

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

**Joint Application of AES Londonderry, L.L.C. and ABN AMRO Bank N.V. as
Agent, for Approval to Transfer Equity Interests in AES Londonderry, L.L.C.
Under R.S.A. 162-H (Joint Application)**

Docket No 2004-01

ORDER ON MOTIONS TO INTERVENE

In this docket, AES Londonderry, L.L.C. and ABN AMRO Bank N.V., (Co-Applicants) seek approval from the Site Evaluation Committee (Committee) to transfer the equity in AES Londonderry, L.L.C. (AESL), from AES Holdings Londonderry, L.L.C., a subsidiary of the AES Corporation, to a new entity owned by a consortium represented by ABN AMRO Bank N.V., as agent. The Committee has the authority to approve or disapprove such a transfer. *See*, RSA 162-H: 5. After receipt of the Joint Application the Committee issued a procedural order requiring that all motions to intervene in these proceedings be filed by July 26, 2004. The Town of Londonderry (Town) and Sustainable Design and Development, L.L.C. (SDD) filed motions to intervene.

R.S.A. 541-A: 32, I, requires the presiding officer in an administrative hearing to grant a motion for intervention if the movant states facts demonstrating that its "rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding..." and that "the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention." *See also*, NEW HAMPSHIRE CODE OF ADMINISTRATIVE REGULATIONS, Jus 809.01.

The Town has a clear interest in the matters to be decided by the Committee, namely whether or not a new entity should be permitted to own a 720 MW combined cycle natural gas fired power plant located squarely within the Town's Ecological Industrial Park. Moreover, the Town has been involved in virtually every step of the certification process to date and receives the benefit of a number of the conditions that govern the Certificate for the facility. Under the statutory standard, the Town's motion to intervene must be granted.

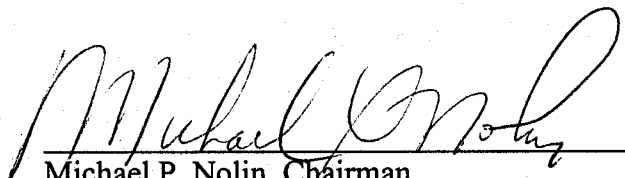
SDD has a different interest in the proceeding that makes for a closer case. SDD asserts that it was the original owner of the land upon which the facility is sited and that it owns surrounding lands. SDD claims to be the "developer" of the Eco-Park in Londonderry. It claims that AESL breached a contract regarding the use of its surrounding lands and caused damage to the lands. In the course of its breach of contract SDD asserts that AESL violated various state laws presumably relating, in part, to the environmental conditions. SDD has filed a civil lawsuit against AESL in the Rockingham

County Superior Court and obtained a pre-judgment attachment on the facility. SDD asserts that its substantial interests may be affected by this proceeding because the proposed transfer may impair its attachment and right to recover damages. SDD also asserts that the Committee should not permit AESL to benefit from the Joint Application until violation of environmental laws are addressed and cured.

The interests asserted by SDD are certainly important and substantial but it is not clear that they are in any way affected by these proceedings. The Committee is simply without jurisdiction or authority to resolve matters of private contracts and damages. Similarly, the Committee does not have authority to take any action that would preserve the priority or integrity of SDD's lien on the facility. However, it is clear that SDD alleges certain environmental violations that may need to be addressed by AESL either during or after the transfer proposed by the Co-Applicants. Because these matters may be relevant to the Committee's determination and assessment of the proposed transferee's "financial, technical and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the certificate" we will allow SDD to intervene. *See*, R.S.A. 162-H: 16, IV (a). In so ruling we also note that SDD has, to date, complied with the scheduling orders of the Committee, has agreed to pre-file written testimony and has freely chosen to forgo discovery. Thus, we are confident that SDD's intervention will serve the interests of justice and will not impair the orderly and prompt conduct of the proceedings. *See*, R.S.A. 541-A: 32, II. However, we will caution SDD to limit its presentations and arguments to issues that are within the jurisdiction of this Committee pursuant to R.S.A. 162-H.

The motions to intervene in these proceedings filed by the Town of Londonderry and Sustainable Design and Development, L.L.C., are GRANTED.

By Order of the Site Evaluation Committee this 11th day of August, 2004.



Michael P. Nolin, Chairman
New Hampshire Site Evaluation Committee