

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2011-01

**Re: Motion of Berlin Station, LLC for Amendment of
the Certificate of Site and Facility**

April 16, 2013

**ORDER AND SECOND AMENDED CERTIFICATE OF
SITE AND FACILITY WITH CONDITIONS**

First Amendment to Certificate of Site and Facility

WHEREAS, the Site Evaluation Committee, on November 9, 2010, issued a Decision granting a Certificate of Site and Facility with conditions 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 (Project);

Whereas, Laidlaw Berlin BioPower, LLC and Berlin Station, LLC, on March 9, 2011, filed a Joint Motion to Amend the Certificate, to transfer the Certificate to Berlin Station, LLC, and to notify the Site Evaluation Committee of a change in major contractors (Joint Motion);

Whereas, the Committee held a public meeting and adjudicatory hearings regarding the Joint Motion and took evidence regarding the Joint Motion on April 22, 2011, May 18, 2011 and June 3, 2011;

Whereas, the Committee considered the Joint Motion and determined that the relief requested therein should be granted;

Whereas, the Committee, on July 12, 2011, issued a Decision granting the Joint Motion and Amendment of Certificate of Site and Facility and the following was ordered:

Now therefore, it is Ordered that the Joint Motion of Laidlaw Berlin BioPower, LLC and Berlin Station, LLC is approved, subject to the conditions set forth herein and that this Order shall be deemed to be an Amended Certificate of Site and Facility pursuant to RSA 162-H:4; and it is,

Further Ordered that the Site Evaluation Committee's Decision in Docket no. 2009-02, dated November 8, 2010, is amended and replaced by this Order; and it is,

Further Ordered that the term "Applicant" as used throughout this Order and Amended Certificate shall refer to Berlin Station, LLC and that the term "affiliated entities" shall refer to NewCo Energy, LLC and Burgess BioPower, LLC; and it is,

Further Ordered that all references to the Applicant or Laidlaw Berlin BioPower, LLC contained in the Appendices attached hereto shall hereby be interpreted to refer to Berlin Station, LLC; and it is,

Further Ordered that the Site Evaluation Subcommittee's Decision dated November 8, 2010, in Docket no. 2009-02, and its Decision on July 12, 2011, in Docket no. 2011-01 and any conditions contained therein, are hereby made a part of this Order; and it is,

Further Ordered that to the extent there is any inconsistency between the Decision of November 8, 2010 and the Decision of July 12, 2011, the Decision of July 12, 2011 shall control; and it is,

Further Ordered that the Applicant may site, construct and operate the Project as outlined in the Application, as amended, and subject to the terms and conditions of the Decision and this Order and Amended Certificate; and it is,

Further Ordered that the Decision and this Order and Amended Certificate shall apply to and bind the Applicant and the following Affiliated Entities: NewCo Energy, LLC 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 Subcommittee, of all of the obligations and conditions imposed upon the Applicant in the Decision and in the Order and Certificate; and it is

Further Ordered that this Certificate is not transferable to any other person or entity without the prior written approval of the Committee; and it is,

Further Ordered that the Applicant shall provide immediate notice to the Committee in the event that the Applicant or any of its associated companies, including NewCo Energy, LLC 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; and it is,

Further Ordered that the Applicant shall immediately notify the Committee of any proposed change in ownership or ownership structure of the Applicant or the Affiliated Entities and shall seek approval of the Committee of such change; and it is,

Further Ordered that the Applicant shall notify the Committee of any change in senior management of the Applicant or any of the Affiliated Entities; and it is,

Further Ordered that all permits and/or certificates recommended by the New Hampshire Department of Environmental Services including the Air Permit, the Site Specific Alteration of Terrain Permit, Shoreland Protection Permit, Industrial Wastewater Indirect Discharge Permit and Sewer Connection Permit shall issue and this Certificate is

conditioned upon compliance with all conditions of said permits and/or certificates which are appended hereto as Appendix I; and it is,

Further Ordered that the New Hampshire Department of Environmental Services is authorized to specify the use of any appropriate technique, methodology, practice or procedure associated with the conditions of the Air Permit, the Site Specific Alteration of Terrain Permit, Shoreland Protection Permit, Industrial Wastewater Indirect Discharge Permit and Sewer Connection Permit including the authority to approve modifications or amendments to said permits and certificates; and it is,

Further Ordered that the Applicant's Environmental Monitor shall supervise all excavations, and excavated soils shall be screened for the presence of contamination by hazardous substances in accordance with a work plan approved prior to construction by the Waste Management Division of DES. any contaminated soils discovered during the construction of the Facility shall be reported to DES in accordance with New Hampshire statute and regulatory requirements and shall be managed in accordance with state and federal requirements, subject to approval by DES in accordance with the approved work plan; and it is,

Further Ordered that the Agreement between the City of Berlin and the Applicant, attached as Appendix II (City of Berlin Proposed Certificate Conditions), shall be a part of this Order and the Conditions contained therein shall be conditions of this Amended Certificate. To the extent that any disputes arise under the City of Berlin Proposed Certificate Conditions, the parties shall file a motion for declaratory ruling, a motion for enforcement or such other motion as may be procedurally appropriate with the Committee and the Committee shall make such final interpretations or determinations that may be necessary; and it is,

Further Ordered that the Applicant is further required to develop an informal complaint resolution procedure together with the City of Berlin. The complaint resolution procedure may include the use of an ombudsman or any other process that is satisfactory to the City of Berlin. The complaint resolution procedure shall remain in place for duration of the construction of the Facility and for the first 12 months of operation of the Facility; and it is,

Further Ordered that the Applicant, in consultation with the City of Berlin, shall develop a decommissioning plan. The plan shall include the estimated cost of decommissioning and a method for creating, maintaining and securing funding for the decommissioning of the Facility in a safe and secure manner. The final decommissioning plan must be filed with the Committee prior to the commencement of construction; and it is,

Further Ordered that the Stipulation between the Applicant and Counsel for the Public, attached as Appendix III (Sustainability Conditions), shall be a part of this Order and the conditions contained therein shall be conditions of this Amended Certificate. To the extent that any disputes arise under the Stipulation, the parties shall file a motion for

declaratory ruling, a motion for enforcement or such other motion as may be procedurally appropriate with the Committee and the Committee shall make such final interpretations or determinations that may be necessary; and it is,

Further Ordered that the Applicant shall not commence construction, as “commencement of construction” is defined in R.S.A. 162-H:2, III, until such time as construction financing is completely in place. The Applicant shall notify the Committee when construction financing is in place and shall provide its financial closing package to the Committee; and it is,

Further Ordered that the Applicant shall not commence construction until such time as the New Hampshire Public Utilities Commission has approved a Power Purchase Agreement (PPA) between the Applicant and Public Service Company of New Hampshire (PSNH) similar in form and substance to the PPA presented to the Committee as Ex. Laidlaw 39, CONFIDENTIAL. The Applicant shall (i) notify the Committee of the approval or denial of the PPA by the PUC; (ii) if approved, provide a copy of the approved PPA to the Committee; (iii) identify any changes in the PPA made or caused to be made by the PUC; and (iv) provide supplemental documentation demonstrating the Applicant’s financial ability to construct and operate the Facility based upon an approved, but amended, PPA. (If further review is necessary, the Presiding Officer will notify the Applicant); and it is,

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. Applicant 3, CONFIDENTIAL; and it is,

Further Ordered that the Applicant shall not commence construction until such time that it has filed, with the Committee, a signed EPC Contract with Babcock & Wilcox Construction Co., Inc., that is materially consistent with Ex. Laidlaw 61 CONFIDENTIAL; and it is,

Further Ordered that the Applicant shall not commence construction until such time that it has filed, with the Committee, a signed Operations and Maintenance Contract with DPS Berlin, LLC; and it is,

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 & Construction, Inc. and a Consulting Contract with Stone & Webster, Inc.; and it is,

Further Ordered that the Applicant continue to cooperate with the requirements of ISO-New England and obtain all ISO approvals necessary to a final interconnection agreement for a gross until rating of up to 75 MW. Said interconnection agreement shall be filed with the Committee prior to the commencement of construction; and it is,

Further Ordered that if during construction or thereafter, any archeological resources are discovered or affected as a result of project planning or implementation, the New Hampshire Division of Historical Resources (NHDHR) shall be notified immediately and NHDHR shall determine the need for appropriate evaluative studies, determinations of National Register eligibility, and mitigation measures (redesign, resource protection, or data recovery) as required by state or federal law and regulations. If construction plans change, notification to and consultation with NHDHR shall be required. If any member of the public raises new concerns about the effect on historic resources, notification to and consultation with NHDHR shall be required. NHDHR is authorized to specify the use of any appropriate technique, methodology, practice or procedure associated with historical resources at the Site including the authority to approve modifications to such practices and procedures as may become necessary; and it is,

Further Ordered that the Applicant shall not remove any trees within 50 feet of the Androscoggin River; and it is,

Further Ordered that all fly ash from the Facility shall be containerized in a fly ash silo and shall not be stored outside of said silo. All bottom ash shall be containerized within the boiler building and shall not be stored outside the Facility; and it is,

Further Ordered that the quarterly and annual reports required by the Sustainability Conditions contained in Ex. PC 76 (Appendix III) shall be forwarded to the New Hampshire Division of Forests and Lands and the Committee, along with information detailing the total supply of biomass delivered to the Facility on a quarterly and annual basis and the geographical source of the biomass; and it is,

Further Ordered that the Applicant and each of its Affiliated Entities shall provide written assurances and guarantees in form and substance acceptable to the Committee binding the Applicant and each Affiliated Entity to all conditions, requirements, and liabilities expressed in the “brownfield” documents identified as Ex. PC 1 and Ex. PC 2; and it is,

Further Ordered that to the extent that blasting may be necessary in the construction of the Project, the Applicant shall comply with all rules and regulations for blasting and the transportation of explosive materials and use of state and local thoroughfares as promulgated by statute or the regulations of the Department of Safety and the Department of Transportation. The Department of Safety and the Department of Transportation are each delegated the authority to specify the use of any appropriate technique, methodology, practice or procedure associated with blasting, transportation of explosives or other heavy loads which shall occur during the construction of the Project; and it is,

Further Ordered that all Conditions contained in this Order and Amended Certificate and in the Decision shall remain in full force and effect unless otherwise ordered by the Committee.

Second Amendment to Certificate of Site and Facility

Whereas, on November 6, 2012, Berlin Station, LLC filed a Motion to further amend the Certificate of Site and Facility (Motion); and,

Whereas, the Committee held a public meeting and adjudicatory hearings regarding the Motion and took evidence regarding the Motion on January 10, 2013; and,

Whereas, the Committee considered the Motion and determined that the relief requested therein should be granted.

Now therefore, it is ordered that the Motion of Berlin Station, LLC is approved, subject to the conditions set forth herein and that this Order shall be deemed to be a Second Amended Certificate of Site and Facility pursuant to RSA 162-H:4, and it is,

Further Ordered that the Site Evaluation Committee's Decision in Docket No. 2011-01, dated July 12, 2011, is amended by this Order; and it is,

Further Ordered that the wood yard area will be reconfigured to include (i) the use of an A-frame overhead stack-out conveyer and an under-pile reclaim conveyor system and (ii) a shift of the processing building approximately 250 feet to the south with the installation of a set of two conveyors to be used to handle incoming woodchips and transport them out to piles; and it is,

Further Ordered that the provision of the Berlin Agreement requiring the Applicant to fund the design, development, and construction of a "River Walk" in the vicinity of the Facility along the east bank of the Androscoggin River is eliminated; and it is,

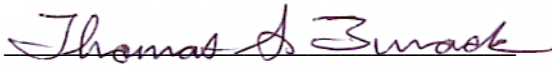
Further Ordered that the provision of the Berlin Agreement requiring the Applicant to erect new fencing along the site boundary that abuts the Androscoggin River is eliminated; and it is,


Further Ordered that the Applicant will be allowed to submit a revised landscaping plan that has been approved by the City of Berlin and the New Hampshire Bureau of Trails; and it is,


Further Ordered that the Certificate shall be further amended to require any and all changes to the original plans to be submitted to the State Preservation Office, the Division of Historical Resources for its review as noted both in the original Certificate and the Section 106 findings; and it is,

Further Ordered that all Conditions contained in this Order and Second Amended Certificate and in the Decision shall remain in full force and effect unless otherwise ordered by the Committee; and it is,

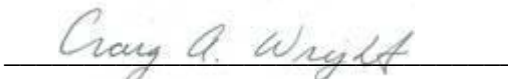
Further Ordered that all of the terms and conditions of the original Decision, the original Order and Certificate of Site And Facility, and the Amended Order and Certificate of Site and Facility, to the extent they are consistent herewith shall remain in full force and effect.


Thomas Burack, Chairman
Department of Environmental Services


Amy Ignatius, Vice Chairman
Public Utilities Commission

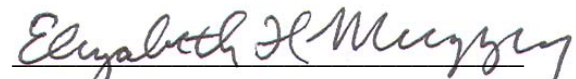

Philip Bryce, Director
Dept. of Resources & Economic Development
Division of Parks & Recreation

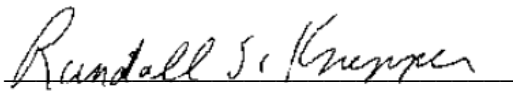
David J. Brillhart, Asst. Commissioner
Department of Transportation


Craig Wright, Acting Director
Department of Environmental Services
Air Resources Division


Robert Scott, Commissioner
Public Utilities Commission


Michael Harrington, Commissioner
Public Utilities Commission


Elizabeth Muzzey, Director
Department of Cultural Resources
Division of Historical Resources


Randall Knepper, Staff Engineer
Public Utilities Commission