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August 4, 2010

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

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

**SEC Docket No. 2009-02**

Dear Chairman Burack:

On behalf of Clean Power Development, LLC, I am filing with the Committee an original and 18 copies of a Proposed Ruling of Law.

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

Sincerely,

**/s/James T. Rodier**

*James T. Rodier /cap*

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

**PROPOSED RULING OF LAW PURSUANT TO RSA 541-A:31, VI(E)**

NOW COMES Clean Power Development, LLC (“CPD”), and hereby submits to the New Hampshire Site Evaluation Committee (“Committee”) in the above-captioned docket a proposed ruling of law as provided in RSA 541-A:31, VI(e). In support hereof, CPD says as follows:

1. On December 16, 2009, the Applicant in this proceeding, Laidlaw Berlin BioPower, LLC (“the Applicant” or “Laidlaw”) filed an Application with the Committee for a Certificate of Site and Facility in Berlin, New Hampshire.

2. CPD is an intervenor-party in this proceeding that will be “directly affected” by the outcome of this proceeding within the meaning of RSA 541:3.

3. On or about July 9, 2010, Applicant filed a Purchase Power Agreement (“PPA”) between itself and Public Service Company of New Hampshire (“PSNH”) with the Committee, and in doing so, sought a protective order from the Committee preventing disclosure of the entire PPA to the public.

4. On July 26, 2010, PSNH filed the same PPA with the New Hampshire Public Utilities Commission, with some redactions and a Motion for Confidential Treatment, seeking protective treatment of the pricing terms of the PPA, but not the rest of the PPA as Laidlaw sought with this Committee. *See* NHPUC Docket No. DE 10-195.

5. By statute, the Committee can only issue a Certificate of Site and Facility if it makes a finding that the Applicant has adequate financial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the Certificate. RSA 162-H:16, IV(a). The Applicant understands and admits this: “[u]nder RSA 162-H:16, in order to obtain a Certificate of Site and Facility the Applicant must show that it has adequate financial capability to construct and operate the Project in compliance with the terms and conditions of the Certificate.” Testimony of Michael B. Bartoszek at 4.

6. According to the Applicant, securing the PPA is the only way that it can obtain financing for this project:

[t]he ongoing operations of the Project will largely be supported by the cash flows generated from a long-term Power Purchase Agreement (“PPA”) that is being finalized with Public Service Company of New Hampshire (“PSNH”) pursuant to an executed Letter of Intent. **The PPA is an essential element of the Project’s financial viability and will be the dominant positive factor in securing the debt financing.**

Application at 92 (Emphasis added).

7. The Applicant provided the following response to a data request from Public Counsel:

14. Is a PPA necessary in order to make the Project financially viable?  
Response: Yes.

This response should be treated as an admission of the party that provided the data response. *See* Admin. Rule Puc 203.23(i).

8. Pursuant to RSA 362-F:9, the PPA requires approval from the NHPUC before it can become effective. Accordingly, since the Applicant has stated that the “PPA is an essential element of the Project’s financial viability,” and that the PPA is necessary to make the project financially viable, the Applicant will not be able to demonstrate “adequate financial capability” unless and until the PPA is approved by the NHPUC.<sup>1</sup>

9. In its Application, Laidlaw stated that:

Similar to the Committee’s course of action in Granite Reliable Power, LLC (Decision Granting Certificate of Site and Facility With Conditions, July 15, 2009, Docket No. 2008-04), the Applicant would be willing to accept a certificate condition that prohibits the commencement of construction until all construction financing is in place.

Testimony of Michael B. Bartoszek at 8.

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<sup>1</sup> PSNH’s obligation to begin the purchase of the Project’s output under the PPA is contingent upon, *inter alia*, receipt from this Commission of a final, nonappealable decision approving and allowing for full cost recovery of the rates, terms and conditions of the PPA. Petition for Approval of Power Purchase Agreement between Public Service Company of New Hampshire and Laidlaw Berlin BioPower, LLC at ¶5, Docket No. DE 10- 195. Moreover, according to PSNH,

Laidlaw has made application for its project permits to the New Hampshire Site Evaluation Committee. Laidlaw expects to start construction in late 2010, upon approval of the Site Evaluation Committee and the awarding of the necessary permits. It is anticipated that the facility will begin construction in the fourth quarter of 2010 and achieve initial operation during the second quarter of 2013. Direct Testimony of Terrance J. Large at p.3, Docket No. DE 10- 195.

10. Laidlaw's reliance on the Committee's Decision in the Granite Reliable Power, LLC proceeding is misplaced. In that Decision, the Committee found that:

**[t]he Applicant has demonstrated, by a preponderance of the evidence, that is [sic] has the financial capability to finance, construct and operate the project.**

Nonetheless, all parties agree that the current market for financing such projects is challenging. Therefore, the Subcommittee determines that the Applicant must have committed construction financing for the project in place before construction may commence.

Decision, SEC Docket No. 2008-04, at 32 (Emphasis added.)


11. Granite Reliable Power, LLC was able to satisfactorily demonstrate to the Committee that it had the present capability to finance, construct and operate its project, based in large part on the fact that it had "demonstrated its capability to undertake such an endeavor as evidenced by the successful financing of seven wind parks in New York State." Decision, SEC Docket No. 2008-04, at 31-32. In contrast, based upon its Application, Testimony, and data response, Laidlaw Berlin Biopower, LLC has not and can not make any such showing here.

12. It is thus clear as a matter of law that the Applicant cannot and should not be granted a Certificate of Site and Facility unless and until the PPA has approved by the NHPUC. Given this, CPD recommends that the Committee make the following ruling of law:

Based on Laidlaw's own admission, RSA 162-H:16, IV(a) does not provide the Committee with the authority to issue a Certificate of Site and Facility to Laidlaw until it provides the Committee with proof that the Purchase Power Agreement has been approved by the NHPUC.

WHEREFORE, Clean Power Development, LLC ("CPD") respectfully requests this Committee to issue the ruling of law specified above, or, in the alternative, to take such action that it deems just and reasonable.

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

  
s/ James T. Rodier

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Dated: August 4, 2010

Fly ash will be continuously collected from the electrostatic precipitator and mechanical dust collector hoppers using a dry mechanical system. Collected fly ash will be conveyed to a dry storage bin inside of the boiler building. While the design of this system has not yet commenced, it will be sized to provide storage capacity sufficient to accept twelve to twenty four hours of full-load operation. Ash from the elevated storage bin will be processed through a pug mill which mixes dry fly ash with water to produce a wet cake that minimizes dust generation during subsequent handling. The wetted fly ash will then be loaded onto trucks and transported off site for disposal or for beneficial re-use in agricultural land applications.

- 12. Please provide copies of all power purchase agreements ("PPA") with respect to any energy to be produced by the Project.**

**Response:** At this time, Applicant does not have an executed power purchase agreement.

- 13. If the Applicant has not yet entered into a PPA, does the Applicant anticipate entering into a PPA prior to the close of the SEC process? Please provide copies of any correspondence, term sheets, letters of intent or draft agreements regarding sales of power to be produced by the Project.**

**Response:** Applicant anticipates that a PPA will be executed before the SEC process is concluded. Correspondence, term sheets, letters of intent and draft agreements relating to the PPA are highly sensitive and confidential business information the disclosure of which would cause direct harm to the competitive position of the Applicant. Such drafts and related documents are irrelevant and immaterial. Moreover the Applicant is under an obligation to keep this information confidential and cannot release such information at the present time. The Applicant will only make the PPA available if an appropriate confidentiality order or agreement is in place.

- 14. Is a PPA necessary in order to make the Project financially viable?**

**Response:** Yes.

- 15. Please provide forecasts for earnings/losses through 2010.**

**Response:** As discussed in more detail in 22. below, Applicant does not forecast any earnings or losses through 2010 as Applicant remains in the development phase of the Project.

**Certificate Of Service**

I hereby certify that I have provided a copy of this Proposed Ruling of Law to the Parties on the Service List in this proceeding.

**/s/ James T. Rodier**

*James T. Rodier/cap*