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January 8, 2010

Thomas S. Burack, Commissioner
NH Department of Environmental Services
Chairman, NH Site Evaluation Committee
29 Hazen Drive
Concord, NH 03302-0095

SEC DOCKET NO. 2009-03

Dear Chairman Burack:

On behalf of Clean Power Development, LLC, I am filing with the NH Site Evaluation Committee an original and 18 copies of a Written Response to the Petitions filed by Mike Laflamme of Berlin, NH and Howard Jones of Gorham, NH requesting the New Hampshire Site Evaluation Committee to undertake a review of the Clean Power Development, LLC Berlin Project.

Mel Liston and Bill Gabler will be available at the hearing scheduled on January 29 to attest to the accuracy of all facts asserted in the Written Response and/or to answer under oath any questions the Committee may have.

Please let me know if you have any questions.

Sincerely,

James T. Rodier/cap

Copies to:
Michael J. Iacopino, Esq.
City of Berlin
Mike Laflamme
Howard Jones

STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

SEC DOCKET NO. 2009-03

**Petitions filed by Mike Laflamme and Howard Jones
for the New Hampshire Site Evaluation Committee to Rule on the
Clean Power Development, LLC Berlin Project**

RESPONSE OF CLEAN POWER DEVELOPMENT, LLC

NOW COMES Clean Power Development, LLC (“CPD”), by and through its attorney, and hereby responds to the Petitions filed by Mike Laflamme of Berlin, New Hampshire and Howard Jones of Gorham, New Hampshire requesting the New Hampshire Site Evaluation Committee to undertake a review of the Clean Power Development, LLC Berlin Project (hereinafter, the “CPD Facility”) and in support hereof, CPD says as follows:

THE LAFLAMME AND JONES PETITIONS

1. On or about November 25, 2009, identical Petitions by Mike Laflamme of Berlin, New Hampshire and Howard Jones of Gorham, New Hampshire were filed with the Site Evaluation Committee requesting the Committee to “commence a proceeding to determine whether the proposed Clean Power Development, LLC biomass plant in Berlin, New Hampshire should receive a full review by the Site Evaluation Committee.”

2. The complete text of the Petitions is as follows:

Pursuant to New Hampshire law (RSA 162-H), we, the undersigned registered voters from [Berlin] Gorham, New Hampshire, hereby request the New Hampshire Site Evaluation Committee commence a proceeding to determine whether the proposed Clean Power Development, LLC biomass plant in Berlin, New Hampshire should receive a full review from the Site Evaluation Committee. The Clean Power proposal is a 29 megawatt project – just one megawatt below the threshold level requiring Site Evaluation Committee review – and Clean Power therefore has not sought a Certificate from the Site Evaluation Committee. We believe that the Site Evaluation Committee should nevertheless take jurisdiction over this project to determine whether it is consistent with State energy policy and whether it will have a significant impact upon the local and State environment and the orderly development of the region.

3. In the cover letter conveying the Petitions to the Committee, the Petitioners made the following assertion in support of the Petition:

... while one project will be thoroughly examined by the Site Evaluation Committee¹, the other has apparently been designed to fall just short of the Committee's jurisdiction. Concerned citizens will thus have confidence that one project will receive appropriate scrutiny, but will have little information by which to evaluate the merits of the other.

4. The crux of the Petitions appears to be that the CPD Facility "has apparently been designed to fall just short of the Committee's jurisdiction" and, without an SEC review, Petitioners "will have little information by which to evaluate the merits of the" CPD Facility.

5. Additionally, the Petitioners' cover letter expresses concern regarding:

...several issues associated with the Clean Power project that have received scant attention but which would receive proper airing through the SEC process. For instance, the proposed plant would require heavy trucks to travel through neighborhoods on roads not designed for such traffic. The plan envisions several ancillary projects such as the cultivation of algae in wastewater treatment discharge that would be fed into the plant for combustion. The plant's cooling towers would also use wastewater treatment discharge. It is also impossible for the community to gauge the financial viability of a project like this and therefore evaluate their prospects for sustained operation.

6. On January 5, 2010, the Site Evaluation Committee issued an Order of Notice of Public Hearing and Meeting, and required CPD to file a written response by January 19, 2010.

DESCRIPTION AND FEATURES OF THE CLEAN POWER DEVELOPMENT, LLC BERLIN PROJECT

7. Clean Power Development, LLC is a New Hampshire limited liability company that focuses on the development of renewable and sustainable wood-fueled biomass-energy facilities. CPD's offices are located at 130 Pembroke Road, Suite 100, Concord, New Hampshire. CPD's President is Mel Liston.² Mr. Liston resides at 266 Evans Mountain Road in Strafford New Hampshire.³

¹ On December 16, 2009, Laidlaw Berlin Biopower, LLC filed an Application with the Site Evaluation Committee for a Certificate of Site and Facility in Berlin, New Hampshire.

² Mel Liston has over 38 years of experience working in the steam and power industry. For the last 27, he's been a developer and consultant working on numerous biomass and alternative energy projects throughout New Hampshire. While serving as president of Pinetree Power Development Corporation, Mel advanced biomass power in New Hampshire, constructing Bethlehem's 15MW biomass plant and Tamworth's 22MW biomass plant. His project portfolio also includes the Timco and BioEnergy cogeneration facilities, where he served as construction manager and startup engineer.

³ The actual owner of the so-called "Laidlaw Berlin Biopower" site and facility is PJPD, LLC, a Delaware limited liability company. There is no information on PJPD, the owner of both the site and facility, in the Application recently submitted to the Site Evaluation Committee.

8. The CPD Facility to be located in Berlin, New Hampshire will generate electricity and steam through the combustion of whole tree chips supplied through local markets. The CPD Facility will be capable of generating not more than 29Mw gross output of electricity. Normal net generation will usually be in the 15 to 22mw gross output range based upon thermal load during combined heat and power operation. The CPD Facility will operate with an efficiency of 60% or higher through a combined heat and power design.

9. The site of the CPD Facility is 20 Shelby Street in Berlin, on land adjacent to the City of Berlin Waste Water Treatment Plant. The site, which is identified as Map 116, Lot 23, was purchased from the City of Berlin on December 21, 2009. The site is a “greenfield,” i.e., no other facilities have previously existed on this location.⁴

10. Although a portion of the biomass supply for the CPD Facility is expected to come from low-grade whole logs, these logs will be stored, and chipped off Site. The Site is significantly away from the center of Berlin with no nearby wooden structure buildings. This eliminates or mitigates the concern about dust or fire hazard related to outside wood fuel storage. Location of this project away from the center of Berlin, and with a new dedicated truck route, means there will be no adverse truck delivery related issues.⁵

11. The CPD Facility will use 340,000 tons of biomass per year on a long term sustainable basis within a 30 mile transport radius.⁶ This demand on the regional biomass supply has been carefully calculated so as not to jeopardize the financial viability of existing users. The original plan for the CPD Facility, as originally filed with ISO as queue position #229, was for a 45 MW plant. However, when the biomass availability study performed by Innovative Natural Resource Solutions, LLC concluded that there was a maximum of 30 MW of fuel available at a reasonable cost on a sustainable basis, CPD downsized the project accordingly, and

⁴The Laidlaw Berlin Biopower project is located on a Brownfield subject to the requirements of RSA 147-F.

⁵ CPD’s plans provide for the creation of a new intersection and roadway engineered for truck traffic and specifically designed to avoid directing truck traffic through neighborhoods. This design was completely vetted by both the Berlin planning and zoning boards and overwhelmingly supported by both, with little to no public comment.

⁶ The Laidlaw Berlin Biopower project will need approximately 750,000 tons of biomass per year harvested from within the 100 mile transport radius.

pursued the appropriate course of action to permit the development of a 29 MW combined heat and power facility.⁷

12. The CPD Facility will have minimal discharge to the Berlin Waste Water Treatment (WWT) Facility, and moreover, will reclaim a very significant portion of the WWT effluent as water supply for its cooling system, thereby significantly reducing the total effluent flow by the City of Berlin to the Androscoggin River.

13. The CPD Facility will provide process steam to the nearby Fraser/Gorham Mill⁸ at favorable terms such that the Mill's business model for Fraser or its successor will be significantly improved. Additionally, the Fraser/Gorham Mill will be emitting fewer emissions produced from fossil fuels as a result of using the process steam supplied by the CPD facility.

14. The Clean Power business model is open to selling both thermal and electrical energy to nearby or co-located industries such that its project may serve as the catalyst for additional development, sustaining existing industry such as Fraser/Gorham Mill, and would be a cost effective thermal source for a city wide District Heating System in Berlin.

APPLICABLE LAW

15. New Hampshire's siting statute, RSA Chapter 162-H, has as its fundamental purpose the selection and utilization of appropriate sites for new bulk power and energy facilities. In enacting Chapter 162-H, the legislature recognized "that the selection of sites for energy facilities... will have a significant impact upon the welfare of the population, the location and growth of industry, the overall economic growth of the state, the environment of the state, and the use of natural resources." RSA 162:H-1.

16. Accordingly, the legislature has established "a procedure for the review, approval, monitoring, and enforcement of compliance in the planning, siting, construction, and operation of energy facilities... to assure that the state has an adequate and reliable supply of energy in conformance with sound environmental principles." Id.

17. RSA 162-H normally requires that all aspects of an application to construct and operate an energy facility be reviewed by the Site Evaluation Committee. Site Evaluation review

⁷ The INRS study concluded that "[b]ased upon historic timber harvest figures for Coos County, the net available biomass fuel, combined with a third of traditional pulpwood harvest, can support nearly 30 MW of new biomass generation.

⁸ The Mill is currently for sale.

supplants the consideration of the project by numerous state agencies and municipalities under various state and local laws and centralizes consideration of proposed energy facilities with the Committee.

18. Pursuant to RSA 162-H:2, XII, the jurisdiction of the Site Evaluation Committee extends to renewable energy facilities of 30 megawatts or less nameplate capacity but at least 5 megawatts which the committee determines requires a certificate, consistent with the findings and purposes set forth in RSA 162-H:1.⁹ The CPD Facility is a renewable energy facility of less than 30 megawatts, but greater than 5 megawatts.

19. Therefore, in order to assert jurisdiction over the CPD Facility, the Site Evaluation Committee must find that a certificate of site and facility is required, consistent with the findings and purposes of RSA 162-H:1, namely, (a) to maintain a balance between the environment and the need for new energy facilities; (b) to avoid undue delay in the construction of needed facilities and to ensure full and timely consideration of environmental consequences; (c) to ensure that all entities planning to construct facilities provide full and complete disclosure to the public of such plans; and (d) to ensure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion.

**COMMITTEE JURISDICTION OVER THE CPD FACILITY
IS NOT NEEDED TO ACHIEVE THE PURPOSES OF RSA 162-H:1**

A. Committee Jurisdiction over the CPD Facility is not Needed to Maintain a Balance between the Environment and New Energy Facilities

20. The CPD Facility maintains a balance between the environment and the need for new renewable energy facilities. The design of the CPD Facility is an optimally balanced approach that focuses on the critical commercial need of the Fraser/Gorham paper mill for a stable and affordable process steam supply along with the production of renewable electrical generation from the sustainable component of local biomass fuel resource. The long-term viability of the paper mill, and the jobs directly or indirectly associated with that facility, will be more secure if the cost of steam is reduced and less volatile. Process steam produced from the biomass fuel

⁹ Pursuant to RSA 162-H:4,IV, an owner of a proposed site and facility in excess of 30Mw may seek an exemption of the requirements of 162-H.

source via a new state-of-the-art boiler utilizing best available technology that will be subject to new source emission standards will bring about a substantial air emissions improvement for the region as it replaces the existing steam production method involving older generation boilers that are grandfathered and utilize a fossil fuel source.

21. The CPD Facility will utilize the Berlin Waste Water Treatment (WWT) plant gray water for most of its make-up requirements, thereby reducing the amount of discharge to the Androscoggin River and, therefore, make an incremental improvement to the river resource.

22. The project is sized so as to not exceed the sustainable supply of biomass that can be harvested from the working forest within the 30-mile radius of the facility. This is important to minimize the overall project carbon footprint related to diesel fuel consumption for biomass fuel delivery trucking. This aspect will be additionally improved after start-up through the encouraged utilization of bio diesel by truckers and also by on-site rolling stock.

23. The CPD Facility has established initial understandings with technology vendors toward eventual algae production adjacent to the facility in an effort that will utilize nutrients from the WWT facility, and waste heat from the circulating water system to grow algae that will sequester carbon from stack gas, thus, lowering total emissions of CO₂ by a substantial amount.

B. Committee Jurisdiction over the CPD Facility is Not Needed to Avoid Undue Delay in the Construction of Needed Facilities and to Ensure Full and Timely Consideration of any Environmental Consequences

24. Committee jurisdiction over the CPD Facility by the Site Evaluation Committee may actually cause an undue delay in the construction of the CPD Facility. The nine-month site review process could cause the CPD Facility to lose access to federal stimulus monies, loan guarantees, favorable grants, and available specialized tax credits

25. Committee jurisdiction over the CPD Facility is not needed to ensure full and timely consideration of any environmental consequences. Local permits are complete; the requisite public hearings have been held. CPD's State permits are complete except for wetlands.¹⁰

26. There will be actually a positive impact to the environment from the development of the CPD Facility. Waste water effluent discharge to the Androscoggin River will be reduced. Emissions from the combustion of No. 6 oil at the Fraser Paper Mill will be reduced. With the emissions controls in place, the plant will be one of the cleanest in the region. As a combined

¹⁰ The Laidlaw Berlin Biopower has not obtained any of the requisite local or state permits.

heat and power facility, with numerous synergies, the CPD Facility will be the most efficient biomass power generation facility in New Hampshire, and will serve as a best case example to be copied in the development of additional biomass energy projects throughout the country.

C. Committee Jurisdiction over the CPD Facility is not Needed to Ensure Full and Complete Disclosure to the Public of CPD's Plans

27. The CPD Facility has appeared before the Berlin Planning Board on five separate occasions dating back to 2008. Through this series of appearances, the plans for development have been vetted for conformity to the city master plan and the desires of city leaders for orderly development of the community. At each of those meetings, CPD plans garnered overwhelming support from both board members and meeting attendees.

28. The plans for development of the CPD Facility were also taken before the Berlin Zoning Board for approval of several special exceptions and a variance. Each was granted.

29. The various state permit processes have been widely publicized and noticed, with not a single public comment being made.

30. The staff of Clean Power Development has participated in sessions working to develop a new master plan for the city to ensure that the proposed project not only meets the current goals, but will be in consonance with the city's next master plan. In addition, members of the CPD development team have met regularly with city leaders, planning department staff and various civic/social leaders in an effort to ensure that all present and future CPD efforts were in keeping with the desires of the community.

31. The efforts of Clean Power Development have been widely publicized in the media, with the plant being the subject of numerous (20+) newspaper articles and several radio talk shows over the last two years as this project has moved forward in development.

32. The staff of Clean Power Development has been extremely open throughout the process and has gone out of their way to ensure that there has been not only full and complete disclosure of the plans, but that the desires of the community are recognized and addressed in those plans.

D. Committee Jurisdiction over the CPD Facility is not Needed to Ensure that the Construction and Operation of the Facility is Treated as a Significant Aspect of Land-Use Planning in which all Environmental, Economic, and Technical Issues are Resolved in an Integrated Fashion.

33. Throughout its development and permitting, the Clean Power Development Berlin project has been treated as a significant aspect of land-use planning and any issues that have arisen have been resolved in an integrated fashion, with numerous city and state agencies involved.

34. A fully integrated approach was developed from the beginning with early involvement of the City Manager and City Planner, where the Clean Power Development (CPD) team vetted the initial plans for the project. This continued with extensive meetings with the planning and zoning boards, conservation organizations, master plan teams and local real estate professionals.

35. In recognition of CPD's efforts, the Berlin City Manager, on behalf of the Mayor and Council recently made the following statement:

[The City of Berlin has] been has been working with Clean Power for the past three or four years towards the development of a bio-energy facility in the City, which would provide jobs, tax base, economic activity, diversity and renewable energy. There are many other creative synergies that could develop from this kind of development in the City.

To our knowledge, certainly the knowledge of the Mayor and Council of the City has all its – close to all, if not all of the permits it needs to go forward with this project, which as I say, we've been working on for I'm going to say four years.

Transcript, NHPUC Docket DE 09-067 at 38 (November 3, 2009.)

SUMMARY AND CONCLUSION

For all of the foregoing reasons, Site Evaluation Committee jurisdiction over the CPD Facility would not serve any of the purposes of RSA of 162-H:1. The CPD Facility has obtained all of the necessary state and local permits; the 29 Mw size of the CPD Facility has been dictated by the available wood supply in Coos County in accordance with an independent expert study; the CPD Facility is located on a “greenfield” next to the City of Berlin Waste Water Treatment Plant; the CPD Facility will reclaim a very significant portion of the Waste Water Treatment effluent as water supply for its cooling system, thereby significantly reducing the total effluent flow by the City of Berlin to the Androscoggin River; and the CPD Facility will provide process steam to the nearby Fraser/Gorham Mill at favorable terms such that the Mill's business model for Fraser or its successor will be significantly improved.

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

- A. Deny the Petitions by Registered Voters of Berlin and Gorham for the New Hampshire Site Evaluation Committee to Rule on the Clean Power Development, LLC Berlin Project; and
- B. Grant such other and further relief as may be just and equitable.

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

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603-559-9987

Dated: January 8, 2009