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February 24, 2010

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:

Pursuant to Committee rules, I have enclosed an original and eighteen (18) copies of Laidlaw Berlin BioPower's Objection to Wagner Forest Management, LTD Petition to Intervene for filing in the above matter.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry Needleman".

Barry Needleman

BN:cb
Enclosure
cc: Service List

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

SEC DOCKET NO. 2009-02

**Application of Laidlaw Berlin BioPower, LLC, for a Certificate of Site and Facility for a
70MW Biomass Fueled Energy Facility in Berlin, Coos County, New Hampshire**

**OBJECTION TO WAGNER FOREST MANAGEMENT, LTD.
PETITION TO INTERVENE**

NOW COMES the Applicant, Laidlaw Berlin BioPower, LLC (“Laidlaw”), and submits this Objection to Petition to Intervene of Wagner Forest Management, Ltd. (“Wagner”), and states as follows:

Introduction

1. On December 16, 2009, Laidlaw filed an Application with the Site Evaluation Committee for a Certificate of Site and Facility for a 70 MW Biomass Fueled Energy Facility in Berlin, New Hampshire.

2. Wagner seeks to intervene in this proceeding. According to its Petition, Wagner is a timberland management company based in Lyme, New Hampshire who manages over 2.7 million acres of timberland in the United States and Canada. Wagner is also developing an industrial wind farm in northern Coos County.

Standard for Intervention

3. The standard for intervention is set forth in the New Hampshire Administrative Procedure Act and the New Hampshire Code of Administrative Rules. RSA 542-A:32, I and Site 202.11.

4. Pursuant to RSA 541-A:32 and Site 202.11, the requirements for intervention are (1) the petitioner must properly file a petition, (2) the petitioner must establish that it has a right, duty, privilege, immunity or other substantial interest that may be affected by the determination

of the issues in the proceeding, and (3) the petitioner must show intervention will not impair the interests of justice, and the orderly and prompt conduct of the proceedings.

5. Here, Wagner does not meet the second and third requirements of RSA 542-A:32, I and Site 202.11. Therefore, its Petition should be denied.

Wagner Does Not Have a Substantial Interest Which May be Affected by this Proceeding

6. Wagner claims it has a right to intervene based on two (2) interests:

A. Because it is a timberland management company and it believes Laidlaw's proposed project will have an impact on local wood markets; and

B. Because it has a wind farm in the early stages of development in northern Coos County that, if successful, will compete with Laidlaw for access to the Coos Transmission Loop.

7. Wagner is a competitor of Laidlaw to the extent both entities seek access to the Coos Transmission loop and the capacity of that loop is limited. This is a proceeding about the issuance of a Certificate under RSA 162-H. It is not a process designed to decide which business gets to prevail in a competitive market. A competitive interest cannot be the basis for granting a Petition for Intervention. “[I]njury resulting from competition is rarely classified as a legal harm but rather is deemed a natural risk in our free enterprise economy.” *Cf. Valley Bank v. State*, 115 N.H. 151, 154 (1975) (holding that a “grandfather clause in a statute regulating branch banking does not violate the equal protection clause of the Constitutions of the United States and New Hampshire) (citing 1967 C.J.S. Competition (1967, Supp. 1974); W. Prosser, Law of Torts, 130, at 954-62 (1971)). As such, a competitive interest is not a right, duty, privilege, immunity or other substantial interest that can support a Petition to Intervene in these proceedings.

8. Notwithstanding that point, Wagner’s other claimed interests – fuel supply and transmission loop access – also are not sufficient bases for intervention for four reasons.

9. First, Wagner has not and cannot allege any specific harm that would provide a basis for standing. *Blanchard v. Railroad*, 86 N.H. at 264; *Appeal of Richards*, 134 N.H. at 156 (where a party is unable to demonstrate an actual or immediate injury, there is no standing).

10. Second, Wagner’s alleged interest in these proceedings must be different than those interests of the public in order for standing to exist. Standing is conferred only to parties “who [are] interested in or affected by the proceedings in some manner different from the public, citizens, and taxpayers generally....” *Blanchard v. Railroad*, 86 N.H. 263, 264 (1933); *Appeal of Richards*, 134 N.H., 148 156 (1991). Standing does not exist if a party alleges “nothing distinguishing [its] right and interest from that of other citizens and taxpayers.” *Id.*

11. Third, issues such as those dealing with adequate supply of energy are precisely within the purview of Public Counsel:

The [Counsel for the Public] shall represent the public in seeking to protect the quality of the environment and in seeking to assure an adequate supply of energy. The counsel shall be accorded all the rights and privileges, and responsibilities of an attorney representing a party in formal action and shall serve until the decision to issue or deny a certificate is final.

RSA 162-H:9. Where counsel for the public already represents such interests, a party like Wagner has no standing. *Appeal of Richards*, 134 N.H. at 156 (“[n]o individual or group of individuals has standing to appeal when the alleged injury caused by the administrative agency’s action affects the public in general, particularly when the affected public interest is represented by an authorized official or agent of the state”).

12. Fourth, public counsel and the Committee will undoubtedly explore both issues Wagner has raised in great depth. It is their responsibility to do so. Thus, Wagner’s

participation will be entirely repetitive and create significant risk of interference with the orderly conduct of the proceedings.

13. For all these reasons, Wagner's Petition for Intervention should be denied.

**Alternatively, If the Committee Grant's Wagner's Petition to Intervene,
It Should Limit Its Participation Pursuant to Site 202.11(d)**

14. As an alternative, if the Committee is inclined to allow Wagner to intervene, its role should be limited pursuant to Site 202.11(d). Specifically, Wagner's participation should be limited only to specific issues where it clearly and unequivocally has standing, and the Committee believes that its own efforts and those of the Public Counsel may not adequately address an issue such that Wagner's involvement is necessary, would not be duplicative and would not risk interfering with the orderly conduct of the proceedings.

Conclusion

15. Even if the Committee adopts Laidlaw's position here and denies Wagner's Petition, Wagner will still have the same opportunity to participate as every other member of the public. Thus, its concerns will be heard. But (1) as a competitor of Laidlaw (2) who does not have standing and (3) who seeks to raise issues that will already be adequately addressed, and are no different from the concerns of the public at large, Wagner's Petition for Intervention should be denied. Alternatively, if Wagner's Petition is granted, Wagner's participation in these proceedings should be limited.

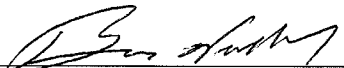
Respectfully submitted,

Laidlaw Berlin BioPower, LLC

By Its Attorneys,

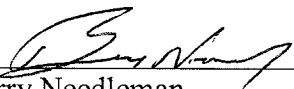
McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

Date: February 24, 2010

By: 
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Certificate of Service

A copy of this Objection to Wagner Forest Management, Ltd.'s Petition to Intervene has been served by electronic mail this 24th day of February, 2010 to each of the parties on the attached service list and by first class mail to the New Hampshire Attorney General's Office.


Barry Needleman