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STATE OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

August 27, 2010 - 8:37 a.m.
Public Utilities Commission
21 South Fruit Street
Suite 10
Concord, New Hampshire

DAY 5
MORNING SESSION ONLY

PUBLIC SESSION
(Redacted for public use)

RE: Application of Laidlaw Berlin
BioPower for a Certificate of
Site and Facility for a 70 MW
Biomass Fueled Energy Facility
in Berlin, Coos County, New
Hampshire. (Hearing on the merits)

PRESENT:
Thomas Burack, Cmsr.
(Presiding as Chairman)

SITE EVALUATION SUBCOMMITTEE:
Dept. of Environmental Services

Amy Ignatius, Cmsr.
William Janelle, Asst. Dir.
Elizabeth Muzzey, Dir.
Harry Stewart, Dir.
Craig Wright, Asst. Dir.
Donald Kent, Administrator
Christopher Northrop
Michael Harrington

Public Utilities Commission
Dept. of Transportation
N.H. Div. of Historical Res.
Water Division - DES
Air Resources Division - DES
Dept. of Resources & Econ. Dev.
Office of Energy & Planning
Public Utilities Commission

* * *

Counsel for the Committee: Michael J. Iacopino, Esq.

COURT REPORTER: STEVEN E. PATNAUDE, LCR No. 52

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ALSO PRESENT:

REPTG. THE APPLICANT:
(Laidlaw Berlin BioPower)

Barry Needleman, Esq.
Gregory H. Smith, Esq.
Cathryn E. Vaughn, Esq.
(McLane, Graf, Raulerson
& Middleton)

COUNSEL FOR THE PUBLIC:

K. Allen Brooks, Esq.
Peter C. L. Roth, Esq.
Senior Asst. Attys. General
N.H. Dept. of Justice

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P R O C E E D I N G

1
2 CHAIRMAN BURACK: Good morning. I'm
3 going to call to order today's session of the New
4 Hampshire Site Evaluation Committee in proceeding RSA --
5 I'm sorry, proceeding for the Site Evaluation Committee
6 Docket Number 2009-02, Application of Laidlaw Berlin
7 BioPower, LLC, for a Certificate of Site and Facility for
8 a 70 megawatt biomass fueled energy facility in Berlin,
9 Coos County, New Hampshire.

10 I first understand that Counsel for the
11 Applicant has a motion to make?

12 MR. NEEDLEMAN: I do, yes. Thank you,
13 Mr. Chair. We provided another document, which is a
14 confidential document. It is the letter agreement with
15 Homeland Renewable Energy. Public Counsel requested that
16 we provide this document. Like other documents in this
17 case, we're seeking confidential treatment under RSA 91-A,
18 because the letter agreement contains confidential,
19 commercial and financial information. And, therefore, we
20 believe it's exempt from public disclosure under 91-A:5,
21 IV, and ask that you issue an order similar to the orders
22 that have been issued for other similar documents.

23 CHAIRMAN BURACK: Thank you, Attorney
24 Needleman. I understand that, again, as you mentioned,

1 Counsel for the Public has requested that this document be
2 entered into the record. Obviously, you have no
3 objection. I understand that there have been assents
4 received from some of the parties, but you, because of
5 timing, were not able, apparently, to contact all the
6 parties. Nevertheless, based on the argument you have
7 made and the nature of the document, I will grant your
8 motion and a written order will reflect that the.

9 MR. IACOPINO: And, that's been marked
10 as "Applicant's Exhibit 66" confidential. And, I have
11 copies for the Committee here.

12 (The document, as described, was
13 herewith marked as Applicant Exhibit 66
14 (confidential) for identification.)

15 CHAIRMAN BURACK: And, again, the title
16 of the document is?

17 MR. IACOPINO: Homeland -- I'm sorry.
18 The title of the document is a letter of August 18th,
19 2010, to Richard Cyr, C-y-r, of PJPD Holdings, LLC, from
20 Rupert Fraser, F-r-a-s-e-r, CEO, Homeland Renewable
21 Energy, Inc. And, it appears to be signed by Mr. Cyr on
22 August 19, 2010. And, for members of the Committee, this
23 is a confidential document that should not be publicly
24 disclosed. It's Exhibit Number 66.

1 MR. HARRINGTON: And, this is
2 confidential, Mr. Chairman?

3 CHAIRMAN BURACK: That's correct.

4 MR. IACOPINO: Has everybody got one?
5 We have one extra this time. I'm going to give that back
6 to Ms. Vaughn.

7 CHAIRMAN BURACK: For the benefit, in
8 particular, of any members of the public who happen to be
9 here this morning, when we recessed last night, at
10 approximately 5:15, we came out of nonpublic session and
11 sealed the record on -- took a vote to seal the record on
12 that portion of the nonpublic session. We have made some
13 progress in making our way through a nonpublic session
14 consideration of the confidential documents in this
15 proceeding, but we have not concluded that process. So,
16 in a moment, we will have a motion from a member of the
17 Subcommittee to go into nonpublic session for the purpose
18 of consideration and of the content of various
19 confidential documents, which will be identified in the
20 upcoming motion. Assuming that that motion is approved by
21 the Committee -- or, the Subcommittee, which will require
22 a voice vote, I will then ask any members of the public
23 who are present to leave the room. And, we will, as soon
24 as we have completed the nonpublic session, we will come

1 out of it. We will then, most likely, take a vote to seal
2 the record of that nonpublic session. We will then return
3 to public session, at which time we will take up the
4 introduction of the case in chief of Clean Power
5 Development, which will include two witnesses, Mr. Liston
6 and Mr. Gabler. Following that, I will entertain brief
7 closing arguments from the parties. We will resolve any
8 outstanding motions and verifications of exhibits. And, I
9 will provide an opportunity for brief public comment,
10 again, from any members of the public who are here. It is
11 my goal to have us complete the evidentiary portion of
12 this proceeding by the close of business today.

13 Any other housekeeping matters at this
14 time from the parties who are present?

15 (No verbal response)

16 CHAIRMAN BURACK: If not, I will ask,
17 Commissioner Ignatius, if you have a motion for us?

18 CMSR. IGNATIUS: I do, Mr. Chairman.
19 Again, I move that we enter into nonpublic session for the
20 purpose of discussing the content of the material deemed
21 confidential under RSA 91-A:5. The documents in question
22 are the following: Applicant Exhibit 38, Development
23 Agreement documents; Applicant Exhibit 38A, the First
24 Amendment to the Development Agreement and Lease;

1 Applicant Exhibit 39, the Power Purchase Agreement;
2 Applicant Exhibit 41, the Hancock comfort letter;
3 Applicant Exhibit 42, the Keybanc comfort letter;
4 Applicant Exhibit 43, the Laidlaw Pro Forma; Applicant
5 Exhibit 61, the Pre-EPC Contract; Applicant Exhibit 62,
6 the Cousineau Draft Fuel Supply Agreement, in unredacted
7 form; and Applicant Exhibit 66, the letter agreement
8 regarding Homeland Renewable Energy, Inc.

9 CHAIRMAN BURACK: Thank you. Is there a
10 second to that motion?

11 MR. NORTHROP: Mr. Chairman, I second
12 the motion.

13 CHAIRMAN BURACK: Thank you,
14 Mr. Northrop. This motion requires a roll call vote.
15 And, I will ask counsel if he would please call the role
16 of the Subcommittee.

17 MR. IACOPINO: Thank you, Mr. Chairman.
18 Dr. Kent?

19 DR. KENT: Yes.

20 MR. IACOPINO: Mr. Wright?

21 MR. WRIGHT: Yes.

22 MR. IACOPINO: Ms. Muzzey?

23 DIR. MUZZEY: Yes.

24 MR. IACOPINO: Mr. Stewart?

1 DIR. STEWART: Yes.

2 MR. IACOPINO: Mr. Northrop?

3 MR. NORTHROP: Yes.

4 MR. IACOPINO: Mr. Janelle?

5 MR. JANELLE: Yes.

6 MR. IACOPINO: Mr. Harrington?

7 MR. HARRINGTON: Yes.

8 MR. IACOPINO: Commissioner Ignatius?

9 CMSR. IGNATIUS: Yes.

10 MR. IACOPINO: Mr. Chairman?

11 CHAIRMAN BURACK: Yes.

12 MR. IACOPINO: It's unanimous. The
13 motion carries.

14 CHAIRMAN BURACK: Thank you. The motion
15 being carried unanimously, we will now enter into
16 nonpublic session. And, I would ask any members of the
17 public who are here if they would please excuse
18 themselves. And, we will notify members of the public as
19 soon as we leave nonpublic session.

20 (Pages 10 through 192 regarding the
21 confidential nonpublic session are
22 contained under separate cover
23 designated as "HIGHLY CONFIDENTIAL".)

24

1 (Hearing resumes on the public portion
2 of the record.)

3 CHAIRMAN BURACK: So we are now
4 returning to public session, and I would now turn to
5 Commissioner Ignatius. Do you have a motion for us?

6 CMSR. IGNATIUS: I do. Mr. Chairman, I
7 move that we seal the transcript of the non-public session
8 as it relates to the confidential documents and discussion
9 of confidential documents, because those documents have
10 been found to be exempt from public disclosure pursuant to
11 90-A -- I'm sorry -- R.S.A. 91-A:5, IV, as confidential
12 commercial and financial documents, but that those items
13 discussed which dealt with non-confidential matters not be
14 sealed.

15 CHAIRMAN BURACK: Thank you. Is there a
16 second to that motion?

17 MR. NORTHROP: Mr. Chairman, I second
18 the motion.

19 CHAIRMAN BURACK: Thank you,
20 Mr. Northrop.

21 We will now hold a roll-call vote on
22 this motion. And I would note that it requires a
23 two-thirds vote to seal the transcript.

24 MR. IACOPINO: Dr. Kent.

1 DR. KENT: Yes.

2 MR. IACOPINO: Mr. Wright.

3 MR. WRIGHT: Yes.

4 MR. IACOPINO: Director Muzzey.

5 DIR. MUZZEY: Yes.

6 MR. IACOPINO: Mr. Stewart.

7 DIR. STEWART: Yes.

8 MR. IACOPINO: Mr. Northrop.

9 MR. NORTHROP: Yes.

10 MR. IACOPINO: Mr. Janelle.

11 MR. JANELLE: Yes.

12 MR. IACOPINO: Mr. Harrington.

13 MR. HARRINGTON: Yes.

14 MR. IACOPINO: Commissioner Ignatius.

15 CMSR. IGNAGTIUS: Yes.

16 MR. IACOPINO: Mr. Chairman.

17 CHAIRMAN BURACK: Yes.

18 MR. IACOPINO: It's unanimous.

19 CHAIRMAN BURACK: Thank you. The vote

20 being unanimous, we do have more than two thirds of the

21 Committee having voted yes, so the transcript will be

22 sealed. And, again, we are -- it will be sealed subject

23 to the terms of the motion -- that is, there is certain

24 information that was discussed relating to certain, I

1 believe it was just one, but possibly more non-public
2 documents -- or public documents during the non-public
3 session. And we will make those portions of the document
4 that are, in fact, public documents, we will make them
5 part of the public record, as we will also make part of
6 the public record that portion of the transcript of this
7 now-concluded non-public session that relates to those
8 public documents.

9 The hour is now 1:15. I would ask the
10 parties whether they think we could be back here in 45
11 minutes.

12 MR. NEEDLEMAN: Yes.

13 MR. ROTH: Yes.

14 CHAIRMAN BURACK: Is that feasible?
15 Very well. Thank you. We will come back here at 2:00
16 then, at which time we will turn to the case in chief of
17 Clean Power Development. Thank you.

18 (Whereupon the Day 5 Morning Session
19 recessed for lunch at 1:15 p.m. The
20 Day 5 Afternoon Session to resume under
21 separate cover so designated.)
22
23
24

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