



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

OFFICES IN:
MANCHESTER
CONCORD
PORTSMOUTH
WOBURN, MA

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

September 16, 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:

I enclose an original and eighteen (18) copies of the Applicant Laidlaw Berlin BioPower, LLC's Post-Hearing Memorandum.

If you have any questions, please contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Cathryn E. Vaughn". The signature is fluid and cursive, with a large initial "C" and a long, sweeping tail.

Cathryn E. Vaughn

Enclosure

cc: Service List

STATE OF NEW HAMPSHIRE
BEFORE THE
ENERGY FACILITY SITE EVALUATION COMMITTEE

APPLICATION OF LAIDLAW BERLIN BIOPOWER, LLC FOR A CERTIFICATE OF SITE
AND FACILITY

DOCKET NO. SEC 2009-02

**APPLICANT LAIDLAW BERLIN BIOPOWER, LLC'S POST-HEARING
MEMORANDUM**

Applicant Laidlaw Berlin BioPower, LLC ("LBB"), respectfully submits this Post-Hearing Memorandum.

RSA 162-H Requirements

RSA 162-H specifies the criteria an applicant must meet to receive a Certificate of Site and Facility. Specifically, RSA 162-H:16(IV) requires the Committee to consider four factors.

- (a) Applicant has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the certificate.
- (b) Will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal governing bodies.
- (c) Will not have an unreasonably adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety.
- (d) Operation is consistent with the State energy policy established in RSA 378:37.

LBB will not restate here all the evidence it presented to satisfy each of those criteria.

The Committee explored these issues in depth and the record speaks for itself pertaining to each of these requirements. LBB's Application, all of its pre-filed testimony, the responses to cross-examination and the Committee's questions during the hearing, as well as LBB's exhibits and

the record as a whole, all clearly demonstrate that LBB has satisfied its burden of proof with respect to each of these criteria.

Sustainability Conditions

LBB and its fuel supplier, Cousineau Forest Products, worked with Counsel for the Public and the State Forester to develop voluntary sustainability conditions for fuel procurement. These parties met, exchanged draft proposals and ultimately reached consensus on conditions that would ensure LBB procures wood in a sustainable manner while not adversely affecting LBB's ability to obtain adequate fuel supplies or disrupt the complex wood supply markets in the region. Counsel for the Public and LBB stipulated that the Sustainability Conditions may be included as conditions of a Certificate of Site and Facility. Laidlaw Exhibit 76.

These conditions not only ensure that LBB will procure fuel sustainably, but they will also provide fuel suppliers with incentives and resources to employ sustainable logging practices. Similarly, pursuant to the terms of the Sustainability Conditions, LBB will institute a scholarship program and a fund that will assist loggers to become licensed. An increase in trained and licensed foresters will help foster sustainable forestry and logging practices.

LBB also stipulated with the City of Berlin that to the extent feasible and economically reasonable, LBB would prioritize the purchase of local wood. Berlin Exhibit 5. This provision of the stipulation with the City has been incorporated into LBB's Biomass Fuel Supply Agreement with Cousineau.

The Sustainability Conditions and the stipulation with the City represent the culmination of an extensive process that involved input from a wide range of stakeholders. The Applicant worked diligently to create a set of conditions that would promote and enhance sustainable forestry practices while carefully balancing an array of competing interests. Accordingly, LBB

requests that the Committee include in the Certificate, as presented, the Sustainability Conditions and the preference for local wood included in the stipulation with the City.

Orderly Regional Development

The Applicant must demonstrate that a proposed facility “[w]ill not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal governing bodies.” RSA 162-H:16(IV)(b). The representative of the City of Berlin testified that the project is consistent with orderly regional development. Day 3-PM Session at 137:13-19. Likewise, the Coos County Commissioners, as an intervenor, expressed a similar view. Laidlaw Exhibit 31. In addition, Berlin Mayor Paul Grenier, Executive Councilor Raymond Burton and the Androscoggin Valley Economic Development Corporation all offered comments consistent with those views. Taken together with the Applicant’s testimony, LBB submits it has met its burden on this issue and that the record as a whole unequivocally supports a finding that this project is not only consistent with order regional development, but it will significantly promote such development.

It has been suggested that the Committee, in assessing this issue, must somehow consider the affect that the proposed facility will have on potential competitors in the marketplace. Those espousing this argument have offered no legal authority for that position, nor have they pointed to anything in RSA 162-H, or prior Committee decisions, to support such a view. In fact, regulating competition in the free market is simply not within the Committee’s purview under the statute.

When assessing the issue of orderly regional development, the Committee typically looks to how the facility will affect local land use concerns, particularly looking to how the facility fits into the local zoning and/or development scheme. *See* AES Londonderry, Docket No. 2004-01

(noting project was consistent with the town's Master Plan and town's development goals). The Committee has also referenced positive economic impacts when determining if a proposed facility fits into the local development scheme. However, as far as LBB can tell, the Committee has not based any of its determinations on competitive factors, nor has it indicated that it must take these competitive impacts into consideration. Essentially, where an economic impact is a subpart of the impact on regional development, it has been considered as a part of the Committee's review of land use concerns and the local zoning and/or development scheme. Finally, when the town or city in which a project is to be located supports the project and reaches agreement with the applicant regarding conditions for its construction and operations, that appears to be a very persuasive factor in this context. *See e.g.* Community Energy Inc. and Lempster Wind, Docket No. 2006-01 (relying on agreement between town and applicant regarding visual impacts, fire protection, emergency response and decommissioning). In none of the decisions reviewed by LBB has the Committee injected itself into the overall market economy of a region and determined which projects should be permitted to exist based on speculative impacts¹ on existing or other proposed competitors.

As such, CPD's view that orderly regional development is defined as "protection of existing projects and economic interests" is wrong. *See also* Order on Clean Power Development's Contested Motion for Clarification and/or Rehearing at 3 ("[T]he Committee has no authority to regulate competition, or any of its components such as pricing, that may exist between competing facilities. ... "The fact that one electric producer may be able to command a

¹ The record contains no studies or third party assessments to support the assertion that the proposed project would have an adverse affect in the competitive marketplace. CPD could not point to any such information, and it acknowledged that when projects like the PSNH Schiller Station were built, it could point to no studies showing that project had the type of affect that some have speculated the Laidlaw project would have here on competitors.

better fuel price or develop a better output pricing model than another is not within the regulatory authority of the Committee.”) .

Conclusion

The record contains substantial evidence with respect to each of the criteria under RSA 162-H:16(IV) such that LBB has more than met its burden of proof with respect to each of these requirements. Accordingly, LBB respectfully requests that the Committee issue to it a Certificate of Site and Facility.

Respectfully submitted,

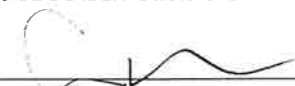
Laidlaw Berlin BioPower, LLC

By Its Attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

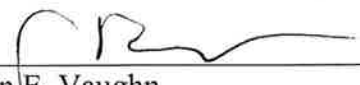
Date: September 16, 2010

By: _____


Barry Needleman
Gregory H. Smith
Cathryn E. Vaughn
Eleven South Main Street
Concord, NH 03301
Telephone (603) 226-0400

Certificate of Service

I hereby certify that on this 16th day of September, 2010, I served the foregoing Post-Hearing Memorandum by sending copies via electronic mail to the service list for this matter.



Cathryn E. Vaughn