure does not serve that purpose, then disclosure is not required. Finally, when there is a public interest in disclosure, that interest is balanced against any privacy interests in non-disclosure. *See also, Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 NH 540, 553 (1997.) (The agency must perform a balancing test to determine whether the records should be protected or if the public's interest in disclosure is outweighed by the Applicant's interests in protecting its confidential, financial and commercial information.)

Interconnection Request

ISO-New England is the regional transmission organization and independent system operator for the New England electricity grid. ISO-New England is responsible for the continuous reliable operation of New England's bulk electric power system and the wholesale electricity marketplace. ISO-New England oversees the transmission of electric energy throughout the New England grid and regulates the interconnection of electric generation sources to the system. In order to deliver electricity to the system, a generator must receive the approval of ISO-New England. In order to obtain approval, a generator must file an interconnection request that contains specifications and engineering details that are required for the safe, secure and reliable operation of the transmission system. The information provided with interconnection requests pertains to critical energy infrastructure. The security of this infrastructure is an important public policy. In order to maintain the security of this infrastructure, ISO-New England

prohibits the disclosure or publication of interconnection requests and studies. Such requests and studies also contain confidential commercial information about various aspects of the electric generator's equipment, specifications and operation plans.

Given the importance of the security of critical energy infrastructure information, the Joint Applicants have demonstrated a privacy interest in the interconnection request and interconnection studies. Disclosure of interconnection requests and studies will do little, if anything at all, to inform the public about the activities and conduct of government. Any benefit in public disclosure is vastly outweighed by the security needs of the public-at-large, ISO-New England and the Joint Applicants. Therefore, the Motion for Protective Order and Confidential Treatment of the interconnection request and any interconnection studies is granted.

Fuel Supply Agreement

The Joint Applicants also seek a protective order and confidential treatment for a fuel supply agreement to be executed with Richard Carrier Trucking (RCT). The information contained within the agreement includes terms and conditions for the purchase and sale of biomass, specific pricing terms, calculations and requirements. Such information fits within the definition of "financial" information that is exempt from disclosure under RSA 91-A: 5, IV. Additionally, the fuel supply agreement contains information that could be used to the financial disadvantage of the Joint Applicants or RCT. Contracts containing important commercial and financial terms clearly fit within the exemption to the Right-to-Know law. See, RSA 91-A: 5, IV. These matters, if disclosed to the public, could damage the competitive interests of both RCT and the Joint Applicants. Thus, an important privacy interest has been established by the Joint Applicants. On the other hand, public interest in the details of the fuel supply agreement is not high. While the price of fuel may play a role in the cost of electricity, most electricity rates in this state remain subject to careful regulation by the Public Utilities Commission. In this regard, the public interest in disclosure of this commercial document in this proceeding is substantially outweighed by the privacy interests of the Joint Applicants and RCT. Therefore, the Motion for Protective Order and Confidential Treatment of the fuel supply agreement is granted.

Counsel for the Public Exhibits

It is also clear that the exhibits introduced by Counsel for the Public are confidential, financial and commercial documents in which the Joint Applicants have a privacy interest. If disclosed to the public, the information used in the documents could be used by others to the competitive disadvantage of the Joint Applicants. In addition, the exhibits include documents upon which the Joint Applicants and their lenders will make projections regarding the future financial status of the Joint Applicants. These

documents are the kind of documents that are normally considered to be confidential. They clearly contain financial and commercial information. It is unclear that there is any public interest in disclosure of these documents but, to the extent there may be such an interest, it is outweighed by the privacy interest of the Joint Applicants and their lenders.

Conclusion and Order

Based upon the foregoing is hereby:

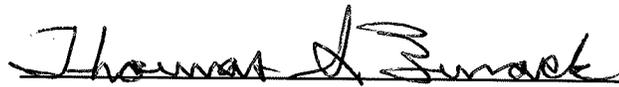
ORDERED: that the Joint Applicants' Partially Assented Motion for Protective Order and confidential Treatment for ISO New England interconnection request is granted; and it is,

FURTHER ORDERED: that the Joint Applicants' Partially Assented Motion for Protective Order and Confidential Treatment for the fuel supply agreement is granted; and it is,

FURTHER ORDERED: that the Joint Applicants' oral motion for protective order and confidential treatment of Exhibits PC 2, PC 3, PC 3.1 and PC 6 is granted; and it is,

FURTHER ORDERED: that each of the foregoing documents shall be maintained in the records of the Committee UNDER SEAL and shall not be publically disclosed without further order by the Committee or a court of competent jurisdiction.

SO ORDERED this 27th day of May, 2011.



Thomas S. Burack, Chairman
NH Site Evaluation Committee