

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE
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**

March 12, 2010

REPORT OF PREHEARING CONFERENCE

On March 11, 2010, a prehearing conference in the above entitled matter was held at the Offices of the Public Utilities Commission. The prehearing conference commenced at 10:00 a.m. Thomas Burack, Commissioner of the Department of Environmental Services and Chairman of the Site Evaluation Committee, served as the presiding officer. Michael Harrington, the designated engineer from the Public Utilities Commission also attended the prehearing conference. The following appearances were noted: Barry Needleman and Catherine Vaughn from McLane, Graf, Raulerson & Middleton representing the Applicant, Laidlaw Berlin BioPower, LLC; K. Allen Brooks, Senior Assistant Attorney General, counsel for the public; Jonathan Peress of Downs, Rachlin Martin, PLLC, representing the City of Berlin; Jack P. Crisp, Jr., of Wiggin & Nourie, PA, representing North American Dismantling; Thomas Colgan, representing Wagner Forest Management, Inc.; James T. Rodier, representing Clean Power Development, LLC; and Jonathan Edwards, *pro se*. The hearing was opened by Chairman Burack. After taking the foregoing appearances, Chairman Burack reviewed the Motions that are pending. The following Motions were identified as still pending:

Applicant's Motion for Protective Order filed on December 23, 2009

Petition of Wagner Forest Management to Intervene filed on February 15, 2010

Petition of the City of Berlin to Intervene filed on February 15, 2010

Petition of Clean Power Development, LLC to Intervene filed on February 19, 2010

Petition of Jonathan Edwards to Intervene filed on February 22, 2010

Petition of the Coos County Commissioners to Intervene filed on February 25, 2010

Petition of NH Sierra Club to Intervene filed on March 9, 2010

All of the parties and potential parties who attended the prehearing conference agreed that the foregoing list contained all of the outstanding Motions which had not been ruled on.

After reviewing the outstanding Motions, counsel for the public advised the Chairman that he had no objection to the Motion to Allow Confidential Treatment of Application Exhibit Q and that counsel for the public took no position with respect to any of the Motions to Intervene filed by the various parties.

Thereafter, Chairman Burack reviewed the statutory timeframes that would apply in the proceeding, as this proceeding involves a renewable energy facility. Chairman Burack advised the participants that the bulk of the adjudicatory and deliberative hearings in this docket will likely fall in the summer and likely conflict with other obligations and vacation schedules of the various Subcommittee members and the parties. Therefore, Chairman Burack advised the participants that he would like to commence the adjudicatory proceedings in this matter as early as possible in the summer, even if that meant that issues were bifurcated so that the adjudicatory proceedings could commence before the deadline for the filing of final state agency determinations. None of the participants voiced any objection to that proposal.

After determining that none of the participants at the prehearing conference had any further issues to raise with the Chairman, the Chairman designated counsel for the Committee, Michael J. Iacopino, to preside over the balance of the prehearing conference. Mr. Iacopino facilitated the balance of the conference, which primarily dealt with scheduling and identification of issues.

Scheduling

Attorney Iacopino had prepared a proposed schedule that was reviewed with all of the participants. After extensive discussion regarding each part of the proposed procedural schedule and amending certain parts of that schedule, it was determined that the following schedule would be most appropriate:

- i. Public counsel's position on intervention motions and confidentiality order due (March 22, 2010 – Monday)
- ii. Intervention order to issue – March 22, 2010 (Monday)
- iii. Intervenors to propound data requests – April 12, 2010 (Monday)
- iv. PC to propound data requests to Applicant – April 16, 2010 (Friday)
- v. Applicant to answer Intervenor data requests – April 26, 2010 (Monday)
- vi. Applicant to answer PC data requests – April 30, 2010 (Friday)

- vii. State Agency progress reports due April 26, 2010 (Monday)
- viii. Tech Session No. 1 – Applicant’s witnesses (May 5, 2010 – Wednesday)
 - 1. Witnesses, issues place and time to be determined
- ix. Applicant’s answers to Tech Session Data Requests – May 17, 2010 (Monday)
- x. Intervenors and PC pre-filed testimony – May 26, 2010 (Wednesday)
- xi. Applicant to propound data requests to Intervenors and PC – June 3, 2010 (Thursday)
- xii. PC and Intervenors to answer data requests – June 17, 2010 (Thursday)
- xiii. Tech. Session No. 2 – PC and Intervenor witnesses – June 25, 2010 (Friday)
 - 1. Witnesses, issues, place and time to be determined.
- xiv. Answers to Tech Session No. 2 requests – July 7, 2010 (Wednesday)
- xv. Deadline for all parties to file supplemental pre-filed testimony – July 9, 2010 (Friday)
- xvi. Final Pre-Trial Conference – July 9, 2010 (Friday)
 - 1. Mark all exhibits
 - 2. Final schedule for witnesses
 - 3. Resolve outstanding issues, if any.
- xvii. Commence adjudicatory hearings on issues that do not pertain to state agency determinations – July 12, 2010 (Monday)
- xviii. State Agency final determinations - June 26, 2010
- xix. Continue adjudicatory hearing on all issues, including State Agency determinations (various dates between July 26, 2010 and July 30, 2010)
- xx. Final Decision – September 23, 2010

Thereafter, discussion then turned to the various issues which the parties identified as being important and brief summaries of their expected presentations. It should be noted that the conversation regarding the issues and nature of presentation was conceptual only. Most of the participants have not yet identified witnesses or identified the exact number of witnesses that they may call if permitted to intervene in this matter.

Counsel for the public advised that he intended to remain within his statutory role and to urge the Site Evaluation Committee to remain within their statutory role. He indicated that he had a “laundry list” of various issues that basically broke down into two very large categories: economic issues and environmental issues. On the economic issues side, counsel advised that he saw economic viability, community integration, job creation, and tax base issues as all bearing on his role and the Site Evaluation Committee’s role in ultimate determination regarding a Certificate of Site and Facility. Counsel for the public also advised that on the environmental side, he was interested in presenting and dealing with the fact that the site is a “brownfield” and that there are both contamination issues, as well as economic benefit issues applicable to the site. He also indicated that a fuel source and the various state permits were all issues which generally bear on the environmental considerations. Counsel for the public advised that he expected that he would likely retain one expert regarding the economic issues and would likely retain a brownfields expert or identify someone from the Department of Environmental Services who can testify in this regard. Counsel for the public indicated that that he would be discussing expert witnesses and payment of those experts with the Applicant and that he would report back regarding any orders that might be needed from the Committee.

Jonathan Peress, on behalf of the City of Berlin, indicated that the City’s major concerns were quality of life issues which pertain to the orderly development of the region and the land use issues. He advised that the City of Berlin has a highly competent planning department and advised that he expected that Pamela Laflamme, the City Planner, would likely be offered as a witness.

Jonathan Edwards, *pro se*, advised that his main areas of concern would be real estate values and tax base. He indicated that he is a realtor and also owns a real estate management company in the City of Berlin. He indicated that he would possibly call a residential real estate appraiser, a commercial real estate appraiser and an industrial real estate appraiser as witnesses.

Tom Colgan spoke on behalf of Wagner Forest Management. He advised that Wagner Forest Management sees two main issues:

1. The fuel issue. He indicated that Laidlaw would be the “largest wood user in the neighborhood” if the Project was built. He said that this would likely have a substantial effect on forest and land management throughout the North Country. He again advised that Wagner Forest Management is in the business of forest and land management.

2. The second issue that he addressed is that Wagner Forest Management has proposed the construction of a wind energy plant of approximately 145 megawatts on land that it manages. Mr. Colgan indicated that with respect to that project, the transmission resource is of great concern to his company. He indicated that his

company may employ one or 2 witnesses if permitted to intervene in the case; one on the fuel issue and one on the transmission issue.

Attorney Rodier spoke on behalf of Clean Power Development. He indicated that the main issues identified by Clean Power Development are the sustainability of the fuel and the wood basket and the transmission issue. He advised that if permitted to intervene, he expected that CPD would call 2 to 3 witnesses. One witness would likely be from Innovative Natural Resources, a company that prepared a wood basket study for CPD. Another witness would likely be Mel Liston or Bill Gabler, both of whom are principals in the company.

The Applicant advised that, at this point in time, it intended only to call those witnesses identified in its Application.

Committee counsel advised the parties that he appreciated their identification of issues and prospects for witness testimony. He also advised the parties that it would be appropriate for them, during the course of the proceedings, not only to identify the issues and present the facts that are attendant to those issues, but also to address how those issues are intertwined with the Site Evaluation Committee's role, its purpose, and the determination that it will ultimately make. By way of example, Attorney Iacopino raised the transmission issue. He advised the participants that it would be helpful if each of the parties, during the course of the proceedings, identified exactly what legal issues are involved for the Site Evaluation Committee with regard to the transmission system and how that relates to the independent system operator and any decisions that might be made by the Site Evaluation Committee.

Thereafter, there was a short discussion regarding the upcoming site visit and the prehearing conference was then adjourned.

/s/Michael J. Iacopino
Michael J. Iacopino, Counsel
Site Evaluation Committee