

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

August 26, 2010

**ORDER DENYING MOTION TO INTERVENE**  
**FILED BY INDUSTRIAL CONSULTANTS INC.**

**Background**

On December 16, 2009, Laidlaw Berlin BioPower, LLC (Applicant) filed an Application for a Certificate of Site and Facility (Application). The Applicant proposes to site, construct and operate a renewable energy facility (Facility) in Berlin, Coos County, New Hampshire. The Applicant proposes to convert and upgrade a pre-existing industrial site to develop a biomass fueled energy generating facility nominally capable of generating 70 megawatts (MW) of electric power. The Application in this docket was deemed administratively complete on January 26, 2010, and a Subcommittee of the Site Evaluation Committee was designated to review the Application pursuant to RSA 162-H:6-a. Adjudicatory hearings are scheduled to commence in this docket today, August 23, 2010.

On Friday, August 20, 2010, Industrial Consultants Inc. filed a motion to intervene in these proceedings. Industrial Consultants Inc. identifies itself as a developer of state of the art poly-generating facilities that use natural resources in the most efficient manner. In its motion Industrial Consultant's Inc. asserts that it can produce electricity and heat far more efficiently than the Applicant by using its own designs and methods. In the motion Industrial Consultants claim that they have an interest in the proceedings because construction of the Applicant's facility will use the available wood supply and prohibit Industrial Consultants from building a plant in the area.

The Applicant filed an objection on August 23, 2010. The objection claims that the motion is untimely and fails to assert facts demonstrating that Industrial Consultants Inc. has any right, duty, privilege or other substantial interest that might be affected by the proceeding. The Applicant asserts that a competitive interest or an interest in selling a product to the Applicant is not the type of interest required by the statute to allow intervention.

## Analysis

On February 9, 2010, the Committee issued an Order and Notice of Prehearing Conference, Site Visit and Public Information Hearing. The February 9, 2010, order required all motions to intervene in this docket to be filed by March 5, 2010. New Hampshire Code of Administrative Rules Site 202.11 (a) permits the Committee to schedule a deadline for the filing of intervention motions. However, R.S.A. 541-A: 32 requires that the Committee give consideration to any motion to intervene filed at least three days before the hearing. Although this motion could be rejected as being untimely, I will nonetheless consider the substance of the motion and whether intervention would impair the prompt and orderly conduct of these proceedings.

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. Similarly, the Committee's 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 motion filed by Industrial Consultants Inc. does not meet this standard

Industrial Consultants makes unsubstantiated claims about its "state of the art poly generating facilities" without providing any description of the types of facilities that they develop and operate. The motion also fails to describe any actions taken by Industrial Consultants to conceptualize and plan the construction of an energy facility anywhere in the State of New Hampshire. The motion contains no description of any efforts by Industrial Consultants to undertake system feasibility studies through ISO-New England or to do any pre-construction planning whatsoever. Similarly, the motion does not contain a reliable description of the financial, managerial or technical capabilities of Industrial Consultants. In short, the interests asserted by Industrial Consultants in this docket are speculative interests at best. Therefore, the motion to intervene must be denied.

Even if Industrial Consultants Inc. asserted more than speculative interests, the motion must be denied because intervention at this point in time would impair the orderly conduct of the proceedings. The parties in this case have completed discovery and have participated in two pretrial conferences and two technical sessions. All of the parties have filed prefiled testimony and supplements based upon the discovery conducted to date. The addition of a new party, especially a party that claims particular technical expertise and asserts that it can provide a better facility, would require vast amounts of new discovery. In light of the speculative nature of Industrial Consultants claims, permitting intervention would clearly impair the prompt and orderly conduct of these proceedings.

Therefore, the Motion to Intervene will be denied.

It is hereby ordered that the Motion to Intervene by Industrial Consultants Inc., is Denied.

So Ordered.

August 26, 2010

  
Thomas S. Burack, Chair  
N.H. Site Evaluation Committee