

1 STATE OF NEW HAMPSHIRE
2 SITE EVALUATION COMMITTEE

3
4 March 11, 2010 - 10:08 a.m.
5 Public Utilities Commission
6 21 South Fruit Street
7 Suite 10
8 Concord, New Hampshire

9 In re: SITE EVALUATION COMMITTEE:
10 SEC DOCKET NO. 2009-02:
11 Application of Laidlaw Berlin
12 BioPower, LLC, for a Certificate
13 of Site and Facility for a
14 70 MW Biomass Fueled Energy
15 Facility in Berlin, Coos County,
16 New Hampshire.
17 (Prehearing conference)

18 PRESENT: SITE EVALUATION COMMITTEE:
19 Thomas S. Burack, Cmsr. Dept. of Environmental Services
20 (Chairman of SEC - Presiding)
21 Michael Harrington Public Utilities Commission

22 * * *

23 Counsel for the Committee: Michael J. Iacopino, Esq.

24 COURT REPORTER: Steven E. Patnaude, LCR No. 52

1
2 ALSO PRESENT:

3 Reptg. Laidlaw Berlin BioPower, LLC:
4 Barry Needelman, Esq. (McLane Graf...)
Cathryn Vaughn, Esq. (McLane Graf...)
Ray Kusche
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Reptg. Counsel for the Public:
Allen Brooks, Esq.
Assistant Atty. General
New Hampshire Dept. of Justice

Jonathan Edwards, pro se

Reptg. Wagner Forest Management:
Tom Colgan, President

Reptg. North American Dismantling
Group:
Jack Crisp, Esq. (Wiggin & Nourie)
Tracy Uhrin, Esq. (Wiggin & Nourie)

Reptg. Clean Power Development:
James T. Rodier, Esq.

Reptg. the City of Berlin, N.H.:
Jonathan Peress, Esq. (Downs...)

OTHER APPEARANCES:

Thomas McCue, Esq. (Berlin City Council)

Ralph Perron (Forest Service)

{SEC 2009-02} [Prehearing conference] {03-11-10}

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P R O C E E D I N G

CHAIRMAN BURACK: Good morning. My name is Tom Burack. I serve as Commissioner of the Department of Environmental Services, and, pursuant to RSA 162-H, I also serve as Chair of the New Hampshire Site Evaluation Committee. I am going to call to order this morning's prehearing conference regarding Application of Laidlaw Berlin BioPower, LLC, for a Certificate of Site and Facility for a 70 megawatt biomass fueled energy facility

10 in Berlin, Coos County, New Hampshire. Seated to my right
11 is Michael Iacopino, who has been designated as legal
12 counsel to the Committee for purposes of consideration of
13 this Application, and to my left is Mike Harrington, who
14 is a Staff engineer with the Public Utilities Commission
15 and has been designated to serve as one of the members of
16 the Subcommittee that will consider this Application.

17 I'm going to provide a background and
18 description of this docket matter, and then we will take
19 appearances and discuss in more detail setting out a
20 schedule and other provisions relating to how this
21 particular matter will proceed before the Subcommittee of
22 the Committee.

23 On December 16, 2009, Laidlaw Berlin
24 BioPower, LLC, known as the "Applicant", filed an
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1 Application for a Site -- I'm sorry, for a Certificate of
2 Site and Facility, known as the "Application". The
3 Applicant petitions the Site Evaluation Committee, or the
4 "Committee", for a Certificate of Site and Facility, which
5 we'll refer to as the "Certificate", in order to site,
6 construct and operate a renewable energy facility, which
7 we'll call a "Facility", in Berlin, Coos County, New
8 Hampshire. The facility is proposed to be located on the
9 northern side of Community Street, Coos Street, and
10 Hutchins Street, in Berlin, and we'll refer to that area
11 as the "Site". This location formally was the site of the
12 Fraser Paper -- I'm sorry, the Fraser Pulp Mill, and was
13 also sometimes referred to as the "Burgess Mill". The
14 site has existing structures thereon.

15 The Applicant proposes to convert and
16 upgrade the site and to develop a biomass fueled energy
17 generating facility nominally capable of generating 70
18 megawatts of electric power. The Facility, as proposed,
19 will use whole tree wood chips and other low grade clean
20 wood as fuel. The Applicant proposes to convert an
21 existing boiler, manufactured by Babcock and Wilcox, at
22 the Site to a bubbling fluidized bed boiler that will use
23 whole tree wood chips as its primary fuel, and ultra low
24 sulfur diesel fuel as auxiliary fuel. In addition to the
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1 boiler, the facility will consist of a steam turbine
2 generator, wood handling system, ash handling system,
3 storm water management systems, two recirculating water
4 systems for steam generation and cooling, air pollution
5 control systems, including a fluid -- I'm sorry, including
6 a flue gas recirculation system, an upgraded electrostatic
7 precipitator, and a selective catalytic reduction system.
8 The Applicant also proposes to renovate an existing 50,000
9 gallon ultra low sulfur diesel fuel tank to store ultra
10 low sulfur diesel fuel. In addition, the Applicant seeks
11 to construct a new switchyard adjacent to the turbine
12 building, and consisting of a step-up transformer and
13 single breaker.

14 The new switchyard is proposed to be
15 connected to the existing East Side Substation 300
16 operated by Public Service Company of New Hampshire,
17 otherwise known as "PSNH". A new 115 kilovolt
18 transmission line will be installed. Portions of the
19 transmission line will run both underground and overhead.

20 The underground portion of the transmission line will be
21 installed inside an existing 18 inch diameter fiberglass
22 reinforced pipe formally used to transport pulp from the
23 Site to Fraser's Paper Mill in Gorham, Coos County, New
24 Hampshire. The underground portion of the transmission
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1 line will leave the Site near the intersection of Coos and
2 Community Street and generally follow the route of the
3 former rail bed from the south end of the Site to the
4 north end of Shelby Street. The underground portion of
5 the transmission line will then travel within an existing
6 easement along Shelby Street and Devent Street. The
7 transmission line will then transition to overhead
8 conductors from the east side of Devent Street and
9 terminate at the PSNH East Side Substation 300. The
10 underground portion of the transmission line is proposed
11 to run for an estimated length of 3,200 feet and the
12 overhead portion of the transmission line is estimated to
13 be 800 feet.

14 Initially, the Application was rejected
15 as incomplete, because the Applicant had supplied
16 insufficient information to the Water Division of the
17 Department of Environmental Services, known as "DES".
18 However, the Applicant corrected those deficiencies, and,
19 after hearing from the Water Division and other state
20 agencies with permitting authority, I accepted the
21 Application as being administratively complete on
22 January 26, 2010. I determined that the Application
23 contained sufficient information to carry out the purposes
24 of RSA 162-H.

1 Upon acceptance of the Application, we
2 scheduled this prehearing conference for today, as well as
3 a site visit and public informational hearing for March
4 16, 2010, in Berlin, Coos County, New Hampshire.

5 The purpose of this prehearing
6 conference is to set a procedural schedule and to
7 determine if there are any issues that can be simplified
8 and to identify those issues that may be more complicated
9 than they may seem.

10 So, I would like to start now by taking
11 appearances, first from the Applicant, and then Counsel
12 for the Public, and then other parties who are here, some
13 of whom have, I suspect, filed motions or requests to
14 intervene in this matter. And, again, for purposes of
15 today's discussion, we're going to hear input from all
16 parties, but please understand that, although we're going
17 to give everyone an opportunity to participate in the
18 discussion here shortly, that does not necessarily mean
19 that we have determined that all parties are, in fact,
20 entitled to be intervenors in this matter. We will
21 address that in a written order at a later time.

22 But let us start by taking appearances,
23 first, with counsel for the Applicant.

24 MR. NEEDLEMAN: Mr. Chairman, Barry

1 Needleman, from the McLane law firm, representing the
2 Applicant, Laidlaw. With me is Kate Vaughn, also from the
3 McLane law firm, and Ray Kusche, who is Vice President of
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4 Development & Operations for Laidlaw.

5 CHAIRMAN BURACK: Thank you.

6 MR. BROOKS: Thank you, Mr. Chairman.

7 Allen Brooks, for Counsel for the Public, and also Peter
8 Roth, who is not here, will be assisting me as Counsel for
9 the Public in this matter.

10 CHAIRMAN BURACK: Thank you very much.
11 Why don't we just go around the room to behind Attorney
12 Brooks and let's just introduce ourselves please.

13 MR. EDWARDS: Jon Edwards, from Berlin,
14 New Hampshire, representing myself as a citizen of Berlin.

15 CHAIRMAN BURACK: Thank you.

16 MR. McCUE: Attorney Tom McCue. I'm
17 with the Berlin City Council. I'm just here observing
18 today.

19 CHAIRMAN BURACK: Thank you.

20 MR. COLGAN: Tom Colgan. I'm President
21 of Wagner Forest Management, a party that has petitioned
22 to be an intervenor.

23 CHAIRMAN BURACK: Thank you.

24 MR. CRISP: Jack Crisp and Tracy Uhrin,
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1 we're with Wiggins & Nourie, and we represent the abutting
2 landowner, North American Dismantling Corporation.

3 MR. IACOPI NO: I'm sorry. What was the
4 name of the landowner?

5 MR. CRISP: North American Dismantling
6 Corporation.

7 MR. IACOPI NO: Thank you.

8 MR. PERRON: Ralph Perron, Forest
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9 Service, just listening.
10 CHAIRMAN BURACK: Thank you.
11 MR. RODIER: Jim Rodier, representing
12 Clean Power Development.
13 CHAIRMAN BURACK: Thank you. Mr.
14 Peress.
15 MR. PERESS: Jonathan Peress, with the
16 law firm of Downs, Rachlin & Martin, representing the City
17 of Berlin.
18 CHAIRMAN BURACK: Thank you very much.
19 Okay. I'm going to start this conference now by reviewing
20 all of the outstanding requests or motions, in order to
21 make sure that everyone is aware of what is outstanding at
22 this time. And, certainly, if anyone is aware of any
23 other motions that they believe have been filed, I'd
24 certainly appreciate it if they would let us know.

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1 The first pending matter that we have is
2 the Applicant's Motion for Protective Order and
3 Confidential Treatment of, excuse me, Appendix Q to the
4 Application that was filed on the 23rd of December of
5 2009. Excuse me. The next item is a Petition to
6 Intervene filed by Wagner Forest Management that was filed
7 on February 15th of 2010, and a response, in the form of
8 an objection, from the Applicant was filed on
9 February 24th of 2010. We have received a Petition to
10 Intervene from the City of Berlin, that was filed on
11 February 16 of 2010. We received a response from the
12 Applicant to that on February 24th of 2010. We received a
13 Petition to Intervene from Clean Power Development on
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14 February 19 of 2010. The Applicant filed a response in
15 the form of an objection on February 26, 2010. And, Clean
16 Power Development filed a response to that objection on
17 March 3rd of 2010. On February 22nd of 2010, we received
18 a Petition to Intervene from Jonathan Edwards. The
19 Applicant filed an objection on February 26, 2010.
20 Mr. Edwards filed a response to that objection on
21 February 27, 2010. We received a Petition to Intervene
22 from the Coos County Commissioners on February 25, 2010,
23 and a response from the Applicant on February 26, 2010.
24 We received a Petition to Intervene from the New Hampshire
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1 Sierra Club on March 4, 2010, and a response from the
2 Applicant, in the form of a, essentially, a consent or no
3 objection to limited intervention, consistent with certain
4 provisions set forth in that Petition to Intervene, and
5 that was filed on March 9 of 2010.

6 In addition, we have received this
7 morning, from a Max Makaitis, some materials regarding a
8 group that I believe goes by the name of the "Community
9 EFSEC Committee" or "Community EFSEC Advisory Committee".
10 There have certainly been other communications or letters
11 that have been received by the Committee regarding this
12 matter, and all of these communications have been posted
13 or will be posted on our website as part of the record in
14 this matter.

15 So, those are all of the pending motions
16 that -- or requests that we are aware of at this time.
17 Are any of the parties here today aware of any other
18 motions or requests that have been filed with the

19 Committee relating to this matter at this time?

20 (No verbal response)

21 CHAIRMAN BURACK: Okay. Thank you. On
22 March 5 of 2010, we received a letter from the Attorney
23 General designating Allen Brooks as Counsel for the Public
24 in this matter. As we have heard, he will be assisted in
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1 this matter in that representation by Peter Roth of the
2 Attorney General's Office. Counsel for the Public is a
3 statutory party in this proceeding. So, Mr. Brooks, do
4 you wish to offer any oral responses here today to any of
5 these motions or do you want to file those in writing
6 following today?

7 MR. BROOKS: Thank you, Mr. Chairman.
8 We actually don't take a position with respect to the
9 Motions to Intervene. And, we assent to the Motion for
10 the Protective Order, subject to future modification upon
11 agreement of the parties.

12 CHAIRMAN BURACK: Very well. Thank you.
13 So, you have nothing further that you need to file with us
14 at this time that you're aware of?

15 MR. ROTH: No.

16 CHAIRMAN BURACK: Okay. Thank you.
17 Because this is a renewable energy facility, we are
18 required to issue a decision either granting or denying a
19 Certificate of Site and Facility within 240 days. This
20 means that we will have to maintain a tight schedule.
21 And, although RSA 162-H:6-a suggests that adjudicatory
22 hearings commence after the state agencies have rendered
23 final decisions on the permit applications that they must

24 review as part of the process for our issuance of a
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1 Certificate of Site and Facility, it is my hope that we
2 can actually start the adjudicatory hearings before the
3 deadline for state agency permitting decisions. And, of
4 course, we will provide for hearings thereafter so that
5 those decisions can be fully vetted.

6 I will need to leave here myself today
7 by 11:00, but it's my intention to designate our counsel,
8 Mike Iacopino, to preside over the balance of this
9 prehearing conference to discuss the timeframes and other
10 procedural issues, such as a discovery schedule, technical
11 sessions, number of witnesses, and any other issues that
12 may arise. Mr. Iacopino will then prepare a written
13 report of this conference that will become part of the
14 record. Please understand that Mr. Iacopino will not be
15 able to set actual dates for hearings, as we will need to
16 canvas the Subcommittee members for availability.
17 Clearly, we are going into the summer season with this
18 proceeding, and that's going to, I think, require a high
19 level of understanding and cooperation among all of us, to
20 make sure that we can accomplish all that we need to
21 accomplish.

22 I would also ask you to be advised that
23 Mr. Iacopino is directed, as I mentioned before, to listen
24 to all of the potential parties as part of this
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1 conference, but that does not mean that all potential

2 parties will necessarily be admitted as intervenors. That
3 decision, as I said, will be issued in writing. And, I
4 just want to make sure that everyone understands that as
5 we go into today's discussion.

6 Before I turn the meeting over to
7 Mr. Iacopino, do any of the parties present here today
8 have any issues that they would like to address
9 specifically with me?

10 (No verbal response)

11 CHAIRMAN BURACK: Very well. Seeing
12 none at this point, again, I thank you all very much.
13 And, as I say, I'm going to be here and will participate
14 in the conversation, but I think this will be most
15 efficient from this point forward if we ask Attorney
16 Iacopino to lead this discussion. And, are we going to do
17 this on the record or are we going to take this discussion
18 off the record, Mike?

19 MR. IACOPINO: I think there might be
20 some give-and-take that might be hard for the reporter to
21 get. So, what I would ask if Steve could stay here, if we
22 could try to discuss it informally, and then, if we come
23 to any conclusions as a group, put it on the record, or,
24 if we come to any disagreements, we can put those on the
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1 record as well.

2 MR. PATNAUDE: Yes.

3 (Whereupon an off-the-record discussion
4 ensued at 10:24 a.m., and the prehearing
5 conference was subsequently adjourned at
6 11:30.)

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