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Raulerson & Middleton
Professional Association

11 South Main Street, Suite 500 | Concord, NH 03301
Tel: 603.226.0400 | www.mclane.com

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BARRY NEEDLEMAN
Email: barry.needleman@mclane.com
Licensed in NH

December 29, 2009

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

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

Dear Chairman Burack:

I write in response to Attorney Rodier's December 28, 2009 letter to you on behalf of Clean Power Development, LLC ("CPD") regarding the alleged "incompleteness" of Laidlaw Berlin BioPower, LLC's ("LBB") Application for Certificate of Site and Facility. CPD's letter is procedurally improper, and substantively, the issues raised have no bearing on a completeness determination. Moreover, many of the assertions are inaccurate. We therefore request that the Site Evaluation Committee (the "Committee") reject the CPD letter.

LBB is confident its application is complete. Site 301.03 details the specific information that must be provided. The LBB application, in Sections (a) through (k), tracks the Site 301.03 requirements precisely. Notwithstanding that point, CPD has no procedural right to challenge the completeness of the application. RSA 162-H:6-a(II) provides: "The chairperson of the committee or designee shall decide whether or not to accept the application within 30 days of filing." Site 301.05 requires the chairperson to forward the application to each of the state agencies having jurisdiction under state or federal law to regulate the construction or operation of the facility. Those state agencies may then offer the chairperson opinions as to the completeness of the application. Nowhere in the statute or the regulations is there a provision for the public to participate in any way in this decision.

As the Committee is aware, the public is provided extensive opportunities to participate in the assessment of this application during the review process. Such participation is subject to proper procedures that ensure the process is conducted in an orderly, fair fashion. CPD, who is competitor of LBB with interests adverse to LBB, may not, however, circumvent the proper

committee procedures (such as seeking the right to intervene) and simply submit for the Committee's consideration unsubstantiated allegations whenever it wishes to do so.

Notwithstanding the procedural impropriety of CPD's letter, LBB must also point out that the issues raised in that letter have no bearing on a completeness determination. Those issues, to the extent they are raised properly and accurately, are precisely the types of matters that are normally resolved during the course of the Committee proceedings once an application has been accepted as complete.

For example, LBB explained in detail the status of its PPA negotiations. CPD failed to mention that LBB has a signed letter of intent with PSNH. But CPD's suggestion that an executed PPA is necessary for the completeness determination is incorrect, and has no basis whatsoever in the law.

CPD also states "PJP, not Laidlaw, is the actual owner of the Project...". CPD Letter at 5. That assertion is wrong. PJP is the property owner. LBB has a Development Agreement with PJP that makes LBB the developer of the Project with complete control over the Project and the site.

CPD challenges the substance of the LandVest Study, which LBB uses to support its assertion that there is an adequate supply of biomass to fuel the plant. CPD Letter at 6. That is not a completeness issue. To the extent the Committee has questions about that Study, those questions will be addressed in the SEC process.¹

CPD also asserts the application does not contain a description of LBB's proposal for studying and solving environmental problems. In support of this assertion, CPD claims the applicant failed to address the fact that the site is a Brownfield site. CPD Letter at 5-6. Again, CPD is incorrect. The Application contains a detailed stormwater management system designed to take into account existing conditions and to prevent changes that might promote mobilization of subsurface contaminants. It also includes a Construction Soil Management Plan (Appendix M) that states, in part:

Previous environmental investigations have identified impacts to Site soils and groundwater from historic industrial activities. The impacts are not widespread but rather

¹ Notwithstanding this point, the fact that CPD made numerous errors regarding this issue also further illustrates why these types of assertions must be rejected. For example, CPD claims that plants LandVest excluded from its study actually should have been included because they are within a 100 mile or 3 hour drive time of the Project. CPD then lists 12 such plants. CPD Letter at 7. In fact, LandVest was correct and CPD is wrong: most of those facilities are beyond a 100 mile drive from the Project: Maine Wood Products (120 miles); Verso in Bucksport (157 miles); Corinth (155 miles); Domtar (124 miles); Covanta (193 miles); Greenville (169 miles); Lincoln (208 miles); New England Wood Pellet (165 miles); Old Town (171 miles) and Tafisa (134 miles). It is precisely this type of situation that demands issues like this to be aired in the proper manner at the proper time, where the Applicant will have a full and fair chance to correct the record.

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located in specific areas and related to specific prior use of the property. Soil samples collected in the general vicinity of where the Project's major components will be constructed showed relatively low levels of certain organic compounds and heavy metals. These compounds and locations have been documented as part of the site investigation activities, and will be confirmed prior to the initiation of Project construction. No specific remediation activities are required at this time or to allow development of the Project. Soil and groundwater assessments and management actions will be conducted to assure proper handling of any potentially contaminated media in locations where construction of the Project is proposed. Proper handling of contaminated media includes proper on-site and/or off-site disposal of soil, and dewatering and treatment of potentially contaminated groundwater.

In sum, CPD's assertions are procedurally improper, have no bearing on the completeness determination and furthermore, contain many errors. The Committee should therefore reject CPD's letter.

Very truly yours,



Barry Needleman

cc: Laidlaw Berlin BioPower, LLC
Michael J. Iacopino, Esquire
City of Berlin