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**Via Hand Delivery**

Thomas S. Burack, Chairman  
N.H. Site Evaluation Committee  
N.H. Department of Environmental Services  
29 Hazen Drive  
Concord, NH, 03302

Laidlaw Berlin BioPower, LLC  
SEC Docket No. 2009-02

Dear Chairman Burack:

I am writing to you on behalf of Clean Power Development, LLC (“CPD”). CPD plans to construct and operate a combined heat and power facility to be located in Berlin, New Hampshire that will generate electricity through the combustion of whole tree chips supplied through local markets.

**Introduction**

On December 16, 2009, Laidlaw Berlin Biopower, LLC (hereinafter “LBB” or “Laidlaw”) filed an Application with the Site Evaluation Committee for a Certificate of Site and Facility in Berlin, New Hampshire. According to the Application:

Laidlaw Berlin BioPower, LLC (“LBB”) is proposing to convert and upgrade much of the remaining facility equipment and infrastructure located at the former Fraser Pulp Mill (also referred to as the Burgess Mill) in Berlin, New Hampshire (the “Site”) in order to develop a biomass fueled energy generating facility. Berlin BioPower (the “Facility” or the “Project”) will use whole tree wood chips and other low-grade clean wood as fuel, and will be capable of generating nominally 70 megawatts (MW) of electric power (gross output).

Executive Summary at 4.

According to Appendix A of the Application, “Laidlaw Berlin BioPower, LLC is the development entity that owns the project.”

Pursuant to RSA 162-H:6-a, II, the Committee:

[u]pon the filing of an application for a certificate for a renewable energy facility, the chairperson or designee shall expeditiously conduct a preliminary review to ascertain whether the application contains sufficient information to carry out the purposes of this chapter. The chairperson or designee shall require as much information as he or she deems necessary to review the application and may take other administrative or procedural actions on behalf of the committee to aid in the orderly conduct of the proceeding.

CPD respectfully requests that the chairperson or designee consider the following information in conducting “a preliminary review to ascertain whether the application contains sufficient information to carry out the purposes” of RSA 162-H.<sup>1</sup>

**Section (h)(5) of the Application does not Contain a Description in Detail of the Applicant’s Financial Capability to Construct and Operate the Proposed Facility.**

**The Power Purchase Agreement, which is an essential element of the Project’s financial viability, does not exist and may never exist.**

Section (h)(5) of the Application, as required by Rule 301.03(h)(5), purportedly contains a “[d]escription in detail of the applicant’s financial, technical and managerial capability to construct and operate the proposed facility.” Section (h)(5) of the Application states as follows:

The ongoing operations of the Project will largely be supported by the cash flows generated from a long-term Power Purchase Agreement (“PPA”) that is being finalized with Public Service Company of New Hampshire (“PSNH”) pursuant to an executed Letter of Intent. The PPA is an essential element of the Project’s financial viability and will be the dominant positive factor in securing the debt financing. Under the PPA, PSNH will purchase 100% of Project electric output and capacity for a period of 20 years. As a hedge against rising fuel prices, the energy price will be adjusted based on the Project’s cost of biomass fuel pursuant to the terms of the PPA. In addition, during the PPA term, 100% of the available renewable energy certificates that qualify for compliance under the New Hampshire renewable portfolio standard will be sold to PSNH. The price for RECs is based on the New Hampshire Alternative Compliance Payment.

Application at 92.

In contrast, PSNH recently made the following representations to the Public Utilities Commission with respect to the PPA:

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<sup>1</sup> The purposes of RSA 162-H:1 are (a) to maintain a balance between the environment and the need for new energy facilities; (b) to avoid undue delay in the construction of needed facilities and to ensure full and timely consideration of environmental consequences; (c) to ensure that all entities planning to construct facilities provide full and complete disclosure to the public of such plans; and (d) to ensure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion.

CMSR. IGNATIUS: And, the decision to enter into what people are describing as a “20 year contract” with Laidlaw, doesn’t raise for you those concerns about – that you described of the burdens of long-term purchase power agreements

MR. BERSAK: Any agreement that we enter into will have its risks. But number one, let me clear up what I think is a huge misunderstanding, misconception, unfortunate way things play out in the newspaper. The status of PSNH’s relationship with Laidlaw: We have no contract with Laidlaw. Therefore an agreement to buy 95% of the contract is interesting. There is no contract with Laidlaw. Are we negotiating with Laidlaw. Yes, we are. Did we have – and I guess you could call it a term sheet with them? Yes. We weren’t going to enter into long-term negotiations with anybody for anything, whether it’s a power purchase agreement or whether it’s a scrubber or something, unless we have some kind of basis for those negotiations, to you know, the framework of it. But it’s not a deal, it’s a term sheet. It’s an understanding. Unless and until we reach an agreement with Laidlaw there is no contract.

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So, you know, to the extent that people are comparing it to the “Laidlaw deal” is, I guess, a twinkle in Laidlaw’s eyes at this point. But, you know, we continue to negotiate. And will we reach a deal? If both parties can, yes; If not, then, no.

Transcript, DE 09-067 at 76 to 78 (November 3, 2009) (Emphasis added).

The Application asserts that the “PPA is an essential element of the Project’s financial viability and will be the dominant positive factor in securing the debt financing.” *PSNH has represented to the PUC that the PPA is a “twinkle in Laidlaw’s eyes.”* Unless and until Laidlaw and PSNH reach a deal, the Project is admittedly not financially viable. For this reason alone, the Application does not contain a description in detail of the applicant’s financial capability to construct and operate the proposed facility. Moreover, any agreement between PSNH and Laidlaw would require authorization by the NHPUC pursuant to RSA 362-F based upon a finding that the agreement would be in the public interest.

**The Application does not contain any detailed information on PJP, Aware Energy, Richard Cyr, NewCo, or Cate Street Capital.**

According to the Application, “Laidlaw Berlin BioPower, LLC is the development entity that owns the project.” As explained in the Application, Laidlaw is dependent on PJP Holdings, LLC (PJP) for 100 percent of the capital required to construct the Project:

The projected budget for the construction of the Project is \$110 million. LBB has entered into a Development Agreement, dated 12/23/08, with PJP Holdings, LLC, whereby PJP has agreed to provide capital to fund the development of the project until such time as all construction financing is in place. To date PJP has contributed approximately \$10 million of capital to acquire the former Fraser Pulp Mill and to pay for the various engineering, professional and other costs involved in converting it to a biomass-energy facility.

PJP is an affiliate of NewCo Energy, Inc. NewCo’s owners and its Board of Advisors include both the former and current managing partners of Accenture’s Utilities Practice, as well as other individuals associated with Accenture, who have experience in

the development, investment, and operations of power generation projects through its consulting practice and outsourcing practice.

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LBB has agreed to enter into a long-term lease agreement with PJPD totaling 50 years (including automatic renewal options) and in consideration PJPD has agreed to provide 100 percent of the capital required to construct the Project. In a leveraged lease arrangement of this type, the cash flows of the Project, which will be supported by a long-term power purchase contract with an investment grade rated utility, support debt financing for the Project while the lessor provides the equity capital.

The capital structure of the Project is expected to be comprised of approximately \$80 million of debt and \$30 million of equity. The debt financing is expected to be provided by various institutional investors. The equity capital will be provided by PJPD. While PJPD may enter into one or more transactions to fund all or a portion of its equity commitment, as is often done in such leveraged lease transactions to further enhance the lessor's returns, PJPD has committed to providing this funding in the Development Agreement and has sufficient resources to fund its capital commitment if need be.

Application at 91, 92.

By virtue of a real estate conveyance on December 23, 2008, PJPD, not Laidlaw, is the owner of the Site (Berlin Tax Map 129, parcel 55) and structures located thereon where the proposed Laidlaw Project is to be located, including the black liquor recovery boiler which Laidlaw proposes to convert to a biomass fueled unit. Laidlaw will operate the Project in accordance with a long-term lease from PJPD and in consideration PJPD has agreed to provide 100 percent of the capital required to construct the Project. The Application contains no detailed information on PJPD, the owner of the Site and the Project.

Information obtained from public records indicates that PJPD Holdings, LLC is a Delaware limited liability company formed on November 12, 2008. PJPD registered as a foreign limited liability company in New Hampshire on December 16, 2008. PJPD is located at a residence at 130 Clinton Street in Portsmouth, New Hampshire. The Manager of PJPD is Richard Cyr. The residence located 130 Clinton Street in Portsmouth, New Hampshire is owned by the Richard M. Cyr Revocable Trust.

On December 23, 2008, PJPD granted a mortgage to Aware Energy Funding Company, LLC (Aware Energy) to secure the repayment of \$10,000,000. Aware Energy is a Delaware limited liability company formed on December 16, 2008. Aware Energy registered as a foreign limited liability company in New Hampshire on December 22, 2008. Aware Energy is located at a residence at 130 Clinton Street in Portsmouth, New Hampshire. The Manager of Aware Energy is Richard Cyr.

PJPD's "affiliate", NewCo Energy, LLC (Newco) is a Delaware limited liability company formed on September 24, 2008. NewCo registered as a foreign limited liability company in New Hampshire October 22, 2008. NewCo is located at One Cate Street, Suite 100, Portsmouth New Hampshire. The Manager of NewCo is Robert J. Desrosier. The property located at 100 Cate Street is owned by the Richard M. Cyr Revocable Trust.

Cate Street Capital, Inc.(Cate Street Capital) is also located at One Cate Street, Suite 100, Portsmouth, New Hampshire. Cate Street Capital is a Delaware corporation formed on October 23, 2008. Cate Street Capital registered as a foreign limited liability company in New Hampshire on December 16, 2008. The President, Secretary and Treasurer of Cate Street is Robert J. Desrosier. Robert J. Desrosiers maintains at a residence located at 255 Pembroke Street, in Pembroke, New Hampshire. In a press release dated April 18, 2009, Keith Muller, an advisor to Cate Street Capital and a former employee of Accenture, claimed that Cate Street Capital is “the owner and developer of a New Hampshire based bio-mass power plant that is intended to provide 65 megawatts of clean energy starting in 2010.”

In summary, PJP, not Laidlaw, is the actual owner of the Project and is located in a residence in Portsmouth, NH. PJP, through NewCo, appears to have close ties to Cate Street Capital, the putative “owner and developer of a New Hampshire based bio-mass power plant that is intended to provide 65 megawatts of clean energy starting in 2010.” The Application does not contain any information on PJP, Aware Energy, Richard Cyr, NewCo, or Cate Street Capital. Accordingly, the Application does not contain a description in detail of the applicant’s financial capability to construct and operate the proposed facility.

**Section (h)(4) of the Application does not contain a description in detail of the applicant’s proposals for studying and solving environmental problems associated with the Brownfield Site.**

In response to Site 301.03(h)(5), Section (h)(4) of the Application states in its entirety as follows:

The Project has been designed to minimize environmental impacts. Section (h)(3) outlines the potential environmental impacts of the Project, and describes in detail the analyses completed to quantify those impacts. Further detail of these analyses can be found in the individual permit applications included in the appendices to this document. The results of these analyses demonstrate that the Project will meet all applicable federal, state, and local environmental regulations and guidelines.

According to the Application, the Site is classified as a “*brownfield with existing subsurface contamination.*” Appendix D to Application, Site Specific Alteration of Terrain Permit Application Laidlaw Berlin Biopower, LLC at 1. Additionally, the Hydro Geologic Investigation for the Site prepared for NHDES by GZA GeoEnvironmental, Inc. in December 2003 notes substantial contamination from improper disposal and releases of hazardous waste at the site including metals, polycyclic hydrocarbons, and volatile organic compounds. The Investigation recommends that additional hydro geologic evaluations are necessary to more fully address the potential source and distribution of contamination at the Site. An ATDSR (Agency for Toxic Substances and Disease Registry) study in 2006 concluded that fish was not edible due to the contamination from this site implying the need for proper remediation. The Site should be placed under the NHDES Corrective Action process.

The Site is the subject of a covenant-not-to-sue entered into by the State of New Hampshire on May 30, 2002. Pursuant to RSA 147-F:6, II:

[t]he covenant shall be in a form approved by the department of justice and shall contain a general description of the property and the contamination, a summary of the approved remedial action plan and a detailed description of any use restrictions placed on the property, including their scope and purpose, and the possibility of additional or modified use restrictions imposed by the department...

On May 23, 2008, the Covenant-not- to-Sue was assigned to Laidlaw and PFPD.

The Application does not contain any detailed information on the existing condition of the Site or the Remedial Action Plan, and whether it has been complied with as required by RSA 147-F and the Covenant-not-to-Sue.

Accordingly, the Application does not contain a description in detail of the applicant's proposals for studying and solving environmental problems required by Site 301.03(h)(5).

**Section (j)(1) of the Application does not contain an Accurate Description of the Impact of the Project on Land Use and whether there is an Adequate Supply of Biomass Fuel for the Project**

According to Section (j)(1) of the Application:

LBB is committed to the promotion of environmentally sound, sustainable forestry practices throughout the life of the Project. The LandVest Study that was commissioned by LBB concluded that the timberland supply area for the Facility has the potential to generate, on a sustained basis, 7.2 million tons per year of low-grade biomass, and that the existing consumption of operating pulp mills and power plants consume 6 million tons per year which indicates that there is ample additional supply for LBB and others.

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A conservative estimate is that the Plant will use approximately 750,000 tons of wood chips per year.

**Application at 98.**

Accordingly, the sufficiency and completeness of the Application rests with respect to biomass supply rests entirely on the accuracy of the LandVest Study which contains the following conclusions:

Based upon the projected annual consumption (70 MW) of the Laidlaw project and the historical supply range for similar facilities LandVest defined the Primary Source of Supply to be a wood basket that is roughly 100 miles or within a 3 hr drive of Berlin, NH.

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In analyzing the impact of the Laidlaw (or other) projects on the area with respect to current consumption LandVest conducted a geographical analysis and determined that there are currently ten (10) biomass plants and seven (7) Pulp and Paper mills that collectively consume roughly 6 million tons per year of low-grade fiber (biomass and pulp) from the study area.

The findings of this study conclude that assuming current demand for low-grade biomass remains constant at 6 million tons per year, the defined Primary Source of Supply (Wood Basket) has the capability to generate an additional 710,000 tons per year on a sustained basis.

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Our conclusion then is that historical data support an estimate that 710,000 tons of biomass in excess of current demand is available and that it appears to be entirely feasible that significant additional volume is sustainably available in a more competitive situation.

#### Appendix P to Application, LandVest Report – Biomass Supply Study

Laidlaw estimates that the Project will consume 750,000 tons of wood chips per year, while LandVest has concluded the wood basket has the capability to generate an additional 710,000 tons per year on a sustained basis. More importantly, while the LandVest report correctly notes the importance of other (existing) markets for low-grade wood, it is significantly incomplete, and excludes five existing facilities within the 100 mile or 3 hour drive time, as well as seven proximate to the identified wood basket that may draw significant portions of their supply from the indicated wood basket. The location of twelve (12) existing low-grade wood using facilities not identified or evaluated by LandVest are:

Maine Wood Pellets Pellets Athens, ME  
Verso – Bucksport Pulp Bucksport, ME  
Corinth Wood Pellets Pellets Corinth, ME  
Domtar – Windsor Pulp Winsor, PQ  
Covanta – West Enfield Power Plant West Enfield, ME  
Greenville Steam Power Plant (idle) Greenville, ME  
Lincoln Paper & Tissue Pulp Lincoln, ME  
New England Wood Pellet Pellets Jaffrey, NH  
Old Town Fiber & Fuel Pulp Old Town, ME  
Boralex – Stratton Power Plant Stratton, ME  
Tafisa – Lac Megantic Particleboard Lac Megantic, PQ  
SAPPI – Westbrook Power Plant Westbrook, ME

These facilities, with an estimated annual wood consumption of 7.7 million green tons, also draw from the wood basket discussed as part of Laidlaw's 100 mile or 3 hour wood supply basket. The impact of these markets is not evaluated in the LandVest biomass supply study. Inclusion of these facilities in the LandVest biomass supply study would indicate that there is not enough biomass available for the Laidlaw Project. Moreover, the LandVest study does not contain a price analysis related to increased demand and delivery distance, nor is there sensitivity analysis related to diesel fuel price and consumption for harvest or delivery.

## Conclusion

CPD respectfully suggests to the Committee that Application of Laidlaw Berlin Biopower, LLC does not contain sufficient information on the following matters to carry out the purposes of RSA 162-H:

1. **The Power Purchase Agreement, which Laidlaw asserts is an essential element of the Project's financial viability, does not exist and may never exist. PSNH claims that "the PPA is a twinkle in Laidlaw's eyes."**
2. **The Application does not contain any detailed information on PJPD (the actual owner), Aware Energy (the mortgagee), Richard Cyr (the Manager of PJPD and Aware Energy at whose residence those entities are located), NewCo (the PJPD "affiliate), or Cate Street Capital (the self-proclaimed owner and operator.)**
3. **According to Laidlaw, the Site is classified as a "brownfield with existing subsurface contamination." The Application does not contain any information whatsoever on the existing condition of the Site, the remedial action plan required by RSA 147-F, or whether it has been complied with, and the Covenant-not-to-Sue entered into by the State of New Hampshire.**
4. **The LandVest\_biomass supply study does not include and evaluate twelve (12) existing low-grade wood using facilities which draw from the wood basket studied by LandVest within a 100 mile or three hour drive from Berlin, NH. Inclusion of these facilities in the LandVest\_biomass supply study would indicate there is not enough biomass available for the Laidlaw Project.**

For the foregoing reasons, it would be unreasonable for the Committee to proceed without requiring Laidlaw to complete its Application as required by RSA 162-H:6-a, II.

CPD would be happy to provide documentation for the assertions of fact contained herein, or to answer any questions that the Committee may have.

Sincerely,

  
/s/ James T. Rodier

Copies to:  
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City of Berlin