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February 26, 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 Petition for Intervention of Jonathan Edwards 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 PETITION FOR INTERVENTION OF
JONATHAN EDWARDS**

NOW COMES the Applicant, Laidlaw Berlin BioPower, LLC (“Laidlaw”), and submits this Objection to Petition for Intervention of Jonathan Edwards, 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. Mr. Edwards asserts he is a “citizen, business owner, [and] ratepayer” in Berlin. *See* Edwards Petition.

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, Mr. Edwards does not meet the second and third requirements of RSA 542-A:32, I and Site 202.11. Therefore, his Petition for Intervention should be denied.

Mr. Edwards Does Not Have a Substantial Interest Which May be Affected by this Proceeding

6. Mr. Edwards' Petition is fatally deficient on its face because he has not articulated any "right, duty, privilege, immunity or other substantial interest that may be affected by the determination of the issues in the proceeding." RSA 541-A:32. Rather, he has simply provided a list of concerns pertaining to Laidlaw's proposal which are common to the public at large and in no way unique to him.

7. Even if the Committee views Mr. Edwards' Petition broadly, the alleged interests he identifies are still an insufficient basis for granting his Petition because Mr. Edwards cannot meet the standing requirements under New Hampshire law.

8. First, Mr. Edwards has not and cannot allege any specific injury that he has suffered or will suffer that would provide a basis for standing. *Blanchard v. Railroad*, 86 N.H. 263, 264 (1933); *Appeal of Richards*, 134 N.H. 148, 156 (1991) (where a party is unable to demonstrate an actual or immediate injury, there is no standing).

9. Second, Mr. Edwards does not have standing because his alleged interest in these proceedings is no different from the interests of the public in general. *Blanchard*, 86 N.H. at 264 (quoting *Bennett v. Tuftonborough*, 72 N.H. 63, 64 (1903)) (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..."). Standing does not exist if a party alleges "nothing distinguishing [its] right and interest from that of other citizens and taxpayers." *Id.*

10. Third, issues such as those dealing with environmental quality or 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 those interests, a person like Mr. Edwards has no standing. *Appeal of Richards*, 134 N.H. at 156 (1991) ("[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").

11. Fourth, being a ratepayer does not create an interest sufficient to confer standing. *Appeal of Stonyfield Farms*, ___ N.H. ___ (Decided August 5, 2009); *Appeal of Campaign for Ratepayers Rights*, 142 N.H. 629 (1998).

12. Fifth, both public counsel and the Committee will undoubtedly explore each issue Mr. Edwards has raised in great depth. It is their responsibility to do so. Moreover, Mr. Edwards also raises issues which the City of Berlin will no doubt address in this proceeding. Thus, Mr. Edwards' participation would be entirely repetitive and create significant risk of interference with the orderly conduct of the proceedings.

13. For all these reasons, Mr. Edwards' Petition for Intervention should be denied.

Alternatively, If the Committee Grant's Mr. Edwards' Petition for Intervention, it Should Limit His Participation Pursuant to Site 202.11(d)

14. As an alternative, if the Committee is inclined to allow Mr. Edwards to intervene, his role should be limited pursuant to Site 202.11(d). Specifically, his participation should be limited only to specific issues where the Committee concludes he clearly and unequivocally has standing, and the Committee believes that its own efforts those of the Public Counsel and those of the City of Berlin may not adequately address an issue such that Mr. Edwards' 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 denies Mr. Edwards' Petition, he will still have the same opportunity to participate as every other member of the public. In that context, his concerns will be heard. However, for all the reasons raised previously, his Petition should be denied or, alternatively, his participation in these proceedings should be limited.

Respectfully submitted,

Laidlaw Berlin BioPower, LLC

By Its Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

Date: February 26, 2010

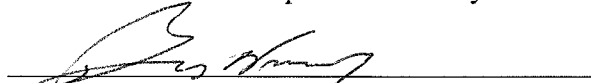
By:



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Certificate of Service

A copy of this Objection to Petition for Intervention of Clean Power Development, LLC has been served by electronic mail this 26th 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