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August 10, 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

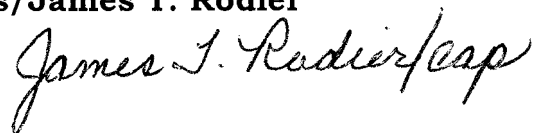
Dear Chairman Burack:

On behalf of Clean Power Development, LLC, I am filing with the Committee an original and 18 copies of an Objection to Applicant's Motion in Limine to Exclude Certain Testimony of Melvin Liston Regarding Fuel Availability in this proceeding.

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

Sincerely,

/s/James T. Rodier

A handwritten signature in black ink that reads "James T. Rodier/cap". The signature is written in a cursive style and is positioned below the typed name.

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

**OBJECTION TO MOTION IN LIMINE TO EXCLUDE CERTAIN TESTIMONY
OF MELVIN LISTON REGARDING FUEL AVAILABILITY**

NOW COMES Clean Power Development, LLC (“CPD”), and hereby objects to Applicant’s Motion in Limine to Exclude Certain Testimony of Melvin Liston Regarding Fuel Availability and in support hereof, CPD says as follows:

Introduction

1. On August 4, 2010, Applicant filed a Motion in Limine to Exclude Certain Testimony of Melvin Liston Regarding Fuel Availability contending that:

Mr. Liston, on behalf of CPD, has submitted testimony in this matter. Significant portions of that testimony contain an **irrelevant discussion about fuel availability predicated on pricing.**

Mr. Liston's entire argument about the availability of LBB's fuel supply is predicated on the errant assumption that price and availability of fuel must be factors that the Committee considers. Mr. Liston's testimony regarding fuel availability and pricing should be excluded because it is beyond CPD's intervention issues (sustainability and transmission) and because it is beyond the scope of the Committee's jurisdiction.

Applicant’s Motion at ¶¶ 3, 4 (Emphasis added).

2. CPD does not contest the Committee’s prior ruling that the Committee does not have authority to regulate competition between Applicant and CPD. Rather, CPD contends that the Committee does have the authority, indeed the responsibility, to consider the issues pertaining to fuel availability predicated on pricing.

The substantial interests of CPD

3. The Committee has ruled that the substantial interests of CPD include the issue of “the sustainability of biomass fuel in the northern forest.” More specifically, the Committee ruled that:

CPD’s Berlin facility will be purchasing biomass, at least in part, from producers in the Northern Forest and, therefore, sustaining the environmental health of that forest is a legitimate interest for CPD to have in this proceeding. Sustaining the health of the Northern Forest is also within the jurisdictional charge of the Committee.

Order at 3 (June 9, 2010).

4. CPD does not intend to litigate business issues between two potential competitors. CPD only intends to prove that the impact of the Applicant's project on the Northern Forest is unsustainable because there is not enough fuel supply available. This is consistent with CPD's substantial interests and is consistent with the scope of the Committee's jurisdiction.

Applicant's Testimony on the Connection between Fuel Price and Availability

5. In its prefiled testimony, Applicant states that:

...there will be an adequate and sustainable fuel supply for the Project. The Project will utilize approximately 700,000 – 750,000 wet tons of biomass annually. We asked LandVest, Inc. of Concord, New Hampshire to conduct a study to assess the availability of a sustainable supply of fiber within 100 miles of Berlin. LandVest completed their study in December 2009 and the analysis indicated that such supply unquestionably exists.

Testimony of Louis T. Bravakis (December 15, 2009) at 8 (Emphasis added).

6. The LandVest referred to by Mr. Bravakis found that:

...historical data support an estimate that 710,000 tons of biomass in excess of current demand is available and that it appears to be entirely feasible that significant additional volume is **sustainably available in a more competitive situation.**

Executive Summary- LandVest Report – Biomass Supply Study at iii (Emphasis added).

7. Mr. Bravakis cogently and accurately summarized the relationship between fuel price and availability in the following manner:

To what extent is availability a function of price? The two are very closely related.

Supplemental Testimony of Louis T. Bravakis (July 9, 2010) at 1 (Emphasis added).

Conclusion

8. Applicant has contended that Mr. Liston's testimony contain[s] an "irrelevant discussion about fuel availability predicated on pricing." However, Applicant's contention is directly contradicted by its own testimony that availability is a function of price.

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

A. Deny Applicant's Motion in Limine to Exclude Certain Testimony of Melvin Liston Regarding Fuel Availability; and

B. Grant such other and further relief as may be just and equitable.

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

James T. Rodier/cap
/s/ James T. Rodier

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603-559-9987

Dated: August 10, 2010

Certificate Of Service

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

/s/ James T. Rodier