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April 9, 2010

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

**Application of Laidlaw Berlin BioPower, LLC for a Certificate of Site and Facility
for a Renewable Energy Facility in Berlin, New Hampshire**

SEC Docket No. 2009-02

Dear Chairman Burack:

On behalf of Clean Power Development, LLC, I am filing with the Committee an original and 18 copies of a Motion for Clarification and/or Rehearing in this proceeding.

I have sent a copy of this filing to the Parties on the Service List in this proceeding.

Sincerely,

/s/James T. Rodier

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

**Application of Laidlaw Berlin BioPower, LLC for a Certificate of Site and Facility
for a Renewable Energy Facility in Berlin, New Hampshire**

SEC Docket No. 2009-02

CONTESTED MOTION FOR CLARIFICATION AND/OR REHEARING

NOW COMES Clean Power Development, LLC ("CPD"), pursuant to RSA 541:3 and NH Admin. Rule Site 202.29, and hereby motions the New Hampshire Site Evaluation Committee ("Committee") to clarify or rehear and reconsider its Order on Pending Motions ("Order") which was issued in this proceeding on March 24, 2010, and in support hereof, CPD says as follows:

1. CPD filed a Petition for Intervention ("CPD Petition") in this proceeding on February 19, 2010.
2. The Committee's Order ruled that the substantial interests of CPD appear to be limited to the issue of the sustainability of biomass fuel in the northern forest and the ability to use the Coos loop transmission capacity. Therefore, the SEC limited CPD's participation to those two particular issues. Order at 4.

Applicable Law

3. Pursuant to Site 202.29(e), a motion for rehearing "shall be granted in writing if it demonstrates that the committee's decision is unlawful, unjust or unreasonable."
4. The Committee must allow a party to intervene if states facts demonstrating that it has substantial interests which might be affected by the proceeding. See RSA 541-A:32. The presiding officer may limit the issues pertaining to a particular intervenor, so long as the limitations do not prevent the intervenor from protecting an interest that formed the basis of intervention. See RSA 541-A: 35.

Biomass Availability and the Purchase Power Agreement

5. In its Petition for Intervention, CPD stated its interest with respect to biomass availability and sustainability:

CPD believes that there is not enough additional biomass available within the Laidlaw-identified harvest area at a reasonable price and on a sustainable basis for the Laidlaw Project. The issues of sustainability, supply, and reasonable price of biomass delivered

are considerably more negatively impacted if both the CPD and Laidlaw projects are to be built.

Petition at ¶ 9.

6. In support this statement of interest, CPD made the following amplification:

If, as represented by Laidlaw, the PPA [Purchase Power Agreement] with PSNH will have a fuel adjustment clause to track the costs of the biomass fuel and pass those cost on to PSNH's regulated ratepayers, CPD and many other biomass energy producers will be at an extreme economic disadvantage to the Laidlaw Facility. PSNH will have passed a regulated monopoly utility advantage to a supposed merchant power producer (Laidlaw) exclusive of all the other merchant biomass energy producers within New Hampshire, either proposed or operational. Apparently this pass through arrangement with PSNH will allow Laidlaw to pay whatever cost is required to obtain the supply of biomass fuel needed for its facility at the expense of other biomass energy producers that will not have this advantage underwritten by the PSNH ratepayers. It is this specific PPA with rate structure and fuel pass that makes the Laidlaw project viable and financeable. Without the PPA, the Laidlaw Project would not be viable or financeable.¹

Petition at ¶ 11.

7. CPD also addressed the same substantial interest in its Response to Laidlaw's Objection to its Petition for Intervention:

If, as represented by Laidlaw, the PPA with PSNH will have a fuel adjustment clause to track the costs of the biomass fuel and pass those cost on to PSNH's regulated ratepayers, CPD and many other biomass energy producers will be at an extreme economic disadvantage to the Laidlaw Facility.

CPD Response to Objection to Petition for Intervention at ¶ 9.

8. Accordingly, the purported PPA between PSNH and Laidlaw was clearly identified by CPD as substantial interest in this proceeding. The Order which was issued in this proceeding on

¹ Laidlaw has summarized the PPA with PSNH as follows:

The PPA is an essential element of the Project's financial viability and will be the dominant positive factor in securing the debt financing. Under the PPA, PSNH will purchase 100% of Project electric output and capacity for a period of 20 years. As a hedge against rising fuel prices, the energy price will be adjusted based on the Project's cost of biomass fuel pursuant to the terms of the PPA. In addition, 100% of the available renewable energy certificates ("RECs") that qualify for compliance under the New Hampshire renewable portfolio standard will be sold to PSNH. The price for such RECs is based on the New Hampshire Alternative Compliance Payment.

Laidlaw Application at 92.

March 24, 2010 could be interpreted as preventing CPD from protecting this interest which formed the basis of its intervention. This would be an unreasonable and unlawful limitation on the scope of its intervention. See RSA 541-A: 35

9. CPD respectfully requests the Committee to clarify its Order to expressly state that issues pertaining to the PPA are encompassed within the scope of the issue of “the sustainability of biomass fuel” for the purposes of this proceeding. In the alternative, CPD respectfully requests the Committee to its Order to rehear and reconsider its Order and rule that issues pertaining to the PPA are a substantial issue for CPD and that CPD may participate in that issue in this proceeding.

Ownership Structure of the Laidlaw Project

10. In its Petition for Intervention, CPD stated its interest with respect to the ownership structure of the Laidlaw project:

The Application does not contain any information on PJP, LLC (the actual owner of the Laidlaw site and facility and the party responsible for its long-term operation), Aware Energy, LLC (the mortgagee), Richard Cyr (the Manager of PJP and Aware Energy at whose residence those entities are located), NewCo, LLC (the PJP “affiliate), or Cate Street Capital, LLC (the self-proclaimed owner and operator.)

Given the fact that Laidlaw has not disclosed who the actual principals are that are involved in the Laidlaw Project, CPD believes that it is possible that PSNH may be indirectly involved in some manner with contingent ownership rights. This would have an extremely adverse impact on CPD ability to compete with the Laidlaw Project on fair terms.

Petition at ¶¶ 11, 12 (Emphasis added.)

11. At this juncture, the Committee has been provided with no information on who the real parties in interest are in this proceeding. Similar to the PPA issue addressed above, the ownership structure of the Laidlaw Project, particularly if PSNH is directly or indirectly involved, could have an extremely adverse impact on CPD’s ability to compete with the Laidlaw Project. Accordingly, CPD respectfully requests the Committee to rehear and reconsider its Order and rule that issues pertaining to the ownership structure of the Laidlaw Project are a substantial issue for CPD and that CPD may participate in these issues in this proceeding.

Precedential Ruling in SEC Docket No. 2008-04

12. The Committee has recently allowed CPD to intervene without limitation in a very similar proceeding involving the issuance of a certificate of site and facility to another North Country renewable project, Granite Reliable Power:

There is no question that CPD has a substantial interest that may be affected by this proceeding. **Such interest, moreover, is not limited to narrow issues concerning the orderly development of the region but concerns the broader issue of whether the Applicant should receive a Certificate.** Therefore, CPD's petition to intervene will be granted without limitation.

Order Granting Petitions to Intervene and Revising Procedural Schedule, SEC Docket No. 2008-04 (October 14, 2008) at 3 (Emphasis added.)

13. CPD's interests in the Laidlaw project in this proceeding are substantially greater than they were in the Granite Reliable Power proceeding, given that CPD is now ready to commence construction. Its interests are substantially and directly affected by the broader issue of whether Laidlaw receives a Certificate of Site and Facility.² Following the precedent established for CPD in Docket No. 2008-04, it would be arbitrary and unreasonable for the Committee not to allow CPD to intervene as a full party without limitation.

14. Applicant Laidlaw Berlin BioPower objects to this Motion. The other Parties have not responded to an email seeking their position.

WHEREFORE, for all of the foregoing reasons, Comes Clean Power Development, LLC respectfully requests the Committee to:

- A. Authorize its intervention in this proceeding as a full party; and
- B. Grant such other and further relief as may be just and equitable.

Respectfully submitted,
CLEAN POWER DEVELOPMENT, LLC
By its Attorney,

/s/ James T. Rodier

² According to Laidlaw,

Under RSA 162-H:16, in order to obtain a Certificate of Site and Facility the Applicant must show that it has adequate financial capability to construct and operate the Project in compliance with the terms and conditions of the Certificate.

Dated: April 9, 2010

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Certificate Of Service

I hereby certify that I have provided a copy of this Motion for Clarification and/or Rehearing to the Parties on the Service List in this proceeding.

/s/ James T. Rodier