

May 3, 2010

Clerk  
New Hampshire Supreme Court  
One Noble Drive  
Concord, NH 03301

**APPEAL OF JONATHAN EDWARDS**

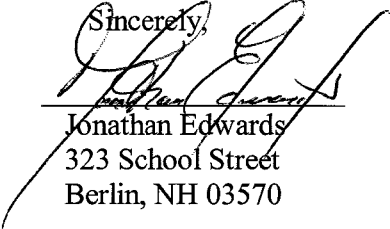
Dear Clerk:

Please find enclosed an original and 8 copies of an appeal under RSA 541 (Rule 10) along with my check for \$205.00 for the filing fee.

This is an appeal of Orders issued by the Site Evaluation Committee in SEC Docket No. 2009-02. The Orders were issued on March 24, 2010 and April 6, 2010.

Thank you.

Sincerely,



Jonathan Edwards  
323 School Street  
Berlin, NH 03570

**SUPREME COURT DOCKET NO. \_\_\_\_\_**

**APPEAL OF JONATHAN EDWARDS  
UNDER RSA 541:6 AND RSA 365:21  
FROM ORDERS OF SITE EVALUATION COMMITTEE  
(Supreme Court Rule 10)**

**Appeal of Orders issued by the Site Evaluation Committee  
on March 24, 2010 and April 6, 2010 in SEC Docket No. 2009-02.**

**Jonathan Edwards  
323 School Street  
Berlin, NH 03570**

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SUPREME COURT DOCKET NO. \_\_\_\_\_

APPEAL OF JONATHAN EDWARDS  
UNDER RSA 541:6 AND RSA 365:21  
FROM ORDERS OF SITE EVALUATION COMMITTEE  
(Supreme Court Rule 10)

This pleading was prepared with the assistance of a New Hampshire attorney

**A. PARTIES:**

**1. Parties seeking review:**

Jonathan Edwards  
323 School Street  
Berlin, NH 03570

Counsel: *Pro Se*

**2. Other Parties of Record:**

(A) Laidlaw Berlin BioPower, LLC  
90 John Street, 4th Floor  
New York, New York 10038

Counsel: Barry Needleman, Esq.  
McLane, Graf, Raulerson  
& Middleton  
11 South Main Street, Suite 500  
Concord, NH 03301

(B) Clean Power Development, LLC  
130 Pembroke Road  
Concord, NH 03301

Counsel: James T. Rodier, Esq.  
1500A Lafayette Road, No. 112  
Portsmouth, NH 03801-5918

(C) City of Berlin, NH  
168 Main Street  
Berlin, NH 03570

Counsel: N. Jonathan Peress, Esq.  
Downs, Rachlin, Martin PLLC  
8 South Park Street  
P.O. Box 191  
Lebanon, NH 03766-0191

(D) New Hampshire Sierra Club  
40 North Main Street  
Concord, NH 03301-8909

Counsel: Arthur B. Cunningham, Esq.  
PO Box 511  
Hopkinton, NH 03229

(E) Counsel for the Public

Counsel: K. Allen Brooks, Esq.  
Senior Assistant Attorney General  
Peter C.L. Roth, Esq.  
Senior Assistant Attorney General  
Department of Justice  
33 Capitol Street  
Concord, NH 03301-6397

**B. ORDERS TO BE REVIEWED; MOTION FOR REHEARING AND OBJECTION THERETO:**

Annexed hereto are the following: (1) Petition to Intervene filed by Jonathan Edwards on February 22, 2010; (2) Order on Pending Motions issued by the Site Evaluation Committee (“Committee”) dated March 24, 2010; (3) Motion for Rehearing filed by Jonathan Edwards on March 26, 2010; (4) Objection to Motion for Rehearing of Jonathan Edwards filed by Laidlaw Berlin BioPower, LLC dated April 1, 2010; and (5) Order Denying Motion for Rehearing of Jonathan Edwards issued by the Committee on April 6, 2010.

**C. QUESTIONS PRESENTED FOR REVIEW:**

1. Did the Committee erroneously deny the Petition to Intervene of Mr. Edwards on the basis that he has no substantial interest in this docket that differs from the interests of the public at large?
2. Did the Committee erroneously deny the Petition to Intervene of Mr. Edwards on the basis that his participation is likely to be duplicative and may cause unnecessary delay in the proceedings?

**D. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED:**

There are no Constitutional provisions involved in this appeal. The statutory provisions involved are:

**RSA 541-A:32 Intervention. –**

I. The presiding officer shall grant one or more petitions for intervention if:

(a) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's notice of the hearing, at least 3 days before the hearing;

(b) The petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(c) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

II. The presiding officer may grant one or more petitions for intervention at any time, upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings.

III. If a petitioner qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Such conditions may include, but are not limited to:

- (a) Limitation of the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition.
- (b) Limitation of the intervenor's use of cross-examination and other procedures so as to promote the orderly and prompt conduct of the proceedings.
- (c) Requiring 2 or more intervenors to combine their presentations of evidence and argument, cross-examination, and other participation in the proceedings.

IV. Limitations imposed in accordance with paragraph III shall not be so extensive as to prevent the intervenor from protecting the interest which formed the basis of the intervention.

V. The presiding officer shall render an order granting or denying each petition for intervention, specifying any conditions and briefly stating the reasons for the order. The presiding officer may modify the order at any time, stating the reasons for the modification.

**E. DOCUMENTS INVOLVED:**

Other documents involved include: (6) Order No. 25,075, NHPUC Docket DE 09-067 (February 24, 2010); (7) Order on Petitions to Intervene, SEC Docket No. 2006-01 (September 23, 2006); and (8) Order Granting Petitions to Intervene and Revising Procedural Schedule, SEC Docket No. 2008-04 (October 14, 2008).

**F. STATEMENT OF THE CASE CONTAINING FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTIONS PRESENTED:**

On December 16, 2009, Laidlaw Berlin Biopower, LLC (hereinafter "LBB" or "Laidlaw") filed an Application with the Site Evaluation Committee for a Certificate of Site and Facility for a proposed 70 Mw biomass energy facility in Berlin, New Hampshire. On January 26, 2010, the Committee issued an Order Accepting Application for Certificate of Site and Facility, stating:

The Facility is proposed to be located on the northern side of Community Street, Coos Street and Hutchins Street in Berlin (Site). This location formerly was the site of the Fraser Pulp Mill and was also referred to sometimes as the Burgess Mill. The Site has existing structures thereon.

The Applicant proposes to convert and upgrade the Site and to develop a biomass fueled energy generating facility nominally capable of generating 70Mw of electric power. The Facility, as proposed, will use whole tree wood chips and other low grade clean wood as fuel. The Applicant proposes to convert an existing boiler (manufactured by Babcock and Wilcox) at the Site to a bubbling fluidized bed boiler that will use whole wood tree chips as its primary fuel and ultra low sulfur diesel oil as auxiliary fuel. In addition to the boiler, the Facility will consist of a steam turbine generator, wood handling system, ash handling system, storm water management systems, two re-circulating water systems for steam generation and cooling, air pollution control systems, including a flue gas re-circulation system, an upgraded electrostatic precipitator, and a selective catalytic reduction system. The Applicant also proposes to renovate an existing 50,000 gallon ultra low diesel fuel tank to store ultra low sulfur diesel fuel. In addition, the Applicant wishes to construct a new switchyard adjacent to the turbine building and consisting of a step up transformer and single breaker.

Order Accepting Application (January 26, 2010) at 1.

On February 22, 2010, Jonathan Edwards file a timely Petition for Intervention, stating:

As a citizen, business owner, rate payer, and actively involved in the Berlin NH real estate market, I have been an active opponent to the Laidlaw proposal because I believe the location and size of the plant will have an adverse impact to this area's quality of life, Coos county's assessed value, sustainability of the great North Woods, and could lead to the peril of many NH wood commodity businesses that easily could be forced out of business due to lack of supply, escalating prices, or both of various wood commodities.

Petition to Intervene by Jonathan Edwards at 1.

On March 24, 2010, the Committee issued an Order on Pending Motions which denied Mr. Edwards's Petition, stating:

Despite Mr. Edwards claims, I find that he has no substantial interest in this docket that differs from the interests of the public at large. The interests claimed by Mr. Edwards will be adequately represented by counsel for the public.

Order on Pending Motions (March 24, 2010) at 6.

Mr. Edwards filed a timely Motion for Rehearing asserting that:

[t]here is no basis in administrative law generally, or RSA 541-A specifically, that empowers the Committee to deny the intervention of Jonathan Edwards because the "interest claimed by Mr. Edwards will be adequately represented by counsel for the public."

Motion for Rehearing of Jonathan Edwards at 1.

On April 6, 2010, the Committee issued an Order Denying Motion for Rehearing of Jonathan Edwards, stating:

The interest claimed by Mr. Edwards is no more than a general interest. Mr. Edwards does not assert that he owns abutting or nearby property that may be affected by the proposed facility. He does not assert that his residence or the operation of his business will be directly affected by the operation of the facility. Essentially his entire claim is based upon the fact that he is a resident of Berlin and owns a business in the city. The lack of more than a general interest in the proceeding was the basis for the denial of Mr. Edwards's petition to intervene. He simply has not presented facts establishing the standing required for an intervenor under R.S.A. 541-A: 32 or N.H. Code of Administrative Regulations, Site 202.11.

\*\*\*\*

Given the participation of counsel for the public, the City of Berlin and the Coos County Commissioners in this docket, Mr. Edwards's participation is likely to be duplicative and may cause unnecessary delay in the proceedings which, by statute, must conclude within 240 days of the acceptance of the Application.

Order Denying Motion for Rehearing of Jonathan Edwards (April 6, 2010) at 1, 2.

This appeal followed within 30 days.

**G. JURISDICTIONAL BASIS FOR APPEAL:**

The jurisdictional basis for this Appeal is RSA 541:6 and RSA 365:21.

**H. STATEMENT OF REASONS WHY A SUBSTANTIAL BASIS EXISTS FOR A DIFFERENCE OF OPINION ON THE QUESTIONS AND WHY ACCEPTANCE OF THE APPEAL WOULD PROTECT A PARTY FROM SUBSTANTIAL AND IRREPARABLE INJURY, OR PRESENT THE OPPORTUNITY TO DECIDE, MODIFY, OR CLARIFY AN ISSUE OF GENERAL IMPORTANCE IN THE ADMINISTRATION OF JUSTICE:**

In its Order on Pending Motions, Committee correctly summarized the applicable law:

RSA 541-A: 32, I, outlines the criteria which require the Committee to grant a petition for intervention and states, in pertinent part, that a person seeking to intervene must establish the following:

- “(b) ...facts demonstrating that the petitioner's rights, duties, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and
- (c) ...that the interest of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.” RSA 541-A:32, I(b), (c).

The statute also permits the presiding officer to allow intervention “at any time upon determining that such intervention would be in the interest of justice and would not impair the orderly and prompt conduct of the proceedings.” RSA 541-A:32, II.



Order on Pending Motions (March 24, 2010) at 2.

However, in the decisions under appeal, the Committee has erroneously applied the standards contained in RSA 541-A: 32 to the facts of this case. Additionally, the Committee's decisions are not only inconsistent with its prior rulings in other cases, they are also inconsistent with a very recent decision by the Public Utilities Commission applying RSA 541-A: 32 to a very similar petition for intervention by Mr. Edwards.

This appeal presents the Court with an opportunity to decide, modify, or clarify an issue of general importance involving the standards for intervention before administrative agencies.

**1. The Committee erroneously denied the Petition to Intervene of Mr. Edwards on the basis that he has no substantial interest in this docket that differs from the interests of the public at large.**

A petitioner for intervention under m RSA 541-A:32 must demonstrate a substantial interest that may be affected by the proceeding. In his Petition for Intervention, Mr. Edwards asserted that he is citizen, and business owner, who has actively opposed the Laidlaw facility plant because of its adverse effects on the City of Berlin.

In its Order on Pending Motions, the Committee denied Mr. Edwards's Petition on the basis "that he has no substantial interest in this docket that differs from the interests of the public at large." Similarly, in its Order Denying Motion for Rehearing of Jonathan Edwards, the Committee found that:

The interest claimed by Mr. Edwards is no more than a general interest. Mr. Edwards does not assert that he owns abutting or nearby property that may be affected by the proposed facility. He does not assert that his residence or the operation of his business will be directly affected by the operation of the facility. Essentially his entire claim is based upon the fact that he is a resident of Berlin and owns a business in the city. The lack of more than a general interest in the proceeding was the basis for the denial of Mr. Edwards's petition to intervene.

Order Denying Motion for Rehearing of Jonathan Edwards (April 6, 2010) at 1.

The Committee's determination that Mr. Edwards has no substantial interest that differs from the interests of the public at large is unlawful and unreasonable. If Mr. Edwards was a resident of another municipality in Coos County such as Gorham, Lancaster, or Bethlehem, it might be reasonable for the Committee to conclude that he has no substantial interest in the matter at hand. However, he is in fact a resident of, and business owner in, Berlin, the location

of the proposed biomass facility. He is likely to see significant impact to the community's economic and environmental circumstances as result of the proposed biomass plant.

In fact, in a recent decision by the Public Utilities Commission involving Mr. Edwards in a very similar proceeding regarding a different biomass plant proposed to be located in Berlin, the Commission ruled that:

Jonathan Edwards, a resident of Berlin, seeks intervention as one directly affected by the complaint. As a resident who may see significant impact to the community's economic and environmental circumstances as result of the proposed plant, we find he has demonstrated a cognizable interest affected by the complaint and will grant his request to intervene.

Order No. 25,075, NHPUC Docket DE 09-067 (February 24, 2010) at 4.

Moreover, in a prior proceeding, the Committee granted Petitions to intervene from Deborah Stone, a Lempster resident; and Wayne Orso, a resident of the unincorporated place of Millsfield. Ms. Stone and Mr. Orso were residents of municipalities wherein a renewable energy facility was proposed to be located. The residences of Ms. Stone or Mr. Orso did not abut the proposed facility. Order on Petitions to Intervene, SEC Docket No. 2006-01 (September 23, 2006).

**2. The Committee erroneously denied the Petition to Intervene of Mr. Edwards on the basis that his participation is likely to be duplicative and may cause unnecessary delay in the proceedings.**

In its Order Denying Motion for Rehearing of Jonathan Edwards, the Committee erroneously concluded that:

[g]iven the participation of counsel for the public, the City of Berlin and the Coos County Commissioners in this docket, Mr. Edwards's participation is likely to be duplicative and may cause unnecessary delay in the proceedings which, by statute, must conclude within 240 days of the acceptance of the Application. See, R.S.A. 162-H: 6-a, VIII.

Order Denying Motion for Rehearing (April 6, 2010) at 2.

There is nothing in the record in this proceeding that would allow the Committee to reasonably conclude that Mr. Edwards's participation is likely to be duplicative and may cause unnecessary delay in the proceedings. The discretion of the Committee to make such a finding should be used very sparingly and only in those extremely rare situations where a habitual intervenor has a track record of abusing his right to intervene by impeding administrative proceedings. There are no reported decisions of either the Site Evaluation Committee or the Public Utilities Commission where an otherwise qualified person was precluded from intervening in a proceeding because it would impair the interest of

justice and the prompt and orderly conduct of the proceeding. In making its unprecedented and extraordinary decision, the Committee appears to have relied heavily on RSA 162-H: 6-a, VIII which nominally requires the Committee to issue or deny a certificate for a renewable energy facility within 240 days of the acceptance of an application. Notwithstanding this provision, however,

[i]f the subcommittee at any time during its deliberations relative to an application for a certificate deems it to be in the public interest, it may temporarily suspend its deliberations and enlarge the time frame established under this section to issue or deny a certificate.

RSA 162-H: 6-a, IX

Accordingly, RSA 162-H: 6-a, VIII and IX do not provide a basis to deny intervention in a circumstance where the petitioner has a substantial interest to protect.

The presiding officer is authorized may impose conditions upon the intervenor's participation in the proceedings in order to promote the prompt and orderly conduct of the proceeding. RSA 541-A:32, III. This would have been a much less drastic method and more appropriate method of addressing the Committee's concern. To deny an otherwise person the right to intervene because it is "likely to be duplicative and may cause unnecessary delay" is highly improper in the circumstances of this case.

Additionally, the Committee's denial of Mr. Edwards's right to intervene in this proceeding is in stark contrast to another very recent decision of the Committee on intervention wherein it decided that Kathryn Keene, Robert Keene and John Odell did not demonstrate a substantial interest which would be affected by the Committee's decision. However, the Committee then decided to allow these petitioners to intervene anyway pursuant to RSA 541-A:32, II, which empowers an administrative agency to allow an intervention where irt would be in the interests of justice even though no "substantial interest" is at stake. See, Order Granting Petitions to Intervene and Revising Procedural Schedule, SEC Docket No. 2008-04 (October 14, 2008).

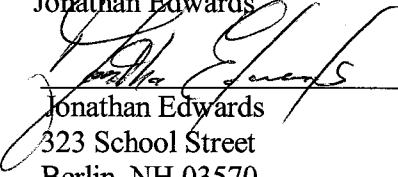
**3. Conclusion.**

The Committee has erroneously applied the standards contained in RSA 541-A: 32 to the facts of this case. The Committee's decisions are not only arbitrary and inconsistent with its prior rulings in other cases, they are also inconsistent with a very recent decision by the Public Utilities Commission applying RSA 541-A: 32 to a very similar petition for intervention by Mr. Edwards. Given all of the foregoing, a substantial basis exists for a difference of opinion on the question presented. Moreover, acceptance of the appeal would present an opportunity for the Court to decide, modify, or clarify an issue of general importance in the administration of justice.

**I. ISSUES PRESERVED FOR APPELLATE REVIEW**

Every issue specifically raised has been presented to the administrative agency and has been properly preserved for appellate review by a properly filed pleading.

Respectfully submitted,  
Jonathan Edwards

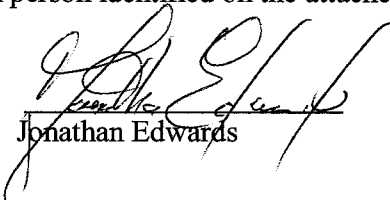


Jonathan Edwards  
323 School Street  
Berlin, NH 03570

Dated: May 3, 2010

CERTIFICATION OF SERVICE

I have served copy of the foregoing on each person identified on the attached service list for this docket.



Jonathan Edwards

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

Barry Needleman, Esq.  
McLane, Graf, Raulerson & Middleton  
11 South Main Street, Suite 500  
Concord, NH 03301

James T. Rodier, Esq.  
1500A Lafayette Road, No. 112  
Portsmouth, NH 03801-5918

N. Jonathan Peress, Esq.  
Downs, Rachlin, Martin PLLC  
8 South Park Street  
P.O. Box 191  
Lebanon, NH 03766-0191

Arthur B. Cunningham, Esq.  
PO Box 511  
Hopkinton, NH 03229

K. Allen Brooks, Esq.  
Senior Assistant Attorney General  
Peter C.L. Roth, Esq.  
Senior Assistant Attorney General  
Department of Justice  
33 Capitol Street  
Concord, NH 03301-6397

----- Original Message -----

From: <jonathanedwards@ne.rr.com>

To: <pcrc@pcrc.com>

Sent: Tuesday, February 23, 2010 12:10 PM

Subject: SEC

February 22, 2010

Mr. Thomas S. Burack, Chairman  
New Hampshire Site Evaluation Committee  
C/O New Hampshire Department of Environmental Services  
29 Hazen Drive, P.O. Box 95  
Concord, NH 03302-0095

RE: Application of Laidlaw Berlin BioPower LLC; Docket 2009-02  
Filing of Petition to Intervene by Jonathan Edwards

Dear Chairman Burack,

Relative to SEC's administrative rules, section Site 202.11 and RSA 541-A:32, I hereby petition to intervene in the docket referenced above. Section 202.11 (b) states, "The presiding officer shall grant a petition to intervene if. The petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests might be affected by the proceeding..." RSA 541-A:32 has almost the same language. For reasons that follow, I believe I am entitled to intervene in this matter.

As a citizen, business owner, rate payer, and actively involved in the Berlin NH real estate market, I have been an active opponent to the Laidlaw proposal because I believe the location and size of the plant will have an adverse impact to this area's quality of life, Coos county's assessed value, sustainability of the great North Woods, and could lead to the peril of many NH wood commodity businesses that easily could be forced out of business due to lack of supply, escalating prices, or both of various wood commodities. I also see this proposal as the beginning of wasting better quality wood to be sold as wood chips if pass through costs were granted to cover the additional cost. Also, I find it difficult to believe that the existing biomass plants in Tamworth, Bethlehem, Whitefield, and the proposed Clean Power plant could ever compete against pass through costs which could lead to greater job losses to direct employees of these companies as well as indirect logging job loss. It may become important to look at the profit margins of other companies and the negative impact one proposal that stands to provide 40 direct jobs can have on already existing biomass facilities.

Additionally, there are indications that our North Country politicians, from State Senator to Coos County commissioners have been sending incomplete messages to Concord; that the North Country and Berlin in general are in favor of the Laidlaw proposal. The Coos County commissioners and our State Senator Gallus among others have taken it upon themselves to conclude this area is in favor of this project without basing that decision on any factual data as no referendum has taken place on this proposal. Recently the Commissioners, who are presumably representing Coos County, have sent you a letter of support, however that letter of support is not indicative of how the entire county is currently reacting. In fact, this county seems to be quite divided on the Laidlaw proposal. One of the Commissioners, Paul Grenier, is also now Berlin's mayor. The city of Berlin has asked to intervene in this process, yet the mayor, acting as Coos commissioner is "fully supporting" the proposal while the council has voted unanimously to intervene. It's questionable that the mayor can fully support Laidlaw and also state he wishes to intervene as mayor as "full support" and "intervention" by definition contradicts one another. If the NH SEC is even looking at Berlin's input, that input needs to be presented unbiased and I am representative of the concerns of Berlin citizens who do not feel this plant accomplishes the governor's 2025 initiative or the wishes of many citizens looking for synergies and efficiencies within our sustainable forest.

As a business owner of Berlin's oldest real estate firm I have seen our nearby forests become liquidation harvesting centers and have watched, and now am quite embarrassed to admit the forest within close proximity to both biomass proposals has become depleted. I have read the wood studies provided by the state of NH performed by Landvest, the revised version provided by Landvest for Laidlaw, Clean Power's study, and Professor Aber's wood study of UNH. I believe all studies support concerns relative to sustainability. I encourage the NH Site Evaluation Committee to take a tour of this area's liquidated forests as they are becoming focal points of our Great North Woods beyond the buffers and very visible by air at any time of the year.

Laidlaw's proposal is directly across the street from low income housing comprising over a hundred people in just two buildings many of whom are physically and/or mentally impaired and may suffer great consequences in close proximity to sudden noise increases, constant truck noise, and danger from toxins that these plants emit, especially created upon downdrafts in low lying valleys of which these citizens reside. The area of Berlin's east side, which is also in close proximity to Laidlaw's proposal suffers the effects of being located so close to an industrial base that the property values are significantly lower than Berlin's average selling price, and this proposal would keep that property going in a downward direction.

As a rate payer, I feel that Laidlaw is effectively utilizing a PSNH monopoly to purchase power solely from Laidlaw which is at the detriment of our very own governor's 2025 initiative, and at the expense of more efficient proposals moving forward that don't put our forests' sustainability at risk. If you look at the fact that Laidlaw is third on the queue list behind both Noble and Clean Power, yet Laidlaw is the only one PSNH is willing to purchase power from, you begin to wonder at the very least if the meaning or definition of the word corruption should be investigated as it pertains to a company that is presumably working towards alternative energy in a responsible way.

In summary, I feel that I represent a significant voice in Berlin that wants to embrace biomass as it pertains to the governor's 2025 initiative, but not at the sacrifice of sustainability, efficiency, and upon an adverse impact to health and quality of life. I appreciate the Site Evaluation Committee's consideration of my request for full intervener status. I do intend to be present at the March 11, 2010 Pre-Hearing Conference, and appreciate it if you'd let me know if you need anything further from me.

Sincerely,

Jonathan Edwards

cc. Attorney Barry Needleman, Counsel to Laidlaw  
NH Attorney General Michael A. Delaney  
Attorney Michael J. Iacopino  
Service List in SEC Docket No. 2009-02

**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 24, 2010**

**ORDER ON PENDING MOTIONS**

**Background**

On December 16, 2009, Laidlaw Berlin BioPower, LLC, (Applicant) filed an Application for a Certificate of Site and Facility (Application). The Applicant petitions the Site Evaluation Committee (Committee) for a Certificate of Site and Facility (Certificate) in order to site, construct and operate a renewable energy facility (Facility) in Berlin, Coos County, New Hampshire. The Facility is proposed to be located on the northern side of Community Street, Coos Street and Hutchins Street in Berlin (Site). This location was formerly the site of the Fraser Pulp Mill and was also sometimes referred to as the Burgess Mill.

The Applicant proposes to convert and upgrade the Site and to develop a biomass-fueled energy generating facility nominally capable of generating 70 megawatts (MW) of electric power. In addition, the Applicant proposes renovation of an existing 50,000 gallon fuel tank to store auxiliary fuel, the construction of a new switchyard and the installation of a new electrical transmission line in an existing right of way that will travel both underground and overhead, eventually interconnecting with an existing PSNH sub-station.

The Application was originally determined to be incomplete because certain information required by the Water Division of the Department of Environmental Services (DES) was deficient. However, the Applicant corrected those deficiencies and I found that the corrected Application contained sufficient information for the purposes of RSA 162-H. Therefore, on January 26, 2010, I accepted the Application and deemed it to be administratively complete. Upon acceptance of the Application, I appointed a Subcommittee to review this renewable energy application pursuant to RSA 162-H:6-a.

On March 11, 2010, a pre-hearing conference was held. On March 16, 2010, the Subcommittee held a site visit in Berlin and conducted a public informational hearing consistent with RSA 162-H:6-a.

Since the filing of the Application, a number of motions have been filed. On December 23, 2009, shortly after filing the Application, the Applicant filed a Motion for Protective Order and Confidential Treatment for Appendix Q (Interconnection Feasibility Study) of the Application.

The Subcommittee has also received petitions to intervene from the City of Berlin, the Coos County Commissioners, Clean Power Development, LLC (CPD), Wagner Forest Management Ltd. (WFM), the New Hampshire Sierra Club (NHSC) and Jonathan Edwards of Berlin, New Hampshire.

The purpose of this Order is to address all outstanding motions.



## The Motions to Intervene

### Standard for Intervention

The New Hampshire Administrative Procedure Act, RSA 541-A, dictates when an administrative agency must allow intervention. See RSA 541-A: 32, I. The statute also sets forth circumstances under which an administrative agency may allow intervention but is not required to do so. See RSA 541-A: 32, II.

RSA 541-A: 32, I, outlines the criteria which require the Committee to grant a petition for intervention and states, in pertinent part, that a person seeking to intervene must establish the following:

“(b) ...facts demonstrating that the petitioner’s rights, duties, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervener under any provision of the law; and

(c) ...that the interest of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.” RSA 541-A:32, I (b), (c).

The statute also permits the presiding officer to allow intervention “at any time upon determining that such intervention would be in the interest of justice and would not impair the orderly and prompt conduct of the proceedings.” RSA 541-A:32, II.

Similarly, SEC’s recently promulgated procedural rules provide:

(b) The presiding officer shall grant a petition to intervene if:

(1) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer’s order of notice of the hearing, at least 3 days before the hearing;

(2) The petition states facts demonstrating that the petitioner’s rights, duties, privileges, immunities or other substantial interests might be affected by the proceeding, or that the petitioner qualifies as an intervenor under any provision of law; and

(3) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

The administrative rule also provides that the presiding officer shall grant one or more late-filed petitions to intervene pursuant to RSA 541-A:32, II upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the hearings. See New Hampshire Code of Administrative Rules, Site 202.11.

The Administrative Procedure Act and the Committee rules require that a party be allowed to intervene in those cases where the party can establish a right, duty, privilege, immunity or other substantial interest that is implicated by the determination of the issues in the proceeding. The statute and the rules also permit intervention, in the presiding officer’s discretion, in those cases where the proposed intervention is in the interest of justice and does not interfere with the prompt and orderly conduct of the proceeding.

Importantly, the Administrative Procedure Act and the Committee's rules also allow the Presiding Officer to place limits upon the authority of a party to intervene. See RSA 541-A: 35, II; New Hampshire Code of Administrative Rules, Site 202.11 (d). The presiding officer may limit the issues pertaining to a particular intervenor, limit the procedures in which a particular intervenor may participate or combine intervenors and other parties for the purposes of the proceeding, so long as the limitations placed on intervenors do not prevent the intervenor from protecting an interest that formed the basis of intervention. Id.

### **Clean Power Development and Wagner Forest Management**

Clean Power Development, LLC (CPD) and Wagner Forest Management, Ltd. (WFM) have both filed Motions to Intervene in this docket. Both CPD and WFM assert that they have substantial interests that may be affected in this docket.

CPD is in the process of developing a 29 MW biomass-fueled project located at 20 Shelby Street in Berlin, approximately 1 ½ miles downstream from the proposed site in this docket. In Docket No. 2009-03, the New Hampshire Site Evaluation Committee determined that the CPD project did not require a Certificate of Site and Facility. In light of that determination, the CPD facility is subject to local land use planning statutes and ordinances, and state agency jurisdiction pertaining to environmental laws and other matters. CPD asserts that its plant will consume approximately 340,000 tons of biomass per year, harvested from working forests within a 30-mile radius of Berlin. CPD alleges that if the Laidlaw Project goes forward, there will not be enough biomass available within the region on a sustainable basis and at reasonable prices. CPD also asserts that to the extent there may be subsurface contamination on the proposed site that enters into the Androscoggin River during construction, such contamination might adversely affect CPD's ability to operate its facility and to co-locate its facility with various other uses. Finally, CPD asserts that the proposed project and its facility both plan to interconnect with the existing 115 KV transmission loop known as the Coos County Loop and that both facilities may have to compete for transmission capacity to market. CPD also asserts that it has questions regarding the ownership of Laidlaw and suspects that Public Service Company of New Hampshire (PSNH) may be indirectly involved with the Project with some contingent ownership rights to PSNH which might adversely affect CPD's ability to compete with the Laidlaw Project.

WFM is based in Lyme, New Hampshire. WFM provides timberland investment management services to clients and asserts that it manages over 2.7 million acres of timberland in both the United States and Canada, including 692,000 acres of timberland within a 100-mile radius of the proposed Project. In addition, WFM asserts that it is in the early stages of planning an industrial wind farm in northern Coos County. The wind project is identified as "North Country Wind" and has filed with the Independent System Operator – New England (ISO) for a queue position for transmission capacity and presently holds queue position no. 280 with ISO. WFM asserts that the North Country Wind project will be a 180 MW facility that will connect to the Coos loop. WFM also asserts that it has a substantial interest in the sustainability of the biomass fuel that will be needed for the operation of the Laidlaw facility.

The Applicant has responded to both CPD and WFM's Motions to Intervene and asserted that neither CPD nor WFM has asserted a substantial interest that may be affected by the petition because the issues raised by each entity deal only with a competitive interest. Citing, Valley Bank v. State, 115 NH 151, 154 (1975), the Applicant asserts that a competitive interest cannot be the basis for granting a petition for intervention. The Applicant claims that the motions for intervention filed by CPD and WFM are based solely on a competitive interest and,

therefore, neither CPD nor WFM have identified a right, duty, privilege, immunity or other substantial interest that can support a petition to intervene in these proceedings. The Applicant also asserts that any claim of environmental harm does not affect CPD or WFM any differently than it does the general public and, therefore, that interest is solely represented by counsel for the public.

Having reviewed the pleadings, I find that both CPD and WFM have identified substantial interests which may be affected by the outcome of this docket. Specifically, the issue of sustainability of the biomass fuel on an ongoing basis is an issue that will substantially affect both WFM and CPD. The sustainability of the northern forest affects WFM in its capacity as a manager of logging lands within the forest. Increased capacity for the burning of biomass fuel will, likely, have some effect on the availability of biomass fuels and the sustainability of the northern forest. However, at this stage in the docket, the Committee cannot determine what that affect may be. However, the Project may certainly have an affect on WFM.

Similarly, CPD, as a developer and operator of an electric generating facility, also has a substantial interest in the sustainability and availability of biomass fuel from the northern forest. Thus, CPD has a substantial interest that may be affected by this docket.

Similarly, both WFM and CPD, as developers of electric generating facilities, have a substantial interest in the transmission capacity of the Coos transmission loop. Although it is unclear what authority the Site Evaluation Committee may have with regard to the issue of transmission capacity – an issue that is generally dictated by ISO-New England – it is certainly likely that the development of new electric generating projects in the North Country will substantially affect the access of all electrical generators to the transmission loop.

As such, I find that both WFM and CPD have asserted and demonstrated a substantial interest that may be affected by the outcome in this docket. The Applicant's suggestion that a purely commercial interest does not create a substantial interest justifying intervention is without merit. The Applicant relies upon the Valley Bank case. However, the Valley Bank case was not a case that determined the standards for intervention.

In Valley Bank v. State, 115 NH 151 (1975), the New Hampshire Supreme Court held that the existing statute governing bank branch expansions was constitutional. In recognizing that injuries resulting from competition are rarely classified as legal harm, the Court was referring to a constitutional attack on the existing statute. The Court eventually held that the then existing bank branch expansion statute was neither unreasonable nor arbitrary and, therefore, did not violate the equal protection clause of the state or federal constitutions. The Valley Bank case did not set forth a standard to define what a substantial interest is justifying intervention in a proceeding before an administrative agency. The Applicant stretches the Valley Bank holding in an effort to apply Appeal of Richards, 134 NH 148 (1991) to this docket. However, Appeal of Richards does not pertain to standing to intervene in an administrative proceeding. Appeal of Richards pertains to standing to appeal from an administrative proceeding to the New Hampshire Supreme Court. That standard is a different standard and is set forth at RSA 541:3. The standard to determine whether or not a party should be permitted to intervene in this proceeding is clearly set forth in RSA 541-A:32 and New Hampshire Code of Administrative Rules Site 202.11. In this case, the petitions of both WFM and CPD demonstrate that each of these parties have substantial interests that might be affected by this proceeding. Additionally, I cannot find that the orderly conduct of the proceedings would be impaired by allowing WFM and CPD to intervene in this docket.

However, it is apparent that both WFM and CPD's substantial interests in this docket are, in fact, limited. The substantial interests of both WFM and 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, pursuant to RSA 541-A:35, II and New Hampshire Code of Administrative Rules Site 202.11(d), the participation of WFM and CPD will be limited to those two particular issues.

### **New Hampshire Sierra Club**

The New Hampshire Sierra Club (NHSC) is a voluntary nonprofit organization claiming over 4000 New Hampshire members, 420 of whom reside in Coos County. NHSC is an environmental organization. NHSC describes its substantial interest in this docket as being the sustainability of the Applicant's forest management plan and the impacts of that plan on New Hampshire's northern forest. The Applicant does not object to intervention by NHSC, so long as intervention is limited to NHSC's concern about sustainability of the forest management plan.

There being no objection to NHSC's Motion to Intervene, that motion will be granted. However, I find that the prompt and orderly disposition of the proceedings in this docket require that NHSC's participation as an intervener shall be limited to the sustainability of the Applicant's forest management plan and the impacts of that plan on the northern forest.

### **City of Berlin and Coos County Commissioners**

The City of Berlin and the Coos County Commissioners each filed Motions to Intervene in this docket. The Applicant does not object to these motions. The participation of local municipalities and counties is consistent with RSA 162-H:16, IV (b), requiring the Committee to give due consideration to the views of municipal and regional planning agencies and municipal governing bodies with respect to the orderly development of the region. Likewise, RSA 541-A:39 requires an administrative agency to give notice to, and afford all effected municipalities, a reasonable opportunity to submit data, views, or comments with respect to the issuance of a permit, license, or other action within its boundaries that directly affect the municipality. Therefore, the motion of the City of Berlin and motion of the Coos County Commissioners to intervene in this docket are both granted. The City of Berlin and the Coos County Commissioners shall participate fully as intervenors.

### **Jonathan Edwards**

Jonathan Edwards is a citizen and business owner in the City of Berlin. He is a real estate agent and reports that he is actively involved in Berlin's real estate market. He argues that he should be permitted to intervene in this docket because it may impact the quality of life in Berlin, and because he does not believe that the popularly elected officials and City of Berlin and Coos County are truly representing the views of the majority of their constituents. In addition, Mr. Edwards asserts that he is a ratepayer who will be affected by the potential construction of the Project. He also asserts that he has a fiduciary duty to his clients to seek to preserve property values in the City of Berlin.

The Applicant objects to Mr. Edwards' petition to intervene. The Applicant asserts that the petition sets forth no substantial interest which would justify Mr. Edwards' petition to intervene. The Applicant asserts that Mr. Edwards' position is no different than that of the public at large. The Applicant points out that counsel for the public has been appointed in this docket and will competently represent the interests of the public at large.

Despite Mr. Edwards claims, I find that he has no substantial interest in this docket that differs from the interests of the public at large. The interests claimed by Mr. Edwards will be adequately represented by counsel for the public. Additionally I reject his claim that, as a real estate broker, he has a fiduciary duty to represent his clients in this matter or to represent future clients. A fiduciary relationship exists "in cases where there has been a special confidence reposed in one who, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing the confidence." Lash v. Cheshire County Savings Bank, 124 NH 435, 439 (1984) (citations omitted). While real estate brokers have a fiduciary duty to their clients, that duty is circumscribed by the New Hampshire Real Estate Practice Act, RSA 331-A. See Petition of Contoocook Valley Paper Company, 129 NH 528, 532 (1987) (recognizing that the fiduciary relationship between a broker and vendor must be read and applied in the context of the statute). Nothing within RSA 331-A extends the real estate broker fiduciary relationship to require that a broker intervene or otherwise participate in proceedings before local, state or federal agencies that may affect the region generally. This interest is most appropriately within the purview of counsel for the public. I also find that allowing intervention by Mr. Edwards would not be consistent with the prompt and orderly disposition of these proceedings. Therefore, his petition to intervene is denied.

#### **Motion for Confidential Treatment of Appendix Q**

The Applicant has filed a Motion for Protective Order and Confidential Treatment for Appendix Q to the Application. Appendix Q consists of an interconnection feasibility study of the proposed Project performed by contractors for ISO-New England. Such studies generally concern the costs and technical feasibility of interconnection of an electric generating facility to the New England electric grid. Such reports contain commercially sensitive information and sometimes also contain information that may affect the security of the region's electric distribution system.

Records pertaining to confidential, commercial or financial information are exempt from public disclosure pursuant to RSA 91-A:5, IV. The information contained in Appendix Q appears to fall within the definition of commercial or financial information, as that term is interpreted in Union Leader Corp. v. New Hampshire Housing Finance Authority, 142 NH 540, 553 (1997). Such records are not exempt from public disclosure on a *per se* basis. The agency must perform a balancing test to determine whether the records should be protected, or if the public's interest in disclosure is outweighed by the Applicant's interests in protecting confidential information. In this case, Appendix Q, if made publicly available, could affect the Applicant's competitive position in the renewable energy market by revealing cost estimates and other information pertaining to the ability to interconnect with the ISO-New England system. On the other hand, the public, at least at this stage of the proceedings, will not benefit from disclosure of such information.

Because the public interest in the disclosure of the requested information is outweighed by the likelihood of substantial harm to the competitive position of the Applicant, the request for confidential treatment Appendix Q is hereby granted. See Union Leader Corp. v. New Hampshire Housing Finance Authority, 142 NH 540, 553-554 (1997). Appendix Q shall be sealed and treated by the Committee as a confidential document. Any party seeking to review Appendix Q should first discuss the matter with the Applicant. A motion for disclosure of Appendix Q should not be brought unless the parties have first tried to resolve the confidentiality issues informally.

Counsel for the public has an important statutory role in seeking to ensure an adequate supply of energy. The feasibility of interconnection is a matter that affects the supply of energy. Therefore, Appendix Q shall be disclosed to counsel for the public. However, counsel for the public shall not further disclose Appendix Q without a further order from the Subcommittee.

**Conclusion and Order**

Based upon the foregoing, it is hereby:

ORDERED that the Applicant's Motion for Protective Order on Confidential Treatment for Appendix Q is GRANTED, and it is,

FURTHER ORDERED, that the Motions filed by the City of Berlin and the Coos County Commissioners to intervene in this docket are GRANTED, and it is,

FURTHER ORDERED, that the Motions of Wagner Forest Management, Ltd. and Clean Power Development, LLC to intervene in this docket are GRANTED IN PART and LIMITED to the issues of the sustainability of the northern forest and transmission capacity; and it is,

FURTHER ORDERED that the motion of the New Hampshire Sierra Club to intervene in this docket is GRANTED IN PART and LIMITED to the issue of the sustainability of the northern forest; and it is,

FURTHER ORDERED that the Motion of Jonathan Edwards to intervene in this docket is hereby DENIED.



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Thomas S. Burack, Presiding Officer

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

MOTION FOR REHEARING OF JONATHAN EDWARDS

NOW COMES Jonathan Edwards, pursuant to RSA 541:3 and NH Admin. Rule Site 202.29, and hereby motions the New Hampshire Site Evaluation Committee to rehear and reconsider its Order On Pending Motions which was issued in this proceeding on March 15, 2010, and in support hereof, Jonathan Edwards says as follows:

1. Pursuant to RSA 162-H:11, decisions of the Committee are reviewable in accordance with RSA 541:3. Under RSA 541:3, any party to the action or proceeding before the Committee, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order..."

2. Jonathan Edwards has been directly affected by the Committee's denial of his petition for intervention.

3. The basis for the Committee's denial is that Mr. Edwards "has no substantial interest in this docket that differs from the interests of the public at large. The interests claimed by Mr. Edwards will be adequately represented by counsel for the public." Order at 6. The Committee also found that "allowing intervention by Mr. Edwards would not be consistent with the prompt and orderly disposition of these proceedings." Id

4. According to the Order,

Jonathan Edwards is a citizen and business owner in the City of Berlin. He is a real estate agent and reports that he actively involved in Berlin's real estate market. He argues that he should be permitted to intervene in this docket because it may impact the quality of life in Berlin, and because he does not believe that the popularly elected officials and City of Berlin and Coos County are truly representing the views of the majority of their constituents. In addition, Mr. Edwards asserts that he is a ratepayer who will be affected by the potential construction of the Project.

5. Accordingly, as a citizen and business owner in the City of Berlin, and a PSNH ratepayer, Jonathan Edwards has substantial interest that might be affected by this proceeding.

6. Moreover, there is no basis in administrative law generally, or RSA 541-A specifically, that empowers the Committee to deny the intervention of Jonathan Edwards because the "interest claimed by Mr. Edwards will be adequately represented by counsel for the public." Moreover, the law pertaining to appointment of counsel for the public is contained in RSA 162-H:9. RSA 162-H:9, II explicitly states that "this section shall not be construed to prevent any person from being heard or represented by counsel."

7. The issue before the Committee here is analogous to the circumstance frequently presented to the Public Utilities Commission when dealing with petitions for intervention from residential ratepayers. Those petitions are routinely granted even though the Office of Consumer Advocate is a party with a legislative mandate to represent the interest of residential ratepayers.

8. There is no factual basis in the record of this proceeding for the Committee's finding that intervention by Mr. Edwards "would not be consistent with the prompt and orderly disposition of these proceedings."

9. Additionally, Mr. Edwards' experience and contacts within the local real estate market could be a valuable asset to the citizens of Berlin who own properties, the value of which may not be appropriately within the purview of counsel for the public. Without Mr. Edwards or anyone else knowing that Counsel for the Public will provide expert witness for the impact such a facility could have on the region's tax base, Mr. Edwards and the citizens of Berlin can be directly effected by the value of their most important asset potentially being in jeopardy.

WHEREFORE, Jonathan Edwards respectfully requests the Committee to reconsider it Order and grant his petition for intervention without limitation.

Dated March 26, 2010

RESPECTFULLY SUBMITTED,

Jonathan Edwards



McLane, Graf,  
Raulerson & Middleton  
Professional Association

900 Elm Street | P.O. Box 326 | Manchester, NH 03105-0326  
Tel: 603.625.6464 | Fax: 603.625.5650 | www.mclane.com

MANCHESTER  
CONCORD  
PORTSMOUTH  
WOBURN, MA

CATHRYN E. VAUGHN  
Direct Dial: (603) 628-1180  
Email: cathryn.vaughn@mclane.com  
Licensed in NH

April 1, 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 Motion for Rehearing of Jonathan Edwards for filing in the above matter.

If you have any questions, please contact me.

Sincerely,

Cathryn E. Vaughn

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 MOTION FOR REHEARING OF JONATHAN EDWARDS**

NOW COMES the Applicant, Laidlaw Berlin BioPower, LLC (“Laidlaw”), and submits this Objection to Motion for Rehearing of Jonathan Edwards and states as follows:

1. The Committee properly denied Jonathan Edwards’ Petition to Intervene on March 24, 2010, because it found that Mr. Edwards “has no substantial interest in this docket that differs from the interests of the public at large.” March 24, 2010 Order on Pending Motions (“Order”) at 6. The Committee also correctly concluded that Mr. Edwards should not be allowed to intervene as a party where the interests he seeks to represent “will adequately be represented by counsel for the public.” *Id.* Nothing in RSA 162-H:9 alters these well established rules of standing. Nevertheless, Mr. Edwards now moves for rehearing of his Petition to Intervene.

2. 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.” Mr. Edwards’ Motion for Rehearing fails to demonstrate or even allege that the Committee’s finding is unlawful, unjust or unreasonable. Nor could he in this instance. Mr. Edwards has no basis to argue that the Committee’s Order was unlawful, unjust or unreasonable where it was based on its finding that Mr. Edwards’ alleged interest in the Laidlaw project will be adequately represented by Counsel for the Public. Mr. Edward instead argues, incorrectly in this case, that the Committee had the discretion to grant his Petition to Intervene, and he believes it should have done so. Mr. Edwards’ Motion for Rehearing should be denied because the Committee’s Order

denying him standing was clearly correct, and he has failed to meet his burden to demonstrate that the Committee's Order is unlawful, unjust or unreasonable.

3. Moreover, to the extent Mr. Edwards argues Counsel for the Public does not have sufficient knowledge regarding the local real estate market in Berlin to adequately protect the interests of all surrounding property owners in the Laidlaw project, both the City of Berlin and Coos County Commissioners, are, no doubt, thoroughly knowledgeable about the economy and real estate market in Berlin, and both were granted intervenor status in this case. The City of Berlin and Coos County Commissioners therefore will represent his alleged interest.

4. Finally, Mr. Edwards' argument that "there is no factual basis in the record of this proceeding for the Committee's finding that intervention ... 'would not be consistent with the prompt and orderly disposition of these proceedings'" is simply incorrect. Mr. Edwards' alleged interests are those of the general public and will be represented by Counsel for the Public. Accordingly, the Committee correctly concluded his participation in these proceedings would be duplicative, and therefore inconsistent with the prompt and orderly disposition of these proceedings.

5. In sum, the Committee properly denied Mr. Edwards' Petition for Intervention. Mr. Edwards has not, and it cannot be demonstrated that the denial was unlawful, unjust or unreasonable, and accordingly his Motion for Rehearing should be denied.

Respectfully submitted,


Laidlaw Berlin BioPower, LLC

By Its Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,  
PROFESSIONAL ASSOCIATION

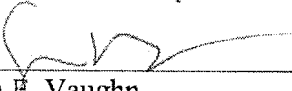
Date: April 1, 2010

By: \_\_\_\_\_

  
Barry Needleman NH Bar No. 9446  
Gregory H. Smith NH Bar No. 2373  
Cathryn E. Vaughn NH Bar No. 16508  
900 Elm Street, P.O. Box 326  
Manchester, New Hampshire 03105  
Telephone (603) 625-6464

**Certificate of Service**

A copy of this Objection to Motion for Rehearing of Jonathan Edwards has been served by electronic mail this 1st day of April, 2010 to each of the parties on the attached service list.

  
\_\_\_\_\_  
Cathryn E. Vaughn

**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**

**APRIL 6, 2010**

**ORDER DENYING MOTION FOR REHEARING OF JONATHAN EDWARDS**

On March 24, 2010, I issued an Order on Pending Motions in this docket. In that Order, I denied the petition of Jonathan Edwards to intervene in this docket. On March 26, 2010, Mr. Edwards filed a Motion for Rehearing. On April 1, 2010, Laidlaw Berlin BioPower, LLC (Applicant) filed an objection to Mr. Edwards's Motion for Rehearing.

In the motion for rehearing, Mr. Edwards essentially repeats the factual arguments that he made in his original petition to intervene. He asserts, that as a citizen and business owner in Berlin and a Public Service Company of New Hampshire (PSNH) ratepayer, he has a substantial interest that may be affected by the proceeding. He relies on R.S.A. 162-H:9, II to support his motion and implies that the sole reason he was denied intervention was due to the appointment of counsel for the public.

In its objection, the Applicant cites N.H. Code of Administrative Regulations, Site 202.29 (e), and asserts that Mr. Edwards fails to demonstrate how the order was unlawful, unjust or unreasonable. The Applicant also repeats its previous arguments that Mr. Edwards does not have a particularized interest that is different than that of the general public. The Applicant also responds by noting that to the extent that Mr. Edwards asserts that he has an expertise that will assist the Subcommittee in determining the proposed facility's effect on the local economy or real estate values, such interest would surely be represented by the City of Berlin and the Coos County Commissioners each of whom have been admitted as intervenors.

The interest claimed by Mr. Edwards is no more than a general interest. Mr. Edwards does not assert that he owns abutting or nearby property that may be affected by the proposed facility. He does not assert that his residence or the operation of his business will be directly affected by the operation of the facility. Essentially his entire claim is based upon the fact that he is a resident of Berlin and owns a business in the city. The lack of more than a general interest in the proceeding was the basis for the denial of Mr. Edwards's petition to intervene. He simply has not presented facts establishing the standing required for an intervenor under R.S.A. 541-A: 32 or N.H. Code of Administrative Regulations, Site 202.11.

The fact that the general interest asserted by Mr. Edwards would be adequately represented by counsel for the public was not the reason for denial of his motion. The appearance of counsel for the public, however, will ensure that the interests of all members of the public, including the citizens and business owners of Berlin, will be appropriately represented. Additionally, as required by law, see, R.S.A. 541-A: 39 and R.S.A. 162-H: 16, IV (b), I allowed the intervention of both the City of Berlin (City) and the Coos County Commissioners (County). The City and the County have a common interest in ensuring the orderly development of the region, economic development, and maintaining the value of real estate in the region. Given the participation of counsel for the public, the City of Berlin and the Coos County Commissioners in this docket, Mr. Edwards's participation is likely to be duplicative and may cause unnecessary delay in the proceedings which, by statute, must conclude within 240 days of the acceptance of the Application. See, R.S.A. 162-H: 6-a, VIII.

"The purpose of a rehearing is to direct attention to matters said to have been overlooked or mistakenly conceived in the original decision, and thus invites reconsideration upon the record upon which that decision rested." Dumais v. State of New Hampshire Personnel Commission, 118 N.H. 309, 311 (1978) (internal quotation and citation omitted). Rehearing may be denied when "good reason" or "good cause" does not exist. Mr. Edwards's motion for rehearing does not present "good reason" or "good cause" for rehearing. Additionally, the motion for rehearing fails to persuade me that the original order denying intervention to Mr. Edwards was unjust, unlawful or unreasonable. Therefore, the Motion for Rehearing of Jonathan Edwards is DENIED.



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Thomas S. Burack, Presiding officer  
Chair, Site Evaluation Committee

THE STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

DE 09-067

CLEAN POWER DEVELOPMENT, LLC

Complaint Against Public Service Company of New Hampshire

Order Commencing Adjudicative Proceeding

O R D E R N O. 25,075

February 24, 2010

On October 8, 2009, an Order of Notice was issued in the instant docket for purposes of conducting an investigation to determine whether an adjudicative proceeding should be commenced to resolve a complaint filed against Public Service Company of New Hampshire (PSNH) by Clean Power Development, LLC (CPD). CPD is a small power producer that proposes to develop a 29 MW biomass fueled facility in Berlin. In its complaint, CPD alleges that PSNH refused to enter into negotiations with CPD to purchase the energy, capacity and renewable energy certificates (RECs) to be generated from the Berlin facility and that such refusal to negotiate is unlawful.

A prehearing conference took place as scheduled on November 3, 2009. Petitions to intervene were filed by Concord Steam Corporation (Concord Steam), ECM-Eastern Construction Management, LLC, Jonathan Edwards, Town of Winchester, City of Berlin, Carbon Action Alliance, New Hampshire Sierra Club and, individually, New Hampshire State Representatives Robert J. Perry, Robin Read, Judith T. Spang, and James U. McClammer. On October 26, 2009, Mr. Perry withdrew his petition to intervene as a state representative and filed a revised petition to intervene as a citizen of Strafford.

Puc 204.05 sets forth a multi-step approach to complaints against utilities. When a complainant's issues are not resolved through the Commission's informal complaint process, it may notify the Commission of its dissatisfaction. If the Commission finds there is a basis for the dispute, it conducts an independent investigation of the matter pursuant to RSA 365:4. If after investigation the Commission finds the complaint warrants further action against a utility, the Commission shall address the matter in an adjudicative proceeding.

We have determined that further inquiry into the legal obligations of PSNH as they relate to CPD is warranted and therefore we are conducting an adjudicative proceeding. We now seek memoranda on the legal issues and provide an additional opportunity for intervention, inasmuch as the legal question in dispute has now become clearer as described below. Depending on the outcome of the legal determination, other steps may be warranted.

**Issues in Dispute.** The complaint involves, as a threshold matter, whether PSNH is obligated to negotiate and contract with CPD for some or all of the output of CPD's biomass facility, which is proposed to be constructed within PSNH's service territory. We are particularly interested in the parties' interpretation of Section 210 of the Public Utilities Regulatory Policies Act of 1978, 16 U.S.C.A. Section 824a-3, RSA Chapter 362-A, the Limited Electrical Energy Producers Act, and any other legal standard that might impose an obligation on PSNH under these circumstances. If we were to conclude that PSNH is obligated to negotiate and contract for some or all of the output of the CPD facility, the next inquiry would be a factual one examining the nature of negotiations that have taken place between CPD and PSNH.

**Petitions to Intervene.** We will address the requests for intervention that are now pending. Any additional petitions to intervene will be addressed in a subsequent order prior to the due date for filing legal memoranda.

Concord Steam is a regulated utility that alleges too that PSNH has failed to engage in negotiations for purchase of the power, capacity and RECs to be created from a biomass facility proposed for Concord. Concord Steam is located in the service territory of Unitil Energy Systems, Inc. Whether PSNH is obligated to negotiate with a power producer located in another utility's service territory is not an issue that needs to be resolved in this docket. We do not find, therefore, that Concord Steam has demonstrated rights, duties, privileges, immunities or other substantial interests that are affected by this proceeding, as required by RSA 541-A: 32 and will deny the petition to intervene. We welcome its input, however, through written statements submitted to the file. Further, if Concord Steam wishes to involve the Commission in its dispute with PSNH, it should file such a complaint; we will not expand this docket to include Concord Steam's issues.

The City of Berlin is the municipality in which CPD's biomass facility would be located and, as such, the financial viability of the plant, among other issues, is of high importance to the City and its residents. The City has demonstrated a cognizable interest affected by this complaint and its petition to intervene will be granted.

The Town of Winchester stated it has been approached by CPD concerning a possible biomass facility within Winchester and finds the "bad behavior on the part of PSNH" to be indicative of the need to move to the final stages of deregulation in the State. While the outcome of this docket will be of interest to the Town of Winchester, we find that it has not met the standards of RSA 541-A:32 and, therefore, we will deny its petition to intervene. We welcome the Town's input regarding the CPD plant, energy policy and deregulation, through written statements submitted to the file.



State Representatives David Borden, Robin Read, Judith Spang and James McClammer sought intervention as PSNH ratepayers and legislators interested in advancement of renewable power, while protecting environmental and rate impacts. We find their policy perspectives to be valuable but not sufficient to constitute the interest required by RSA 541-A:32 to intervene as parties with full rights of participation. We will, therefore, deny their requests to intervene. We welcome their input, however, through written submissions to the file.

Jonathan Edwards, a resident of Berlin, seeks intervention as one directly affected by the complaint. As a resident who may see significant impact to the community's economic and environmental circumstances as result of the proposed plant, we find he has demonstrated a cognizable interest affected by the complaint and will grant his request to intervene. So too has ECM-Eastern Construction Management, LLC, a construction management company that states it has business clients located in the City of Berlin who will benefit from the synergies offered by the CPD facility.

Robert Perry, a resident of Strafford, also states an interest in environmentally sound biomass facilities and his view that the CPD project would be of benefit to the City of Berlin and the state. He further argued that PSNH has not been acting in the public good in its dealings with CPD. We do not find a direct interest affected by the complaint and will deny the request to intervene, though we welcome his views through written statements submitted to the file.

Carbon Action Alliance and the Sierra Club are advocacy organizations that promote the sound development of renewable power, environmental protection and reduction of carbon dioxide emissions but are otherwise not directly affected by the complaint. We find they have not met the standards of RSA 541-A:32 and will deny their requests to intervene. We of course welcome their input on policy issues through written statements submitted to the file.

Each party has the right to have an attorney represent them at their own expense.

**Based upon the foregoing, it is hereby**

**ORDERED**, that, pursuant to N. H. Admin. Rules Puc 203.12, the Commission shall post a copy of this order on its website no later than February 25, 2010 ; and it is

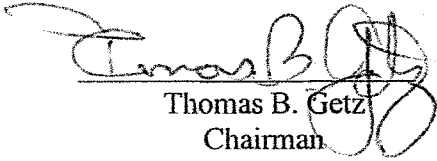
**FURTHER ORDERED**, that the petitions to intervene filed by the City of Berlin, Jonathan Edwards, and ECM-Eastern Construction Management, LLC are GRANTED and the petitions to intervene by Concord Steam, Town of Winchester, State Representatives Borden, Read, Spang and McClammer, Robert Perry, Carbon Action Alliance and Sierra Club are DENIED; and it is

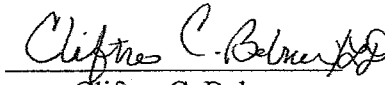
**FURTHER ORDERED**, that, pursuant to N.H. Admin. Rules Puc 203.17, any party seeking to intervene in the proceeding shall submit to the Commission seven copies of a Petition to Intervene with copies sent to CPD and the Office of the Consumer Advocate on or before March 5, 2010, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interest may be affected by the proceeding, as required by N.H. Admin. Rule Puc 203.17 and RSA 541-A:32,I(b); and it is

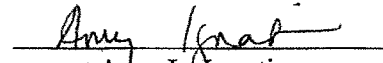
**FURTHER ORDERED**, that any party objecting to a Petition to Intervene make said Objection on or before March 10, 2010; and it is

**FURTHER ORDERED**, that legal memoranda regarding the nature and extent of PSNH's duty to negotiate with and contract for power from CPD shall be due on or before March 26, 2010.

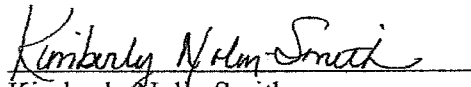
By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of  
February, 2010.

  
Thomas B. Getz  
Chairman

  
Clifton C. Below  
Commissioner

  
Amy L. Ignatius  
Commissioner

Attested by:

  
Kimberly Nolln Smith  
Assistant Secretary

ROBERT BERSAK  
PUBLIC SVC OF NEW HAMPSHIRE  
30 N COMMERCIAL ST  
PO BOX 330  
MANCHESTER NH 03105-0330

BILL GABLER  
CLEAN POWER DEVELOPMENT LLC  
130 PEMBROKE RD STE 100  
CONCORD NH 03301

JAMES MONAHAN  
THE DUPONT GROUP  
114 NORTH MAIN ST STE 401  
CONCORD NH 03301

DAVID BERTRAND  
CITY OF BERLIN  
CITY HALL  
MAIN ST  
BERLIN NH 03570

JOHN GOMARLO  
TOWN OF WINCHESTER  
1 RICHMOND RD  
WINCHESTER NH 03470

OCA LITIGATION  
OCA LITIGATION  
21 SOUTH FRUIT ST STE 18  
CONCORD NH 03301

PETER BLOOMFIELD  
CONCORD STEAM CORPORATION  
PO BOX 2520  
CONCORD NH 03302

ROBERT GRAY  
TOWN OF WINCHESTER  
1 RICHMOND RD  
WINCHESTER NH 03470

DOUGLAS L PATCH  
ORR & RENO PA  
1 EAGLE SQ  
PO BOX 3550  
CONCORD NH 03302-3550

DAVID A BORDEN  
NEW HAMPSHIRE STATE REPRESENT  
PO BOX 167  
NEW CASTLE NH 03854

STEPHEN R HALL  
PSNH  
780 N COMMERCIAL ST  
PO BOX 330  
MANCHESTER NH 03105-0330

ROBERT J PERRY  
88 EVANS MTN RD  
STRAFFORD NH 03884

CATHERINE CORKERY  
NH SIERRA CLUB  
40 N MAIN ST 2ND FLR  
CONCORD NH 03301

MEREDITH A HATFIELD  
OFFICE OF CONSUMER ADVOCATE  
21 SOUTH FRUIT ST STE 18  
CONCORD NH 03301

ROBIN READ  
NEW HAMPSHIRE STATE REPRESENT  
132 ELWYN AVE  
PORTSMOUTH NH 03801

ARTHUR B CUNNINGHAM  
LAW OFFICES OF ARTHUR B CUNNING  
PO BOX 511  
HOPKINTON NH 03229

MELVIN E LISTON  
CLEAN POWER DEVELOPMENT LLC  
130 PEMBROKE ROAD  
SUITE 100  
CONCORD NH 03301

JAMES T RODIER  
ATTORNEY-AT-LAW  
1500 A LAFAYETTE RD NO 112  
PORTSMOUTH NH 03801-5918

GERALD M EATON  
PUBLIC SERVICE COMPANY OF NEW H  
780 N COMMERCIAL ST  
PO BOX 330  
MANCHESTER NH 03105-0330

PATRICK MACQUEEN  
CITY OF BERLIN  
168 MAIN ST  
BERLIN NH 03570

GUSTAVE RUTH  
TOWN OF WINCHESTER  
1 RICHMOND RD  
WINCHESTER NH 03470

STEPHEN R ECKBERG  
OFFICE OF CONSUMER ADVOCATE  
21 SOUTH FRUIT ST STE 18  
CONCORD NH 03301

JAMES U MCCLAMMER JR  
NEW HAMPSHIRE STATE REPRESENT  
391 RIVER RD  
CHARLESTOWN NH 03603

FARRELL S SEILER  
CARBON ACTION ALLIANCE  
PO BOX 693  
LITTLETON NH 03561

02/24/10 Order No. 25,075 issued and forwarded to all parties. Copies given to PUC Staff.

Docket #: 09-067 Printed: February 24, 2010

**FILING INSTRUCTIONS: PURSUANT TO N.H. ADMIN RULE PUC 203.02(a),**

**WITH THE EXCEPTION OF DISCOVERY, FILE 7 COPIES (INCLUDING COVER LETTER) TO:**

DEBRA A HOWLAND  
EXEC DIRECTOR & SECRETARY  
NHPUC  
21 SOUTH FRUIT STREET, SUITE 10  
CONCORD NH 03301-2429

JUDITH T SPANG  
NEW HAMPSHIRE STATE REPRESENT  
55 WISWALL RD  
DURHAM NH 03824

KEN E TRAUM  
OFFICE OF CONSUMER ADVOCATE  
21 SOUTH FRUIT ST STE 18  
CONCORD NH 03301-2429

Docket #: 09-067

Printed: February 24, 2010

RAYMOND S BURTON  
338 RIVER RD  
ATH NH 03740

CHRISTOPHER HODGE  
400 SOUTH ST  
LITTLETON NH 03561

JIM RUBENS  
11 LARAMIE RD  
ETNA NH 03750

JASEN STOCK  
54 PORTSMOUTH ST  
CONCORD NH 03301

RACHEAL STUART  
37 PLEASANT ST  
CONCORD NH 03301

BARBARA TETREALT  
164 MAIN ST  
BERLIN NH 03570

Docket #: 09-067

Printed: February 24, 2010

INTERESTED PARTIES

RECEIVE ORDERS, NOTICES OF HEARINGS ONLY

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

**Docket No. 2006-01**

**ORDER ON PETITIONS TO INTERVENE**

**Re: Community Energy, Inc. and Lempster Wind, LLC. A jurisdictional inquiry regarding the proposal to construct a wind powered generation project in Lempster, Sullivan County, New Hampshire.**

On or about December 1, 2005, the New Hampshire Site Evaluation Committee (Committee) received a letter from the Selectmen of the Town of Lempster (Sullivan County), New Hampshire, requesting "an initial site inspection" of a wind powered electric generation facility proposed by Community Energy, Inc., (CEI) for a prominent ridge line in Lempster. On or about March 30, 2006, the Selectmen of the abutting Town of Washington "joined in the request from the Town of Lempster" and formally requested that the Committee "review the significant wind energy project proposed for a prominent ridge line in Lempster." On or about April 10, 2006, the Committee received a petition to review the project which was signed by 122 registered Lempster voters and certified by the Town Clerk.

Treating the correspondence from the Towns of Lempster and Washington as petitions defined by R.S.A. 162-H:2, X-a and XI ( c), the Committee convened a hearing on June 21, 2006, to determine whether the proposed wind powered electric generation facility should require the issuance of a Certificate of Site and Facility as set forth at R.S.A. 162-H: 1, *et. seq.* Prior to the hearing the Committee received petitions to intervene from the Town of Lempster via Planning Board Member Mark Adams; Richard D. Webb, an abutter; Deborah Stone, a Lempster resident; Elizabeth O'Grady, an abutter; and Jeffrey P. Dwyer, an abutter. Additionally, Theresa Spada and Dorothy Hathaway appeared at the hearing on June 21, 2006, representing those Lempster residents who signed the registered voters' petition and advised the Committee that they wished to jointly appear as intervenors. After due consideration of the petitions to intervene, the Committee determined that each of the petitioners demonstrated that they have substantial interests which may be effected by the proceedings. The Committee further determined that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by granting the petitions to intervene.

Accordingly, the Committee unanimously voted to grant the petitions to intervene filed by the Town of Lempster, Richard D. Webb, Deborah Stone, Elizabeth O'Grady and Jeffrey P. Dwyer, and Theresa Spada and Dorothy Hathaway (jointly).

By **ORDER** of the Site Evaluation Committee, this 23rd day of September, 2006.

New Hampshire Site Evaluation Committee



\_\_\_\_\_  
Michael P. Nolin, Chairman

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

Docket No. 2008-04

**Application of Granite Reliable Power, LLC, for a Certificate of Site and Facility for the  
Granite Reliable Power Windpark in Coos County, N.H.**

**ORDER GRANTING PETITIONS TO INTERVENE  
AND REVISING PROCEDURAL SCHEDULE**

**Background**

On July 15, 2008, Granite Reliable Power, LLC, (Applicant) submitted an Application for a Certificate of Site and Facility for the Granite Reliable Windpark. The Applicant seeks a Certificate of Site and Facility to construct and operate a Renewable Energy Facility in Coos County. The Renewable Energy Facility is proposed to be located in the Town of Dummer and the unincorporated places of Dixville, Ervings Location, Odell and Millsfield, all of which are in Coos County. The Applicant proposes the construction and operation of thirty three (33) wind turbines each having a nameplate capacity of three (3) MW for a total nameplate capacity of ninety-nine (99) MW, along with associated facilities.

On August 14, 2008, the Chairman of the Site Evaluation Committee (SEC) issued an order finding that the Application contained sufficient information to carry out the purposes of R.S.A. 162-H. The Chairman of the SEC, pursuant to R.S.A. 162-H:4, V, designated a Subcommittee to consider the Application.

On August 27, 2008, an Order and Notice of Public Information Hearing, Site Inspection Visit and Pre-Hearing Conference was issued. That Order designated September 18, 2008 as the deadline for the filing of petitions to intervene. The Subcommittee received motions to intervene from Clean Power Development LLC (CPD), Kathlyn J. Keene, Robert A. Keene, Jon Odell, Sonja M. Sheldon, the Appalachian Mountain Club (AMC), Wayne R. Urso, Industrial Wind Action Group (IWAG) represented by Lisa Linowes, and the New Hampshire Wind Energy Association (NHWEA) represented by Farrell S. Seiler.

On September 25, 2008, the Applicant filed a consolidated response addressing the petitions to intervene. Mr. Keene, Ms. Keene and Mr. Odell jointly, and Ms. Linowes replied to the Applicant on September 30 and October 2, 2008, respectively. Subsequently, on October 10, 2008, Ms. Keene and Ms. Linowes also filed motions seeking additional time to conduct discovery.



### Standard for Intervention

The New Hampshire Administrative Procedure Act provides when an administrative agency must allow intervention. See, R.S.A. 541-A: 32, I. The statute also sets forth circumstances under which an administrative agency may allow intervention, but is not required to do so. See, R.S.A. 541-A: 32, II.

R.S.A. 541-A: 32, I, requires that a petition for intervention be granted if:

- (a) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's notice of the hearing, at least 3 days before the hearing;
- (b) The petition states facts demonstrating that the petitioner's rights, duties, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervener under any provision of the law; and
- (c) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

The statute also permits the presiding officer to allow intervention "at any time upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings." R.S.A. 541-A:32, II.

Similarly, New Hampshire Code of Administrative Rules, Site 202.11, requires that a petition to intervene be granted if:

- (1) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's order of notice of the hearing, at least 3 days before the hearing;
- (2) The petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests might be affected by the proceeding or that the petitioner qualifies as an intervener under any provision of law; and
- (3) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

The rules also provide that the presiding officer shall grant one or more late-filed petitions to intervene upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the hearings.

The Administrative Procedure Act and SEC Rules thus provide that intervention is mandatory in those cases where the party can 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. The statute and the rule also provide for permissive intervention in those cases where the presiding officer determines that intervention is in the interests of justice and does not interfere with the prompt and orderly conduct of the proceeding.

Importantly, the Administrative Procedure Act and the SEC's Rules also allow the presiding officer to place limits on an intervenor's participation. See, R.S.A. 541-A: 32, III and N.H. Code of Administrative Rules, Site 202.11 (d). The presiding officer may limit the issues pertaining to a particular intervenor, limit the procedures in which a particular intervenor may participate, or combine intervenors and other parties for the purposes of the proceeding so long as the limitations placed on intervenors do not prevent the intervenor from protecting an interest that formed the basis of intervention.

### **Analysis of Motions to Intervene**

#### **Clean Power Development, LLC**

CPD is involved in the development of renewable energy projects in New Hampshire. CPD has signed an option agreement for the purchase of land in Berlin, New Hampshire. CPD proposes to develop a biomass electric generation facility of approximately 25 MW and it holds a position in the Interconnection Study Queue maintained by the Independent System Operator- New England (ISO). CPD's position in the queue is behind the facility contemplated by the Applicant in this docket and also behind a second project contemplated by the Applicant for a 145.5 MW wind powered generation facility. CPD asserts that its facility, as well as the Applicant's facility, is intended to interconnect with the Coos County Loop transmission system. CPD claims it has a direct financial interest in the outcome of this Application as it pertains to the interconnection of renewable power facilities to the Coos County Loop, which has limited capacity to transmit electricity.

The Applicant does not object to intervention by CPD so long as CPD's role is limited to the issue of the orderly development of the region pursuant to R.S.A. 162-H: 16, IV (b). The Applicant specifically objects to CPD's intervention for the purpose of addressing transmission issues. The Applicant asserts that transmission issues are not properly before the Committee and are more appropriately addressed in other forums. The Applicant also suggests that CDP is a competitor and therefore may seek "competitively sensitive information that will create discovery disputes affecting the prompt and orderly conduct of the proceedings" and asks that, as a limited intervenor, CPD be enjoined from seeking disclosure of sensitive commercial or financial information.

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. Of course, as is the case with any party in any proceeding, the issues a party seeks to pursue are limited by the bounds of relevance. To the extent that a dispute arises regarding

the discovery of commercially sensitive competitive information, such disputes can be addressed through the imposition of appropriate confidentiality requirements if necessary.

### **Sonja Sheldon and Wayne Urso**

Ms. Sonja Sheldon and Mr. Wayne Urso separately filed petitions to intervene. Ms. Sheldon is a resident of the unincorporated area of Millsfield, New Hampshire and asserts that she is an abutter to the project. Mr. Urso indicates that he is a Selectman of the unincorporated place of Millsfield. Additionally, Mr. Urso makes a separate request that every resident of the unincorporated place of Millsfield be added "to your list of Intervenor."

The Applicant indicates that it has no objection to intervention by Ms. Sheldon, Mr. Urso or the residents of the unincorporated place of Millsfield. The Applicant suggests that these individuals be made aware of the role of public counsel in these proceedings and the ability of members of the public to make statements and present information without becoming actual intervenors in the process.

Sonja Sheldon, as an abutting property owner to the project, has a substantial interest in the outcome of these proceedings. Thus, she will be granted full intervention status. Millsfield has a very small population and the impact of a project of the proposed size will have a direct effect on its residents. Therefore, Mr. Urso's petition to intervene will also be granted. However, it should be noted that this status applies to Mr. Urso only and that intervention is not granted to other residents of Millsfield. The deadline for filing petitions to intervene was set for September 18, 2008. Other than Ms. Sheldon and Mr. Urso, no other residents of Millsfield filed a petition to intervene and it would be presumptuous to impose the privileges or obligations of intervention on residents of Millsfield who have not sought to intervene themselves.

It appears that Ms. Sheldon and Mr. Urso have common interests in these proceedings and, therefore, they shall be combined as one party for the purposes of pre-hearing discovery, presentation of evidence and argument, and cross-examination. See, N.H. CODE OF ADMINISTRATIVE REGULATIONS, Site 202.11(d)(3).

### **Kathlyn Keene, Robert A. Keene and John Odell**

Kathlyn Keene and Robert Keene each filed petitions to intervene in these proceedings. It appears that they share the same address in Jefferson, New Hampshire. Additionally, John Odell of Lancaster, New Hampshire filed a similar petition to intervene. The petitions to intervene filed by these three North Country residents assert that they should be granted intervenor status because they are residents of Coos County. Additionally, Mr. Odell asserts that he has engaged in hunting and fishing activities in the general area of the proposed project. Each of these individuals assert that they have a substantial interest because the proposed project would affect the environment of Coos County and have an economic impact on the county.

The Applicant objects to intervention by the Keenes and Mr. Odell, asserting that they do not possess any right, duty, privilege, immunity or other substantial interest in the outcome of these proceedings other than the interest that is generally held by the public and which is represented in these proceedings by Public Counsel. See, R.S.A. 162-H: 9.

Kathlyn Keene, Robert Keene and John Odell have not demonstrated substantial interests which would be affected by the Committee's decision on this Application. Being a resident of the county or having other experience with local boards does not equate to a substantial interest that may be affected by the outcome of the proceeding. There is nothing contained in the petitions of Mr. and Mrs. Keene or Mr. Odell which distinguish them from members of the public who are adequately represented by the appointment of Counsel for the Public by the Attorney General. See, RSA 162-H: 9. Thus, intervention by the Keenes' or Mr. Odell is not required by the Administrative Procedure Act or the Committee's rules.

However, both the Administrative Procedure Act and the Committee's rules permit intervention by any party when the presiding officer determines that "such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings." See, RSA 541-A: 32, II and N.H. CODE OF ADMINISTRATIVE RULES, Site 202.11. In this case, the interests of justice support the intervention of a discrete number of Coos County citizens, such as Kathlyn Keene, Robert Keene and John Odell. However, it should be noted that they will be required to comply strictly with the statutes and rules pertaining to proceedings before the Committee. Furthermore, to ensure that the permissive intervention of these parties will not interfere with the orderly and prompt conduct of these proceedings, their participation will be combined for all purposes; including discovery, presentation of evidence, and conduct of cross-examination. Should it transpire that the participation of Mr. and Mrs. Keene or Mr. Odell interferes with the orderly and prompt conduct of these proceedings, their intervention may be further limited. It is also conceivable that their intervention may be further combined with other parties if circumstances warrant it.

**Appalachian Mountain Club, New Hampshire Wind Energy Association  
and Industrial Wind Action Group**

The Appalachian Mountain Club, the New Hampshire Wind Energy Association and the Industrial Wind Action Group have all filed petitions to intervene in these proceedings. Although they appear to represent different positions with respect to the Application, each uses a similar explanation of its asserted substantial interest in the proceedings.

Each of these organizations states that their representation of others, as well as their interest in issues that may arise during the course of these proceedings, qualify them as having a substantial interest in these proceedings. The Applicant has not objected to the petitions to intervene by either NHWEA or AMC. However, the Applicant has objected to the petition to intervene by IWAG.

Similar to the Keenes and Mr. Odell, these groups have not demonstrated rights, duties, privileges, immunities or other substantial interests which require that they be granted

intervention. Nonetheless, these organizations have shown that allowing their participation may contribute to a thorough exploration of the important issues that the SEC must consider in this case, and it has not been shown by the Applicant that there is a basis for distinguishing among the organizations in a way that would preclude the participation of one organization versus another. Thus, recognizing that the number of parties to this proceeding is reasonably limited and that the participation of various parties will be combined pursuant to the discretion afforded by RSA 541-A: 32, II and N.H. CODE OF ADMINISTRATIVE RULES, Site 202.11(c), these parties will be granted intervention.

Like the Keenes and Mr. Odell, AMC, IWAG and NHWEA will be required to comply strictly with the SEC's rules. It should be noted as well that each of these parties' intervention may be limited or further combined when the various positions with respect to these proceedings are more clearly delineated or if a party acts in a manner that affects the orderly and prompt conduct of the hearings. To determine whether further combination is advisable, Counsel to the SEC, Mr. Iacopino, is directed to consult with the parties and report back to the Subcommittee any recommendations he might have.

#### **Motions to Revise Procedural Schedule**

With respect to the procedural schedule approved on September 26, 2008, Ms. Keene and Ms. Linowes ask that they not be subject to the October 10, 2008 deadline for discovery but that they be given until November 3, 2008 to propound data requests, i.e., the date on which Counsel for the Public must file its data requests. Among other things, Ms. Keene says that she does not have a completed Application in her possession and Ms. Linowes complains that the discovery deadlines are extremely limited.

Inasmuch as this ruling on their petitions to intervene was not issued prior to the October 10, 2008 deadline, Ms. Keene and Ms. Linowes will not be held to that date. However, Ms. Linowes and Ms. Keene failed to attend the prehearing conference in this proceeding at which other parties reached agreement on the procedural schedule, which specifically provided for an earlier filing date by intervenors other than Counsel for the Public and a later filing date by Counsel for the Public, and that later date therefore will not be applied to them. Ms. Keene and Ms. Linowes therefore will have until October 20, 2008 to propound data requests to the Applicant, and the Applicant will have until November 3, 2008 to answer such data requests. To the extent other parties wish to take advantage of the revised date for propounding data requests, they may do so.

#### **BASED UPON THE FOREGOING, IT IS HEREBY ORDERED THAT:**

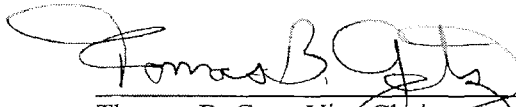
1. The petition of Clean Power Development to participate as a full intervenor is granted;
2. The petitions of Wayne Urso and Sonja Sheldon to intervene are granted, subject to the limitation that they shall be combined for the purposes of discovery, presentation of evidence and cross-examination;
3. The petitions to intervene filed by Kathlyn Keene, Robert A. Keene and John Odell are granted, but are limited in that these individuals shall be considered to be

a combined party for the purposes of discovery, presentation of evidence and cross-examination;

4. The petitions to intervene of the Appalachian Mountain Club, the New Hampshire Wind Energy Association and the Industrial Wind Action Group are granted, subject to any future orders pertaining to limitation of their participation in the proceedings; and it is

**FURTHER ORDERED THAT**, the procedural schedule is revised to permit parties other than Counsel for the Public to propound data requests by October 20, 2008, and to permit the Applicant to respond by November 3, 2008.

By the Site Evaluation Committee of New Hampshire, October 14, 2008.



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Thomas B. Getz, Vice Chairman,  
New Hampshire Site Evaluation Committee  
Presiding Officer