

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**

and

Docket No. 2009-02

**RE: APPLICATION OF LAIDLAW BERLIN BIOPOWER, LLC FOR A CERTIFICATE
OF SITE AND FACILITY FOR A 70 MW BIOMASS FUELED ENERGY FACILITY IN
BERLIN, COOS COUNTY, NEW HAMPSHIRE**

July 12, 2011

**DECISION ON 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**

I. Background

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 megawatt (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 (Berlin Station), and to notify the Committee of a change in major contractors (Joint Motion). The Joint Applicants propose to transfer the Certificate to Berlin Station. Berlin Station 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 (Burgess BioPower), an indirect subsidiary of Newco Energy, LLC, permitting Burgess BioPower 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 notified the Committee and seek approval of a change in major engineering and construction contractors.

II. Procedural History

The Joint Motion was filed on March 9, 2011. The Joint Motion was accompanied by pre-filed direct testimony from Mr. Ross D'Elia, a representative from Richard Carrier Trucking (RCT), Keith Mueller, CEO of Cate Street Capital, Inc., and Raymond S. Kusche, Director of Energy Services for Cate Street Capital, LLC. On April 14, 2011, the Joint Applicants notified the Committee that Matthew Eastwick, Managing Director of Cate Street Capital, would substitute for and adopt the testimony of Mr. Mueller. The Joint Motion was accompanied by a Motion for Protective Order and Confidential Treatment for the ISO New England Interconnection Request.

On April 22, 2011, the Committee held an initial meeting on the Joint Motion. Prior to the initial meeting, the Committee received motions to intervene from the City of Berlin (Berlin) and Edrest Properties, LLC (Edrest). Berlin and Edrest were both

granted intervention status by an order dated May 2, 2011. On May 11, 2011, the Joint Applicants filed supplemental testimony from Mr. D'Elia. On May 11, 2011, the Joint Applicants also filed a Motion for Protective Order and Confidential Treatment of the Fuel Supply Agreement. On May 13, 2011, the parties participated in a technical session to ensure that all parties had a sufficient opportunity to obtain information through the discovery process.

On May 18, 2011, the Committee held an adjudicatory proceeding. At the adjudicatory proceeding, the parties had the opportunity to cross-examine the Joint Applicant's witnesses. No other witnesses were presented.

At the adjudicatory proceeding on May 18, 2011, Counsel for the Public moved to admit Exhibits PC 2, (a document entitled Confidential Response to Number 8), PC 3 (a *pro forma* statement identifying expected revenues and costs based on sales pursuant to a Power Purchase Agreement), PC 3.1 (a *pro forma* statement identifying expected revenues and costs based on additional market based revenue), and PC 6 (an unaudited balance sheet for NewCo reflecting assets, liabilities and owner's equity on December 31, 2009 and on April 30, 2011.) Counsel for the Public and all of the parties agreed that the exhibits should be subject to a protective order and subject to confidential treatment.

During the proceedings on May 18, 2011, it became necessary for the parties and the Committee to make reference to and/or ask questions about the ISO New England interconnection request, the fuel supply agreement and Counsel for the Public's exhibits. Therefore, the Committee voted to conduct a short portion of the proceeding in a closed session and, thereafter, unanimously voted to seal the transcript

of the closed portion of the proceeding. The Committee maintains a verbatim record of the entire proceeding, including the closed portion.

On May 27, 2011, the Chair issued its written Order granting the motions for protective orders and confidential treatment. In its Order, the Chair also granted the oral request for a protective order and confidential treatment of Counsel for the Public's Exhibits PC 2, 3, 3.1 and 6.

Following the adjudicatory hearing, Edrest withdrew as an intervenor in this proceeding. Counsel for the Public participated throughout the proceeding. On June 2, 2011, Counsel for the Public filed proposed conditions.

On June 3, 2011, the Committee re-convened for the purpose of hearing closing arguments and deliberations. The Committee's deliberations and determination are memorialized in this Decision.

III. The Joint Application

The Joint Applicants essentially seek four types of relief.

1. Transfer of the Certificate and Corporate Re-Structuring

The Joint Applicants seek the permission of the Committee to transfer the Certificate from Laidlaw Berlin BioPower to the single purpose entity, Berlin Station. As part of the transfer of the Certificate, the Joint Applicants also seek approval from the Committee for Berlin Station to lease the project to a separate single purpose entity, Burgess BioPower. Along with the lease, the Joint Applicants seek approval of a right of use agreement between Berlin Station and Burgess BioPower that would permit Burgess BioPower to manage the Facility and administer the Certificate, all permits, and contracts associated with the Facility.

The Joint Applicants assert that the relief requested is the result of a corporate restructuring that is necessary to accommodate both its private placement market (PPM) financing and its New Market Tax Credit (NMTC) financing.

In addition to the creation of Berlin Station and Burgess BioPower, the corporate restructuring involves other new entities. Berlin Station replaces Laidlaw Berlin Biopower, LLC and PJPD Holdings. Laidlaw Berlin Biopower was the original Applicant, while PJPD was the owner of the real estate and assets at the Site. In addition, the Joint Applicants propose to create four new intermediary holding companies: BBP Holdings 1, LLC; BBP Holdings 2, LLC¹; Burgess Holdings, LLC; and Newco Energy Holdings, LLC. BBP1 and Burgess Holding will be wholly owned by Newco Energy Holdings, which in turn is wholly owned by Newco Energy, LLC. BBP1 will own 99% of Berlin Station; BBP 2 will own 1% of Berlin Station. Burgess Holdings will own 100% of Burgess Biopower.

In addition to creating a structure that adheres to the NMTC requirements, the Joint Applicants assert that they wish to re-structure the company in order to allow their financiers to be dealing with fresh entities that are unencumbered by prior actions and possible liabilities. The creation of the new special purpose entities will assure lenders that they will not be financing the prior liabilities of the former Laidlaw Companies. The Joint Applicants assert that Newco Energy LLC, Berlin Station LLC and Burgess Biopower, LLC are all willing to be bound by the terms and conditions of the Certificate.

¹ BBP Holdings 2 is wholly owned by CSC Group Holdings.

2. Change in Fuel Supplier

During the original proceeding, the Applicant advised the Subcommittee that it would sign a fuel supply agreement with Cousineau Forest Products (Cousineau). Cousineau is a wood broker. The draft agreement between Cousineau and the Applicant was incorporated into the Certificate. The Joint Applicants now seek to amend that portion of the Certificate to allow them to enter into a similar contract with Richard Carrier Trucking (RCT). The Joint Applicants represent that RCT is a larger company with greater logistical and financial assets. They claim that the RCT Agreement is, in principle, the same as the Cousineau Agreement with the exception that RCT will be posting a performance bond in lieu of a stumpage pledge contained in the Cousineau agreement. In addition, RCT has agreed to maintain a 45 day supply of fuel off-site during “mud season”.

3. Increase in Gross Power Output

The original Certificate was based upon a gross power unit rating up to 70 MW. See, Order p. 5. The Joint Applicants now assert that during the re-engineering and design process, its engineers have increased the gross output without increasing fuel requirements. The new efficiency is found by slightly increasing the steam output temperature; using a new, rather than used, steam turbine generator and optimizing the steam turbine generator’s exhaust pressure. The Joint Applicants seek to amend the Certificate and Order to allow a maximum output of 75 MW. This increase in output has been submitted to ISO New England (ISO) and is in the process of review.

4. Notice of Change of Major Contractors

Finally, the Joint Motion advises the Committee that the Joint Applicants have replaced Homeland Renewable Energy (HRE) as construction engineer and as operations and maintenance contractor. HRE will be replaced by two companies. Waldron Engineering will serve as construction engineer and Delta Power Service (a subsidiary of Babcock & Wilcox) will be the operations and maintenance contractor.

IV. Positions of the Parties

In addition to the Joint Applicants and Counsel for the Public, two parties have been permitted to intervene in this proceeding.

A. City of Berlin.

Upon its request, the City of Berlin was granted intervenor status. The City did not participate in discovery and did not attend the technical session on May 13, 2011. The City did not present witnesses and participated only to a minimal degree with cross examination of the Applicant's panel of witnesses. In the original proceeding, the City supported the Application. In that proceeding the City and the Applicant reached a comprehensive agreement (City Agreement) that was adopted as a condition to the Certificate. Important concerns addressed in the City Agreement were landscaping and appearance issues, City Agreement, p. 1, noise, City Agreement p. 2, the limitation of fuel to biomass, excluding construction and demolition debris, City Agreement, p. 3, trucking issues, City Agreement p. 3-6, and ash disposal, City Agreement p. 5. In addition, the City obtained certain community benefits as a result of the City Agreement. Those benefits include a requirement that the developer must fund the design, development and construction of a "river walk" along the banks of the Androscoggin

River for the City, City Agreement p. 6-7, and a requirement that the developer develop a snowmobile trail on a portion of the site, City Agreement p. 7. The City and the developer also agreed that the Facility will offer low cost thermal energy to businesses that might co-locate at the site and that the developer will give priority to the hiring of local labor, City Agreement, p. 7-8.

The City has a substantial interest in the development of the project and supports the Joint Applicants in all of the requests contained in the Joint Motion.

B. Edrest Properties LLC

Edrest Properties LLC (Edrest) is a real estate management and ownership company represented by Jonathan Edwards as one of its members. Mr. Edwards moved to intervene, individually, in the original proceeding on Laidlaw's Application but was denied intervention status because he did not demonstrate a significant individualized interest in the outcome of the proceeding. Since that time, he has organized Edrest and represented that he has an ownership or management interest in several properties that are within 200 feet of the Site.

In addition to the proximity of Edrest property to the Site, Edrest asserts an interest in the Joint Applicant's claim that the proposed increase in electrical generation from 70 to 75 MW will not require an increase in fuel. Edrest asserts that testimony before the Public Utilities Commission² suggests that the Facility will consume 20% more fuel than it has predicted.

² Edrest cites to testimony provided to the PUC by PSNH in PUC Docket No. DE 10-195. In that PUC docket PSNH sought approval of the PPA between itself and Laidlaw.

Edrest also claims that the requested amendment of the Certificate to permit the Facility to contract with RTC will cause an overall increase in electric rates. Edrest notes that RCT operates a very large chipping yard in Brentwood, New Hampshire. Edrest postulates that by virtue of the ownership of its Brentwood yard and its agreement with Berlin Station, RCT will be able to exert upward pressure on the fuel costs at PSNH's Schiller Station in Newington. Edrest posits that such upward pressure will have the two-fold effect of raising rates to PSNH's customers and also increasing the amount of money PSNH pays to Berlin Station under the Power Purchase Agreement (PPA).

Edrest goes on to assert further interests in the economy of Coos County and the real estate market in Coos County, as well as the health of the forest product industry in Coos County.

Many of the issues raised by Edrest in its Motion to Intervene and Response are not relevant or only tangentially relevant to the proceeding before the Committee. The economic effects on the forest product industry, other wood burners, and real estate values are matters that were fully addressed in the original docket and are not implicated by the Joint Motion.

Edrest did participate in discovery and did attend the technical session. Edrest also undertook extensive cross examination of the Joint Applicant's witness panel. Edrest did not present its own witnesses.

Edrest withdrew as an intervenor on May 27, 2011, for unknown reasons.

C. Public Counsel

Counsel for the Public has participated in the proceedings to date. Counsel for the Public did not engage or call witnesses, but did cross examine the Joint Applicant witnesses. On June 2, 2011, Counsel for the Public filed a document entitled “Counsel for the Public’s Proposed Conditions and Procedures.” In that document, Counsel for the Public urges the Committee to:

1. Issue a construction deadline date of July 15, 2013, after which the Applicant must show cause as to why decommissioning should not commence.
2. Require a submission from the Applicant including an “updated and complete organizational chart showing the relationship of BBP Finance.” Counsel for the Public request that this be required before the Committee votes on the merits of the Joint Petition.
3. Require a submission from the Applicant demonstrating an “updated and complete debt/equity figure which includes the \$75 million note purchase agreement . . .” Counsel for the Public requests that this be required before the Committee votes on the merits of the Joint Petition.
4. Order that all entities depicted on Exhibit PC – 5 be bound by the terms and conditions of the Certificate including BBP Finance.
5. Order that the Applicant must demonstrate that the “appeal” of the Power Purchase Agreement (PPA) order from the PUC will not result in “significant changes” to the Project (additional changes in corporate structure.) Counsel for the Public suggests that the Committee suspend its deliberations until the PPA issue is resolved.

V. Corporate Restructuring

The Joint Applicants accurately assert that during the course of the adjudicatory hearings on the original Certificate, the Committee was advised that further corporate restructuring may be necessary before a final financial closing. Michael Bartoszek, President of Laidlaw Berlin Biopower, LLC, testified before the Subcommittee that he

expected that lenders would require either a restructuring of the Applicant's corporate structure or the creation of an additional entity. The purpose of such corporate arrangements would be for the benefit of the lenders in order to ensure that the collateral for the loan is not subject to any pre-existing or contingent liabilities. See, Testimony of Michael Bartoszek, Application of Laidlaw Berlin Biopower, LLC, No. 2009-02, Tr. Day 3, Afternoon, pp. 97 – 100. In other words, the lenders require that the assets of the Project which serve as collateral are not subject to prior debts, obligations, pledges, security interests or other liabilities.

Similarly, the Joint Motion asserts the following reasons for the corporate restructuring:

- Accommodation of private placement market and new market tax credit lenders.
- Avoidance of extraneous non-project risk.
- To allow rating agencies and lenders to focus on the economic features of the project.
- To accommodate NMTC rules that prohibit Berlin Station from being the operating company. (Apparently some of the NMTC lenders require the debtor to be a real estate entity.)

Joint Motion, p.3-4. The foregoing reasons for re-structuring are also included in the prefiled testimony of Keith Mueller which has been adopted by Matthew Eastwick. Exh. 1, p. 2-3

At the time of the original consideration of this project, there was substantial concern regarding the issue of the Applicant's corporate structure. That discussion primarily centered upon the financial, managerial and technical capabilities of the Applicant and the liability for the conditions of the Certificate by companies that were

“upstream” from the actual Applicant, Laidlaw Berlin BioPower, LLC. The Committee specifically required that the conditions of the Certificate apply to the upstream companies. In pertinent part, the original decision states:

PJPD owns the real property and assets of the Applicant. Aware Energy Funding, LLC (Aware), is a vehicle for financing of the Facility. NewCo is the Applicant’s and PJPD’s parent company. Each of these entities is structured as a limited liability company. While this was originally a concern, the Applicant, PJPD, Aware and NewCo agreed to guarantee the performance of all requirements of the Certificate, if granted. Tr. 08/26/2010, Morning Session, at 21; Tr. 08/26/2010, Morning Session, at 46-49. Therefore, as a condition of the Certificate issued in this docket, the Applicant, PJPD, Aware, NewCo, LBB and their successors and assigns will all be required to guarantee performance of all the terms and conditions of the Certificate and to be jointly and severally liable for the performance of said conditions. Such guarantees shall be in form and substance reasonably acceptable to the Subcommittee, and shall be fully executed and accepted by the Subcommittee prior to commencement of construction. In addition, each entity will be identified in the Certificate and the Committee may pursue enforcement activity against any or all of the entities.

Re: Application of Laidlaw Berlin Biopower, LLC, Docket No. 2009-02, Decision, p. 46-47. In imposing this condition in the original Certificate, the Committee recognized the “placeholder nature” of the “complicated” corporate structure. See, Tr. 09/20/2010, Day 1 p.m., p. 5-8 (Comm. Ignatius), 11-12 (Director Stewart). Commissioner Ignatius also explained the Committee’s concerns with the prolific use of special purpose entities in the corporate structure:

I understand that in the business world that may be a goal that is important, and important to investors. But we are looking at a facility in the center of Berlin, immediately next door to houses. And in my view, there’s got to be absolutely clear language, if a certificate is issued, that the assets are available in the event of any sort of problem on site, that there can’t be any evading of that because that’s not the right entity.

Tr., 09/20/2010, Day 1 p.m., p. 14-15. As a result, the Committee determined that it was necessary to require the conditions of the Certificate to apply to the “upstream” companies in the Project’s corporate structure in order to assure that there is sufficient

financial capability for the Project to be constructed and operated in accordance with the terms and conditions of the Certificate.

The Joint Motion seeks a similar but different stream of responsibility for the upstream companies. The Applicant suggests that under the corporate restructuring Burgess BioPower, Berlin Station and NewCo be subject to all of the terms and conditions of the certificate. In making this suggestion, the Joint Applicants note that the new entity known as Berlin Station is “essentially a combination of LBB and PJPD”, and that Aware Funding LLC will “cease to exist.” Mueller Testimony, p. 3. The Joint Applicants also suggest that NewCo will continue to be liable under the terms and conditions of the Certificate as proposed.

The Committee finds the Joint Applicant’s proposal to bind NewCo Energy, LLC, Berlin Station and Burgess BioPower to the terms and conditions of the Certificate adequately ensures that the Project will have sufficient financial, managerial and technical capabilities.

Counsel for the Public suggests that the Committee take additional steps beyond binding the “upstream” companies to the terms and conditions of the Certificate. However, the Committee finds, with one exception, Counsel for the Public’s conditions to be unnecessary.

Counsel for the Public suggests that the Applicant be required to submit “an updated and complete organizational chart showing the relationship of BBP Finance” *before* the Committee votes on the Joint Motion. Counsel for the Public also suggests that the entity identified as BPP Finance be bound by the terms and conditions of the Certificate. BBP Finance was described in the cross-examination of Mr. Eastwick on

May 18, 2011. See, Tr., Day 1 p.m., p 46-48. BBP Finance is a Cate Street Capital, LLC-affiliated entity that will provide a leveraged loan to the NMTC structure. Tr., Day 1 p.m., p. 46. BBP Finance does not hold any ownership interest in any of the other corporate entities, nor is it owned by any of them. Tr., Day 1 p.m., p. 48. The Applicant describes BBP Finance as an entity that will monetize the NMTC structure. The NMTC structure accounts for \$19.9 million of the \$75 million in equity which the re-structured Applicant reports that it will have upon financial closing. See, Ex. PC 2. The balance of the equity infusion at closing will be the result of the monetization of the §1603 grant in lieu of investment tax credit that is available to the project under the American Recovery & Reinvestment Act (ARRA)³. Under the present terms of the Certificate, the Applicant is required to notify the Committee that financing is in place and provide the committee with its financial closing package. See, Laidlaw Order and Certificate, p. 4. The filing of the closing package should reflect the relationship between entities, including BBP Finance.

The Committee accepts the representation of the Joint Applicants that BBP Finance is merely a financing entity for the purpose of monetizing the grants that are available to the Project. It is not necessary to require that BBP Finance be bound by the terms and conditions of the Certificate. The Committee also finds that in addition to

³ The NMTC and the §1603 grant are not immediately available to the Applicant but apparently will be at some time in the future. Each vehicle is anticipated to be “monetized” at closing by a loan that will then be used by the Applicant to begin construction of the project. When the loan (or Note Purchase Agreement as referred to during the hearing) is paid back upon the receipt of the tax credits (which will be sold to US Bank Corp) and the §1603 grant, the Applicant remains in possession of the project, which at that time (all other things being equal) should be worth at least \$75 million and will be the equity held by the Applicant in the project.

Berlin Station and Burgess BioPower, the upstream company identified as NewCo Energy, LLC will be required to be bound by the terms and conditions of the Certificate. This will ensure that responsibility lies with companies that were similarly bound under the former corporate structure.

Counsel for the Public also suggests that the Joint Applicants be required to file:

“an updated and complete debt/equity figure which includes the \$75 million note purchase agreement to be entered into by Burgess Holdings, and include in the figure an exposition of any guaranties or pledges being made by any of the entities on the revised and updated organizational chart to obligate the \$75 million note purchase agreement or secure it with assets of any of the entities”.

Counsel for the Public argues that this updated figure should also be provided before the Committee votes on the Joint Application. In his request, however, he does not specify what may have changed to require an updated debt equity figure. In fact, there was significant testimony from Mr. Eastwick about the debt and equity position of the Applicant. The Committee finds that it has a sufficient understanding of the revised corporate structure and the financing scheme from the evidence and documents submitted during the hearing process. Moreover, upon closing, the Committee will have a complete copy of the financing documents. Therefore, it is not necessary to require the Joint Applicants to provide yet another filing regarding its debt and equity position. However, in order to ensure that the docket contains an appropriate representation of the revised corporate structure, the Committee has required the Joint Applicants to file an additional chart demonstrating the revised corporate and capital structure, including the financing process. The chart was filed with the Committee on June 14, 2011, and remains part of the record in this docket.

VI. Change in Fuel Supplier

The original Certificate required that the Applicant and Cousineau execute a Fuel Supply Agreement that was to be submitted to the Committee. The importance of the Fuel Supply Agreement to the Committee was that it rendered a steady stream of fuel for the operation of the project to be more likely and it provided “certainty with respect to the sourcing and pricing of fuel.” See, Re: Application of Laidlaw Berlin Biopower, LLC, Docket No. 2009-02, Decision, p. 50. In addition, the Fuel Supply Agreement adopted a procurement policy that incorporated Sustainability Conditions that were also required in the Certificate. Id.

The Joint Applicants now seek to replace Cousineau with RTC. The record reflects that RCT is a larger company than Cousineau and possesses greater financial and logistical resources than Cousineau. Presumably, a contract with a larger and more logistically resourced company will increase certainty with respect to the sourcing and pricing of fuel.

There are two changes in the final contract that should be noted. The Cousineau contract had included a pledge of stumpage as security for Cousineau’s obligations under the fuel supply agreement. In lieu of pledging stumpage, RCT agrees to provide a performance bond to secure its obligations. Second, RCT also agrees to maintain 45 days of off-site fuel storage during “mud season”. The balance of the contract provisions appear to be the same as in the original Cousineau contract. Additionally, both the Joint Applicants and RCT agree that the conditions will be updated to include the most recent version of “Forestry in the Granite State” as part of the sustainability conditions.

Neither the City of Berlin nor Counsel for the Public appears to have any complaint regarding the change in the fuel supply contractor or the changes in the fuel supply agreement.

Before withdrawing as an intervenor, Edrest attempted to demonstrate that the project would destabilize the forest products industry in the North Country. This is an issue that was fully considered in the original Laidlaw docket and rejected. Edrest also attempted to formulate an argument to the effect that because RCT maintained a chip yard in Brentwood (a short distance from Newington) that the RCT Fuel Supply Agreement would cause an increase in the price of fuel for PSNH's Schiller Station in Newington. However, Mr. Edwards did not fully set forth this theory in either his pleadings or in his participation in the docket prior to his withdrawal. He has not demonstrated evidence to support his theory.

The Committee finds that the RCT Fuel Supply Agreement presents a better and more secure alternative than the original agreement with Cousineau. Therefore, the Committee will allow the change in fuel suppliers and require that the new contract with RCT become a condition of the Amended Certificate.

VII. Increase in Power Output

The Joint Applicants represent that re-engineering and design processes have led to the ability to achieve a higher gross output of electricity than originally planned. The Joint Applicants ask that they be permitted to generate at a gross output of 75 MW, rather than 70 MW, as set forth in the original Certificate. As explained by Mr. Kusche, this increased efficiency is achieved by using a new steam turbine, a new generator and step-up transformer and an incremental increase in steam temperature and pressure in

the boiler. This results in a greater output without any increase in the BTU or fuel input. The result is achieved purely from efficiency. Tr. D. 1 PM pp 19-20.

Mr. Kusche also advised that the ISO process for approval of the increase in gross output is progressing smoothly and in a timely fashion in accordance with ISO's procedures. Id.

Neither the City of Berlin nor Counsel for the Public appear to be concerned by this requested change in the Certificate. Edrest asserted that the Project will require 20% more fuel than was represented at the time of the original hearing. However, Edrest offered no explanation for this figure. It also appears that Edrest's argument is not based upon the requested change in the Certificate, but is an attack on the original estimates of fuel use submitted by Laidlaw at the time of certification.

The Committee will approve the request to increase the gross power rating of the Project.

VIII. Change in Contractors

The Joint Applicants seek to substitute certain contractors on the Project. Specifically, the Joint Applicants seek to replace Homeland Renewable Energy with DPS Berlin, LLC for the purposes of operation and maintenance of the Project. DPS Berlin, LLC is a subsidiary of Delta Power Services which, itself, is a subsidiary of Babcock & Wilcox. Babcock & Wilcox is the firm that engineered the original boiler at the Project.

The Joint Applicants also seek to substitute Waldron Engineering to execute a master services agreement. Waldron was involved in the early engineering of the

Project. Additionally, the Joint Applicants seek approval of a consulting agreement with Stone & Webster, Inc.

No objections have been raised to the Joint Applicants' request to change major contractors. Each of the proposed companies appears to have sufficient experience and expertise to perform as required by the contracts.

IX. Construction Deadline Requirements

Counsel for the Public requests that the Joint Applicants be required to complete construction of the Project by July 31, 2013. Counsel for the Public does not specify why he believes such a deadline is necessary or why July 31, 2013 is the appropriate date. Raymond Kusche specifically testified that he foresaw September 2013 as a more realistic date for commercial operation. See, Tr., Day 1 p.m., p. 53-54. Presumably, Counsel for the Public believes that a completion of construction deadline will provide incentive to complete the project and will avoid the possibility of construction beginning and then stopping with a partially built project. The Committee has required a construction deadline in other dockets – most notably in the Application of Brookfield Power, Docket No. 2010-03. However, the circumstances in that docket involved substantial construction at high elevations in a fragile eco-system. The construction deadline in the Brookfield Power docket was to avoid “false starts” in that “fragile environment” which could cause the time frame for construction to become longer than the eco-system might be able to sustain.

There is no similar concern regarding a fragile eco-system in this docket. The Project as proposed involves the renovation and rehabilitation of an existing structure

on a property with a long history of industrial use in a densely populated neighborhood. The “false start” scenario is far less likely given the type of construction that is required in this project. Moreover, the City has expressed no interest in the imposition of a construction deadline. Therefore we will not require a construction deadline.

X. Conclusion

For the reasons set forth above, the Joint Applicants’ Motion for Transfer and Amendment of Certificate and Notice of Change in Major Contractors is granted.

The Certificate may be transferred to Berlin Station, LLC, subject to all of the terms and conditions contained within the Amended Certificate and as required in this Decision.

The Certificate of Site and Facility is amended as follows:

The term “Applicant” in the Certificate shall be changed to be defined as Berlin Station, LLC.

The term “Affiliated Entities” in the Certificate shall be changed to be defined as NewCo Energy, LLC and Burgess BioPower, LLC.

The Certificate shall be further amended to read as follows: “Further ordered that the Decision and this Order and Certificate shall apply to and bind the Applicant and the following affiliated entities: NewCo and Burgess BioPower, LLC (affiliated entities). Prior to the commencement of construction, each of the affiliated entities shall prepare and file with the Site Evaluation Committee written guarantees reasonably acceptable to the Committee of all of the obligations and conditions posed on the Applicant in the Order and Certificate”.

The Certificate shall be further amended to read as follows: “Further ordered that the Applicant shall provide immediate notice to the Committee in the event that the Joint Applicants or any of its associated companies including NewCo and Burgess BioPower, LLC shall file a bankruptcy or insolvency petition in any jurisdiction, foreign or domestic; or be subject to involuntary bankruptcy or any other proceeding pertaining to debt restructuring or the liquidation of assets”.

The Certificate shall be further amended to read as follows: “The Applicant has filed an updated capital structure chart pertaining to the Project”.

The Certificate shall be further amended to read as follows: “Further ordered that the Applicant shall not commence construction until such time that it has filed, with the Committee, a signed fuel supply agreement with Richard Carrier Trucking, Inc., materially consistent with Ex. Laidlaw 62, 63 and 76A CONFIDENTIAL in Docket No. 2009-02.”

The Certificate shall be further amended as follows: “Further ordered that the Applicant shall not commence construction until such time that it has filed, with the Committee, an Operations and Maintenance agreement with DPS Berlin, LLC”.

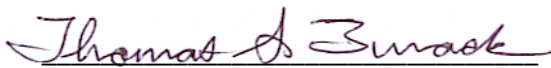
The Certificate shall be further amended as follows: “Further ordered that the Applicant shall not commence construction until such time that it has filed with the Committee a signed Master Services Agreement with Waldron Engineering and Construction, Inc., and a consulting contract with Stone & Webster, Inc.”

The Certificate shall be further amended as follows: “Further ordered that the Joint Applicants continue to cooperate with the requirements of ISO New England and obtain all ISO approvals necessary to a final interconnection agreement for a gross unit

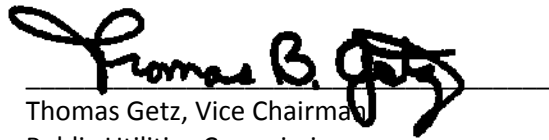
rating of up to 75 MW. Said interconnection agreement shall be filed with the Committee prior to the commencement of construction”.

The verbatim transcript of the closed portion of the proceedings held on May 18, 2011, shall remain under seal, and shall not be available to the public.

SO ORDERED this 12th day of July, 2011 by the Site Evaluation Committee.



Thomas Burack, Chairman
Department of Environmental Services



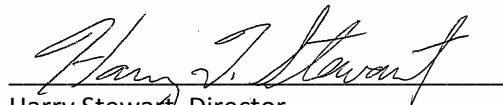
Thomas Getz, Vice Chairman
Public Utilities Commission



Michael Harrington, Staff Engineer
Public Utilities Commission



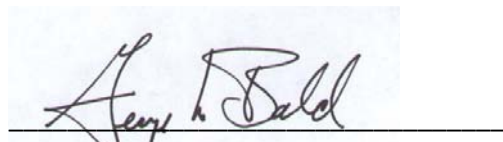
Clifton Below, Commissioner
Public Utilities Commission



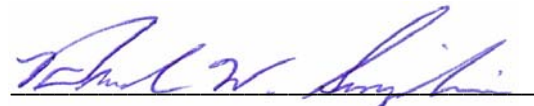
Harry Stewart, Director
Department of Environmental Services



Amy Ignatius, Commissioner
Public Utilities Commission



George Bald, Commissioner
Dept. of Resources & Economic Dev.



Brad Simpkins, Interim Director
Division of Forests & Land



Robert Scott, Director, Air Resources Div.
Dept. of Environmental Services