

STATE OF NEW HAMPSHIRE
BEFORE THE
SITE EVALUATION COMMITTEE

**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 in Major Contractor**

DOCKET NO. SEC 2011-01

**MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT OF
DOCUMENTS REQUESTED BY COMMITTEE IN ORDER AND AMENDED
CERTIFICATE OF SITE AND FACILITY WITH CONDITIONS**

Applicant Berlin Station, LLC (“Berlin Station”), respectfully submits this Motion for Protective Order and Confidential Treatment of Documents Requested by Committee in Order and Amended Certificate of Site and Facility with Conditions, and states as follows:

1. Berlin Station seeks confidential treatment pursuant to RSA 91-A for the following documents requested by the Committee in its Order and Amended Certificate of Site and Facility with Conditions:

- Executed Richard Carrier Trucking Biomass Fuel Supply Agreement
- Executed EPC Agreement with Babcock & Wilcox Construction Co., Inc.
- Executed Operations and Maintenance Agreement with DPS Berlin, LLC (Delta Power)
- Executed Master Services Agreement with Waldron
- ISO New England Inc. and Berlin Station, LLC Large Generator Interconnection Agreement
- Executed Consulting Contract with Stone & Webster, Inc.
- Financial Closing Package containing the following documents:
 - Berlin Station Note Purchase Agreement
 - Berlin Station Depository & Security Agreement
 - Collateral Agency, Subordination and Intercreditor Agreement
 - Berlin Station Pledge and Security Agreement
 - Berlin Station Security Agreement
 - Burgess BioPower, LLC Security Agreement
 - Burgess BioPower, LLC Pledge and Security Agreement
 - Burgess BioPower, LLC Depository and Security Agreement
 - Cooperation Agreement
 - Burgess BioPower, LLC Collateral Agency Agreement

All of these documents contain confidential, commercial and financial information.

2. Because these documents contain confidential, commercial and financial information, they are exempt from public disclosure under the New Hampshire Right to Know Act. RSA 91-A:5, IV. The Committee has the authority pursuant to RSA 91-A:5, IV to protect this information. Indeed, the Committee granted Laidlaw Berlin BioPower, LLC and Berlin Station's earlier motions for confidential treatment of similar commercial documents. For example, the Committee granted Laidlaw's motion for confidential treatment of its prior pro forma (Laidlaw 43), the fuel supply agreement with Cousineau Forest Products (Laidlaw 62 and Laidlaw 63), the Pre-EPC contract (Laidlaw 61) and most recently, the Interconnection Request, Fuel Supply Agreement and Counsel for the Public's Exhibits PC2 (debt/equity exhibit), PC3 (pro forma), PC3.1 (pro forma) and PC6 (NewCo balance sheet).

3. In *Lamy v. New Hampshire Public Utilities Commission*, 152 N.H. 106 (2005), the New Hampshire Supreme Court described a three-step analysis to determine whether information should be protected from disclosure under the Right to Know Law.

First, we evaluate whether there is a privacy interest at stake that would be invaded by the disclosure. If no privacy interest is at stake, the Right-to-Know Law mandates disclosure. Next, we assess the public's interest in disclosure. Disclosure of the requested information should inform the public about the conduct and activities of their government. Finally, we balance the public interest in disclosure against the government interest in nondisclosure and the individual's privacy interest in nondisclosure.

Id. at 109.

4. Berlin Station submits that there is a significant privacy issue at stake with respect to the commercial and financial documents requested by the Committee. These documents contain confidential, commercial and financial information that is highly sensitive and would not normally be disclosed to the public. Any disclosure beyond that to the Committee and parties

would likely cause substantial harm to Berlin Station's competitive position. *See Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540, 554 (1997).

5. Berlin Station understands that the Committee seeks the documents requested in the Amended Certificate to ensure that it has the financial and technical capacity to construct and operate the Facility. Nevertheless, the public does not have an interest in having access to the confidential commercial and financial information contained in the commercial documents. Accordingly, Berlin Station submits its legitimate privacy interest in the commercial documents vastly outweighs any interest the public may have in its disclosure.

6. Consistent with its prior orders, Berlin Station requests that the Committee grant its Motion for Protective and Order and Confidential Treatment of the attached commercial documents.

WHEREFORE, Berlin Station respectfully requests the Committee:

- A. Grant this Motion for Protective Order and Confidential Treatment;
- B. Issue an order protecting the documents referenced herein and limit their release to members of the Committee, Counsel for the Public and the City of Berlin; and
- C. Grant such other and further relief as may be just and equitable.

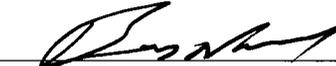
Respectfully submitted,

Berlin Station, LLC

By Its Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

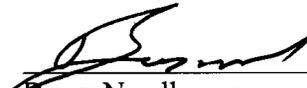
Date: September 26, 2011

By:  _____

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Certificate of Service

I hereby certify that on this 24th day of September, 2011, the original and 18 copies of the foregoing Motion for Protective Order and Confidential Treatment has been forwarded to Site Evaluation Committee. One copy has been sent to the Attorney General's office.

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Barry Needleman