

1 STATE OF NEW HAMPSHIRE  
2 SITE EVALUATION COMMITTEE

3 February 3, 2010 - 9:11 a.m.  
4 N.H. Public Utilities Commission  
5 21 South Fruit Street, Suite 10  
6 Concord, New Hampshire

7 In re: SITE EVALUATION COMMITTEE:  
8 Docket No. 2009-03: Petitions of  
9 Michael Laflamme and Howard Jones  
10 (including 116 Registered Voters  
11 from Berlin and 104 Registered  
12 Voters from Gorham) for Review of a  
29 MW Biomass Power Plant Developed  
by Clean Power Development, LLC, and  
Located in Berlin, Coos County, New  
Hampshire. (Deliberations)

13 PRESENT: SITE EVALUATION COMMITTEE:  
14 Thomas S. Burack, Cmsr. Dept. of Environmental Services  
(Chairman of SEC - Presiding Officer)  
15 Thomas B. Getz, Chrmn. Public Utilities Commission  
16 (Vice Chairman of SEC)  
17 Clifton C. Below, Cmsr. Public Utilities Commission  
18 Amy L. Ignatius, Cmsr. Public Utilities Commission  
19 Robert Scott, Dir. Air Resources Division (DES)  
Glenn Normandeau, Dir. Dept. of Fish & Game  
20 Joanne Morin, Dir. Office of Energy & Planning  
Elizabeth Muzzey, Dir. Div. of Historical Resources  
21 Jeff Brillhart, Asst. Cmsr. Dept. of Transportation  
Michael Harrington Public Utilities Commission

22 ALSO PRESENT: Michael Iacopino, Esq.  
Counsel for the Committee

23 COURT REPORTER: Steven E. Patnaude, LCR No. 52

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1 P R O C E E D I N G

2 CHAIRMAN BURACK: Good morning, Ladies

3 and gentlemen. We are here today for a public meeting of

4 the New Hampshire Site Evaluation Committee. The Site

5 Evaluation Committee is established by RSA 162-H. The

6 membership of this Committee includes the commissioners or

7 directors of a number of state agencies, as well as

8 specified key personnel from various state agencies. And,

9 at this point I would like to introduce the members of

10 this Committee who are present at this meeting, starting

11 with myself. I am Tom Burack. I serve as Commissioner of

12 the Department of Environmental Services, and in that

13 capacity I also, by statute, serve as Chair of this Site

14 Evaluation Committee.

15 Joining us by telephone today from  
16 Washington, D.C., is Joanne Morin, Director of the Office  
17 of Energy & Planning. Joanne, you can hear us clearly?

18 DIR. MORIN: Yes, very well. Thank you.

19 CHAIRMAN BURACK: Thank you. And, I'll  
20 ask now for other introductions to be made, starting from  
21 my far right.

22 DIR. MUZZEY: Elizabeth Muzzey, Director  
23 of the Division of Historical Resources and the Department  
24 of Cultural Resources.

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1 DIR. SCOTT: Bob Scott, New Hampshire  
2 Department of Environmental Services, Air Resources  
3 Division.

4 DIR. NORMANDEAU: Glenn Normandeau, New  
5 Hampshire Fish & Game.

6 CMSR. BELOW: Clifton Below, Public  
7 Utilities Commissioner.

8 VICE CHAIRMAN GETZ: Tom Getz, Chairman  
9 of the Public Utilities Commission and Vice Chair of this  
10 Committee.

11 CMSR. IGNATIUS: Amy Ignatius,  
12 Commissioner with the New Hampshire Public Utilities  
13 Commission. And, I'm in charge of the sophisticated  
14 telephone communications system here.

15 MR. HARRINGTON: Mike Harrington, New  
16 Hampshire PUC.

17 ASST. CMSR. BRILLHART: Jeff Brillhart,  
18 New Hampshire Department of Transportation.

19 CHAIRMAN BURACK: To my immediate right

20 is Michael Iacopino, who serves as legal counsel to the  
21 Site Evaluation Committee for purposes of this proceeding.  
22 I should also note that Brad Simpkins, from the Department  
23 of Resources and Economic Development, who was present for  
24 the hearing and testimony on this matter last week, is

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1 absent today due to illness. But we do have a quorum  
2 present, and we will proceed to take up further  
3 consideration of the one matter that is before us today,  
4 and that is Docket Number 2009-03, Petitions of Michael  
5 Laflamme and Howard Jones, including 116 registered voters  
6 from Berlin and 104 registered voters from Gorham, for  
7 review of a 29 megawatt biomass power plant developed by  
8 Clean Power Development, LLC, and located in Berlin, Coos  
9 County, New Hampshire. I'm going to provide a brief  
10 history of or summary of this matter.

11 On November 25, 2009, Michael Laflamme  
12 and Howard Jones each filed a petition with the Site  
13 Evaluation Committee, the "Committee", entitled "Petition  
14 for the Site Evaluation Committee to rule on the Clean  
15 Power Development, LLC, Berlin Project", collectively  
16 referred to as the "Petition" or "Petitions". The  
17 Laflamme Petition was endorsed by more than 100 registered  
18 voters from the City of Berlin, Coos County, New  
19 Hampshire. The Jones Petition was endorsed by more than  
20 100 registered voters from the Town of Gorham, Coos  
21 County, New Hampshire.

22 The Petitions request the Committee to  
23 assert jurisdiction under RSA 162-H:2, VII(g) and XII.  
24 The role of the Committee in these circumstances is to

1 determine whether the proposed project should require a  
2 Certificate of Site and Facility in order to satisfy the  
3 findings and purposes of RSA 162-H:1.

4 On January 29, 2010, the Committee held  
5 a public hearing on the Petition. We took testimony and  
6 evidence from both the Petitioners and Clean Power  
7 Development. We also heard from representatives of the  
8 City of Berlin and we took public comment. That hearing  
9 was then recessed until today.

10 The purpose of today's hearing is to  
11 deliberate as to what action the Committee should take  
12 with respect to the Petitions. We will not be taking  
13 further evidence or public comment. I will, however, note  
14 for the record, and I think I should read into the record,  
15 a letter that was received by the Committee dated  
16 February 1, 2010, from James T. Rodier, Esquire, who  
17 serves as counsel to Clean Power Development, addressed to  
18 me, in my capacity as Chairman of the New Hampshire Site  
19 Evaluation Committee. This is regarding SEC Docket Number  
20 2009-03. And, again, I'm simply going to read this into  
21 the record, because it was received so recently, and  
22 probably we -- perhaps not all the members of the  
23 Committee have had an opportunity to see it, nor  
24 necessarily have others interested in this matter.

1 It reads: "Dear Chairman Burack: On  
2 behalf of Clean Power Development, LLC, I am writing to  
3 inform the Committee of three corrections to Mr. Bill

4 Gabler's oral testimony at the hearing held on January 29.  
5 (1) Mr. Gabler stated that Unity Street  
6 was state owned, and that CPD would be working with the  
7 state on any necessary" -- "any necessary  
8 engineering/permits. This statement was incorrect. Unity  
9 Street falls within the city compact zone and is fully  
10 owned by the city. The city highway department is fully  
11 aware of the plans for this project and are ready to  
12 proceed as soon as they are given the go ahead.  
13 Consequently, there will be no state involvement.

14 (2) Mr. Gabler stated that the  
15 improvement to Shelby Street will require easements from  
16 four parties. After reviewing the applicable documents  
17 this morning, Mr. Gabler determined that the Project will  
18 require easements from only three parties; City of Berlin,  
19 Androscoggin Valley Regional Refuse Disposal District, and  
20 Public Service of New Hampshire.

21 (3) Additionally, in discussion with  
22 the Berlin city planner this morning, CPD and the City  
23 agreed that the City will be the party seeking the  
24 easements, not Clean Power. CPD's involvement will

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1 generally be limited to responsibility for the costs  
2 incurred. Sincerely, James T. Rodier."

3 So, again, I simply wanted to draw that  
4 matter to the attention of the Committee.

5 Here's how I propose to proceed today.  
6 We will, first, and I'll provide a little more background  
7 on this in just a moment, I'd like to entertain some  
8 discussion of the basic standard that we will be applying

9 here as we consider this petition, the legal standard,  
10 discussion of each of the four elements of that test.  
11 And, then, following that discussion, what I'd like to  
12 suggest is that the Committee hold simply a preliminary  
13 straw poll, that is a non-binding poll, just to get a  
14 sense of where we may all be. That is, how many are  
15 seriously considering supporting a motion to take  
16 jurisdiction, how many are seriously considering  
17 supporting a motion that would have us not take  
18 jurisdiction of this matter. Again, these will be  
19 non-binding votes, just to get a sense of where at least a  
20 majority of the Committee may be in its deliberations at  
21 that point. And, then, we could entertain a motion based  
22 on that straw poll. And, based on further discussion of  
23 that, of that motion, and deliberation, we would then  
24 actually hold a vote to see if that is, in fact, where the

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1 Committee wants to end up or whether we need to have  
2 further motions following that.

3 So, that's how I propose to proceed. I  
4 think that's probably as expeditious a manner as any for  
5 us to deliberate in this matter. But, if any have other  
6 suggestions for ways for us to proceed, I am certainly  
7 open to other suggestions?

8 (No verbal response)

9 CHAIRMAN BURACK: Very well. Thank you.  
10 Hearing and seeing none, let me just review for all of you  
11 what the legal standards are in our consideration of this  
12 matter. Again, the essential standards are set forth in  
13 RSA 162-H:1, whereby, effectively, the Committee must find



14 that the requirement of certificate is consistent with the  
15 findings and purposes set forth in RSA 162-H:1, if, in  
16 fact, we were to determine that a certificate should be  
17 required for this project. And, again, the purpose of RSA  
18 162-H:1 is to assure that the state has an adequate and  
19 reliable supply of energy in conformance with sound  
20 environmental principles. And, specifically, the  
21 Committee must determine that a certificate would be  
22 needed to address the following four factors, although I  
23 don't believe it's the case that all four would have to be  
24 satisfied: The first factor is "to maintain a balance

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1 between the environment and the need for new energy  
2 facilities in New Hampshire." The second is to avoid  
3 "undue delay in the construction of needed facilities" and  
4 to provide "full and timely consideration of environmental  
5 consequences." The third is to ensure that "all entities  
6 planning to construct facilities in the state be required  
7 to provide full and complete disclosure to the public of  
8 such plans." And, fourth, to "ensure that the  
9 construction and operation of energy facilities [are]  
10 treated as a significant aspect of land-use planning in  
11 which all environmental, economic, and technical issues  
12 are resolved in an integrated fashion."

13 So, again, in considering whether this  
14 project will require SEC review and a Certificate of Site  
15 and Facility, the Committee must consider the foregoing  
16 purposes of the siting statute. If the Committee finds  
17 that the review is not necessary to achieve the goals of  
18 the statute, then the Committee should deny the Petitions.

19 However, if the Committee decides that the goals of the  
20 statute are best met by requiring a review, then the  
21 Petition should be granted. But, again, this is a  
22 discretionary matter for the Committee, based upon the  
23 guidance provided by the statute.

24 So, again, what I would suggest that we  
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1 do is start just a general discussion of each of those  
2 four elements before we -- before we hold any kind of a  
3 preliminary non-binding straw poll.

4 So, I would invite discussion on this  
5 first element, which is "maintaining a balance between the  
6 environment and the need for new energy facilities in New  
7 Hampshire." Does anyone wish to offer any observations or  
8 thoughts on this element? Commissioner Below.

9 CMSR. BELOW: This proposal or proposed  
10 project by Clean Power Development falls into I think what  
11 the statute you might characterize as a "gray area". It's  
12 too small -- I mean, it's too small to be automatically  
13 required to have review by this Committee, and yet it's  
14 too big to be excluded by law. It's bigger than  
15 5 megawatts and smaller than 30 megawatts. So, one of the  
16 purposes of having the Site Evaluation Committee is to  
17 have a review for the goal of maintaining this balance  
18 between the environment and the need for new energy  
19 facilities. I think the question is, have other  
20 processes, and this sort of gets into some of the other  
21 findings of the statute, purposes of the statute, is there  
22 -- has there been sufficient review to have comfort that  
23 an appropriate balance is being maintained.

24 And, I guess I would just observe that  
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1 state policy, as reflected in the Renewable Portfolio  
2 Standard, which increases over time for new renewable  
3 resources, does indicate there's a state policy to  
4 encourage development of new renewable resources that this  
5 is likely to qualify as. And, you know, irregardless of  
6 what the absolute needs are at a given point in time, it's  
7 the policy to increase the portion of power that's coming  
8 from power facilities like this. And, I think, when I  
9 look at it, the environmental considerations seem to have  
10 been pretty much addressed through the reviews that have  
11 already occurred. So, that sort of balancing interest I  
12 think has been substantially achieved in a way that is  
13 also reflected in policy, in that, in particular, a  
14 renewable facility such as this is considered good for the  
15 environment, you know, to the extent that it displaces  
16 other sources of energy that perhaps rely more on  
17 non-renewable, less sustainable energy resources, such as  
18 fossil fuels that are imported from outside of the region.

19 CHAIRMAN BURACK: Thank you. Go to  
20 Mr. Scott, and then Mr. Harrington.

21 DIR. SCOTT: I think it sounds like I'll  
22 echo a little bit of what Commissioner Below said, and  
23 just remind the Committee that, for environmental  
24 permitting, the facility already -- the Project already

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1 has permits or is well along in the process of getting

2 permits. And, also, I'd like to point out, again, where  
3 the location of this is, is abutting a wastewater  
4 treatment facility. This is not being placed in a  
5 pristine wilderness environment, with a population -- a  
6 wildlife population that we'd be concerned about or  
7 anything like that. So, I think it's very consistent with  
8 the current land-use as it is also. So, I concur. I  
9 think that the first standard has been met by this  
10 Project.

11 CHAIRMAN BURACK: Mr. Harrington.

12 MR. HARRINGTON: Yes. I would tend to  
13 agree with the previous two speakers. I guess, you know,  
14 one thing that we do on this is we go into these various  
15 hearings, when we spend a lot of time looking closely at  
16 the statute, we always seem to come up with something  
17 where it can be clarified a little bit. And, I think  
18 maybe this would be another one of those cases for future  
19 reference. Because what we have here is that, as  
20 Commissioner Below stated, clearly, we have the need for  
21 new renewable energy facilities in New Hampshire, in order  
22 to meet our goal of whether you want to take the 25 in '25  
23 or the Renewable Portfolio Standard.

24 But, just as clearly, we don't have the

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1 need for any new energy facilities, because we have a  
2 surplus of electricity. The last Forward Capacity Market  
3 was over by about 13 percent when it cleared at the floor  
4 price, and, in New Hampshire, is even more surplus in  
5 electricity than other parts of New England. So, maybe  
6 for future reference, we need to have some qualifier on

7 that part of the statement. But, going with a broader  
8 determination that, in order to have renewable energy you  
9 have to have energy, I think that that criteria is met.

10 And, the environment, I agree with  
11 Mr. Scott that, with all the various permits that are  
12 obtained, plus the fact that, again, it's in an area  
13 that's an industrial site to begin with, and we're  
14 basically talking about converting what appears to be part  
15 of a parking lot into a building. And, in fact, it's  
16 going to be using wastewater from the wastewater treatment  
17 facility, which will actually probably improve some of the  
18 affluent going into the river.

19 So, I think this consideration has been  
20 covered adequately by the reviews done by the state and --  
21 through the state and federal permitting, as well as the  
22 City of Berlin.

23 CHAIRMAN BURACK: Is there further  
24 discussion of this particular element? Commissioner

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1 Ignatius.

2 CMSR. IGNATIUS: I would agree. I think  
3 the situation that "what would we add if we were to take  
4 further analysis of this that hasn't already been done?"  
5 And, I think the question of the wetlands mitigation plan  
6 still is an open issue that would need to be resolved,  
7 wherever the forum ends up being, that that is something  
8 that the Company is still in the midst of. As far as I  
9 understand this, the only environmental permit standard  
10 left to be completed, and would need to be completed  
11 whether it's within our jurisdiction or not, is an

12 important piece left to go. But I don't see additional  
13 environmental issues that we would take on, if we did have  
14 jurisdiction, it seems to be met, with that one exception,  
15 seems really to have been covered already.

16 CHAIRMAN BURACK: Very well. Anything  
17 further from anyone else? Mr. Getz.

18 VICE CHAIRMAN GETZ: Yes. I would just  
19 point out, Mr. Chairman, and I think this applies to other  
20 of the issues here and to the general overall issue of  
21 whether there's adequate protection. The City of Berlin  
22 passed an ordinance a year and a half ago, in June of  
23 2008, to address uses by special exception for renewable  
24 energy projects that lays out in great detail some of the

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1 issues that needed -- conditions that needed to be met.  
2 There was a public hearing on the exception. And, we have  
3 the minutes of the meeting in which the exception was  
4 granted. And, I think that that goes a long way in  
5 providing a basis for concluding that the -- that that  
6 prong of the test is met.

7 CHAIRMAN BURACK: I would just like to  
8 just offer a further observation on Commissioner  
9 Ignatius's comments with respect to wetlands mitigation.  
10 My understanding, based on the testimony we heard the  
11 other day, is that the Clean Power Development has made  
12 the decision that the way they will satisfy their  
13 mitigation requirements for the wetlands permit is to make  
14 a payment to the Aquatic Resource Mitigation Fund. And,  
15 my understanding is that, again, that typically what  
16 happens is that that payment becomes a condition of the

17 permit. And, assuming that payment is made, a permit is  
18 issued and everything is completed. And, it had been my  
19 understanding that the wetlands mitigation was really the  
20 last issue that was left to be resolved with respect to  
21 that permit. So, I just want to clarify that.

22 I also want to welcome here Commissioner  
23 George Bald from the Department of Resources & Economic  
24 Development.

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1 CMSR. BALD: Thank you.

2 CHAIRMAN BURACK: Okay. Anything  
3 further on the first element here?

4 DIR. MORIN: Chairman?

5 CHAIRMAN BURACK: Yes.

6 DIR. MORIN: Yes. No, I just wanted to  
7 express that I concur. I just don't see, and particularly  
8 Commissioner Ignatius's comments, I don't see what more we  
9 can add to already a robust process that's occurred. And  
10 in fact, you know, I do think we could bring harm to the  
11 project that actually goes against some of our mandates,  
12 in terms of we would infringe on their financial ability  
13 to get this project underway. So, I concur with what's  
14 been said.

15 CHAIRMAN BURACK: Thank you. And, your  
16 -- I think your remark actually takes us into the second  
17 element that we need to consider, which is "avoidance of  
18 undue delay in the construction of needed facilities and  
19 provision of full and timely consideration of  
20 environmental consequences."

21 Does anyone wish to speak further to

22 that issue?

23 CMSR. BELOW: I would.

24 CHAIRMAN BURACK: Please go ahead.

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1 CMSR. BELOW: Thank you, Mr. Chairman.

2 This, like some of the other tests, is about a balancing,  
3 a balancing between avoiding undue delay, but also  
4 assuring there's full and timely consideration of the  
5 environmental consequences. Although, part of that, in  
6 the scheme of the statute, was the presumption that a  
7 project, when it's starting off, could be expedited, could  
8 avoid undue delay by having a -- sort of a one-stop review  
9 at the state level, that includes all the environmental  
10 permitting, historical review, all the sort of issues that  
11 might need to be reviewed.

12 And, in this instance, I think, clearly,  
13 the balance of the evidence that we've had presented to us  
14 looks in the direction that us taking jurisdiction over  
15 this project and finding that it requires a certificate  
16 would be more contrary to this purpose finding statement  
17 in the statute than in support of it. In that, as we've  
18 just discussed, there certainly appears, from the evidence  
19 in the record, that there has already been full and timely  
20 consideration of environmental consequences. That most of  
21 the permits have already been issued or are near issuance.  
22 And, that us taking jurisdiction would, in fact, create a  
23 substantial and arguably undue delay in the construction  
24 of the facility that arguably is needed in furtherance of

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1 our state statutory Renewable Portfolio Standard goals.

2 MR. IACOPI NO: Mr. Chairman, may I  
3 interrupt for one minute?

4 CHAIRMAN BURACK: Yes. Please.

5 MR. IACOPI NO: And, just point out that  
6 Commissioner Bald did just appear and has just left. He  
7 just wanted -- he came here because he was concerned, when  
8 he learned that Mr. Simpkins was ill, that we might not  
9 have a quorum and he could do what he could. But I have  
10 advised him that his presence is not necessary. So, he  
11 has left.

12 CHAIRMAN BURACK: Very good. Thank you.  
13 Okay. Further discussion of this second element relating  
14 to undue delay? Mr. Scott.

15 DIR. SCOTT: Again, I concur with  
16 Commissioner Below that there's already been a fairly  
17 robust process at the municipal level. For the most part,  
18 what I would see is we would be rehashing ground that has  
19 already been done at the local level, and, to me, that  
20 would be an undue delay. This is at the tail-end of the  
21 process that's fairly already robust, not at the  
22 beginning. So, again, I concur. I don't think we would  
23 be saving any time for anybody and we would be rehashing  
24 ground that's already been covered. And, I think that it

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1 would have the great possibility of being an undue delay.

2 CHAIRMAN BURACK: Ms. Muzzey.

3 DIR. MUZZEY: I bring this up more as a  
4 point of clarification, rather than as a point of  
5 particular concern. This project does fall under the

6 mandates of the National Historic Preservation Act, and so  
7 a review by our office is currently ongoing. So, adding  
8 to the things that need to be done to finalize the wetland  
9 permit is the review by our office.

10 CHAIRMAN BURACK: Thank you for that  
11 clarification.

12 DIR. MUZZEY: Uh-huh.

13 CHAIRMAN BURACK: Any further discussion  
14 of this element?

15 (No verbal response)

16 CHAIRMAN BURACK: All right. Let's turn  
17 then to the third element, which is ensuring that "all  
18 entities planning to construct facilities in this state be  
19 required to provide full and complete disclosure to the  
20 public of such plans." And, I think Chairman Getz a  
21 moment ago made reference at least to some of the  
22 proceedings that have occurred in the town, both with  
23 respect to the Planning and Zoning Board proceedings, and  
24 following up of an ordinance relating to the siting of

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1 facilities that involve energy production. Do you want to  
2 expand further on that?

3 VICE CHAIRMAN GETZ: Yes, Mr. Chairman.  
4 I would just point out that we do have evidence provided  
5 by the Petitioners of the -- and by the City of the  
6 process that occurred within the City of Berlin. And, we  
7 do have the minutes of the Zoning Board of Adjustment and  
8 other meetings that indicates that they were open to the  
9 public and there was an opportunity to comment, and that  
10 the ordinance underlying this was duly passed and

11 approved. And, I think that shows that there's a complete  
12 disclosure to the public regarding this project.

13 CHAIRMAN BURACK: We'll just go right  
14 around here, starting with Commissioner Below, and then  
15 Mr. Normandeau, and Mr. Scott.

16 CMSR. BELOW: Well, thank you. I think  
17 the Petitioners highlighted the concern that they had  
18 about the roadwork that needed to be done to bypass the  
19 residential neighborhoods in the truck route to deliver  
20 the wood chip supply to the proposed biomass plant. And,  
21 they were concerned that those -- that aspect of the  
22 project had not been fully and completely disclosed. And,  
23 I think we heard through subsequent testimony that those  
24 -- the design was actually pretty well advanced, it had

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23

1 been professionally designed. And, in fact, that those  
2 plans were available to the public at the City of Berlin's  
3 Planning Office. So, I think that was one of the, you  
4 know, key issues the Petitioners brought forward. And, I  
5 think the evidence supports that there, in fact, has been  
6 or there is a means for full and complete disclosure to  
7 the public of that aspect of the plans. And, certainly,  
8 the other aspects of the site plan, all that stuff, came  
9 forward publicly through the City of Berlin's site plan  
10 review, as well as their zoning ordinance, and as well as  
11 all the permitting applications that have gone through the  
12 Department of Environmental Services.

13 CHAIRMAN BURACK: Thank you. Director  
14 Normandeau.

15 DIR. NORMANDEAU: I'll just -- I agree

16 with Commissioner Below. And, I just wanted to note that,  
17 you know, there was a little conversation by the  
18 Petitioners about light attendance at these planning board  
19 meetings and whatnot. But I think it's clear from the  
20 minutes that, you know, that a full disclosure of  
21 everything going on was made, and it's not the Applicant's  
22 responsibility to force the public to go to public  
23 hearings. I mean, they have to take that upon themselves.  
24 So, I think they did what they needed to do to prove the

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24

1 point.

2 CHAIRMAN BURACK: If I may, I just want  
3 to clarify things. I'm not sure I heard you correctly.  
4 You're saying that "the Petitioners suggested that their  
5 had been light" --

6 DIR. NORMANDEAU: Exactly. There was  
7 some comment at one point about, you know, that "not many  
8 people went to these hearings, and, therefore, the people  
9 didn't really know what was going on." And, my point was  
10 just that you can't force people to go to public meetings.  
11 The Petitioner -- I mean, that Clean Power did its part in  
12 full disclosure.

13 CHAIRMAN BURACK: Thank you. Director  
14 Scott.

15 DIR. SCOTT: I'd like to also remind the  
16 Committee, at least in my questioning of the Petitioners,  
17 I had asked, in effect, did they know about the public  
18 meetings? They agreed they had, did know about it.  
19 Further, when we look at Petitioners' Exhibit Number 4,  
20 which is an article from the Berlin Daily Sun, it's an

21 article in the local paper talking about the hearings  
22 also. So, I don't think a case could be made that the  
23 general public didn't know about these either. So, I  
24 don't think there's any -- "they have been derived of the

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25

1 ability to go to this" I don't think is appropriate to  
2 say.

3 CHAIRMAN BURACK: Further discussion?  
4 Mr. Harrington, and then --

5 MR. HARRINGTON: And, just as sort of a  
6 follow-up on that same issue, as you look at the various  
7 exhibits on the planning board minutes and the zoning  
8 board minutes, you can see that, not in absolutely every  
9 case, but the overall majority, they were attended by at  
10 least one member of the press. Normally, there was  
11 someone from the Berlin Daily Sun and someone from the  
12 Berlin Reporter. So, I'm going to assume that they  
13 attended these meetings with the idea of reporting them.  
14 So, I think that, not only was there opportunity for the  
15 public to attend, but, through the press, the public were  
16 informed of what happened at the meetings.

17 CHAIRMAN BURACK: Thank you,  
18 Mr. Harrington. Commissioner Ignatius.

19 CMSR. IGNATIUS: Thank you. I concur  
20 with all of the comments made so far. And, just would add  
21 that, in addition to the formal proceedings that we've  
22 described, there have also been a number of informal  
23 discussions that came out in the record last week.  
24 Meetings with officials within the Town of Gorham,

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1 although it had no regulatory authority over it, sort of  
2 informational meetings to go over plans, because it's, in  
3 effect, a community nearby; outreach to the Regional  
4 Planning Commission and support from them; the  
5 Transmission Commission, North Country Transmission  
6 Commission, which is a different entity, has met  
7 periodically, and at recent agendas has included an update  
8 on the status of this and other renewable projects. So,  
9 that was a further outreach opportunity, with a number of  
10 legislative members and others present. And, considerable  
11 news coverage from, as we've said, from the Berlin Daily  
12 Sun, but also the Coos County Democrat and other papers.

13 So, I think there's no question this has  
14 had a thorough discussion and airing of details within the  
15 community.

16 CHAIRMAN BURACK: Thank you. Further  
17 discussion of this element?

18 (No verbal response)

19 CHAIRMAN BURACK: All right. Let's turn  
20 then to the fourth element, which is "to ensure that the  
21 construction and operation of energy facilities are  
22 treated as a significant aspect of land-use planning in  
23 which all environmental, economic, and technical issues  
24 are resolved in an integrated fashion." Who would like to

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1 speak to this? Mr. Harrington.

2 MR. HARRINGTON: Yes. I think this may  
3 be sort of the key that wraps the whole thing together

4 here. And, for me, I kind of looked at this and saying  
5 "what would the Site Evaluation Committee bring to the  
6 table that's not already being covered?" I mean,  
7 obviously, all the state and federal permits, we just  
8 found about a new one from historical purposes, would have  
9 to still be issued and granted. So, it's looking at the  
10 other things that aren't covered by those permits is I  
11 think where we see -- and see if there's a big void here  
12 that the Site Evaluation Committee would bring in. And, I  
13 simply don't see that.

14 If you look through the record of the  
15 zoning board and planning board minutes, as well as the  
16 ordinance, it talks about things such as "several aspects  
17 should be considered when reviewing the appropriateness of  
18 the location, including but not limited to scale, height,  
19 materials used for construction, the level of activity of  
20 the site during both construction and during operation,  
21 impact on existing and potential future uses of adjoining  
22 and area properties, and any other factors which may  
23 negatively impact the appropriate development of the  
24 area." Going through there, there's things such as the  
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1 heights of the fences put on the property, the amount of  
2 parking spaces present, the number of trucks that will be  
3 coming to the site and what time of the day they would be  
4 able to be there, how much noise would be created. The  
5 fire department's input as to whether they could contain  
6 fires in the area and so forth.

7 All of these things were considered by  
8 the City of Berlin. And, I think that most, if not all,

9 of what the Site Evaluation Committee would bring would be  
10 redundant to what has already been captured by the state  
11 -- by the city. So, I don't think that it's necessary for  
12 us to come in.

13 And, I did want to comment briefly on  
14 another area, because it did come up as an awful large  
15 amount of time during the previous hearing, and this is  
16 the whole concept of the sizing of the facility. And,  
17 going over the law, my opinion is that, even if the Clean  
18 Power Development chose specifically to make their plant  
19 29 megawatts just for the explicit purposes of being below  
20 30 so that they may be exempt from Site Evaluation  
21 Committee jurisdiction, I see nothing wrong with that.  
22 That's an economic decision. Because we obviously all  
23 know, who's been on this Committee before, that going  
24 through the months of hearings and all the different

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1 things that we would request is going to cost a lot of  
2 money, as well as probably bring delays to the project.  
3 So, if it's only for an economic basis, and I'm not saying  
4 that was what they did, they say it was based on the  
5 availability of wood, but, even if it was based on  
6 strictly the size to keep out of jurisdiction, I see  
7 nothing wrong with that. It's just a financial decision  
8 that they would make, along with any other type of  
9 financial decision. So, I just wanted to state that for  
10 the record.

11 But, overall, I feel as though the City  
12 of Berlin's process adequately addresses all of the  
13 concerns of 162-H:1. And, bringing jurisdiction to the



14 Site Evaluation Committee would really add nothing, other  
15 than violate the requirement for not having undue delays.

16 CHAIRMAN BURACK: If I may, before  
17 others speak, I just want to again just clarify something  
18 for the record. Again, this comes back to the issue of  
19 the historical review, particularly that associated with  
20 the wetlands permit. I believe we actually did hear  
21 testimony during the hearing that, in fact, the Applicant  
22 is in the process of working with the Division of Historic  
23 Resources to review those issues. So, I don't think this  
24 is a new issue --

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1 MR. HARRINGTON: Okay.

2 CHAIRMAN BURACK: -- a new issue that  
3 has just come up for the first time today. And, I just  
4 wanted to clarify that for the record.

5 MR. HARRINGTON: I just misspoke, Mr.  
6 Chairman.

7 CHAIRMAN BURACK: Thank you. No  
8 problem. I just wanted to make sure we all have a  
9 consistent recollection of that. So, --

10 CMSR. BELOW: Thank you. And, likewise,  
11 I think we heard on the record that this is -- the  
12 underlying site is a "greenfield" site. So, there haven't  
13 -- I mean, there still could be archeological issues, but  
14 there's not apparently any historic uses of the site, in  
15 terms of recent history.

16 But the further concern that I had about  
17 this is that, as I understand it, if we did accept  
18 jurisdiction and determined that this project required a

19 certificate from this Committee, the effect of that would  
20 be that our decisions would preempt the local planning,  
21 potentially the zoning decisions that have already been  
22 made, to the extent we might put conditions or come to  
23 different conclusions than the local boards have done,  
24 that the nature of our statute would sort of trump those

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1 local land-use planning processes. And, I think, in that  
2 sense, accepting jurisdiction sort of runs a little bit  
3 contrary to this purpose of the statute, in that the City  
4 of Berlin has indicated that they felt that they had the  
5 capacity to have this kind of integrated review from a  
6 land-use planning point of view. And, that contrast, for  
7 instance, to the situation with the Lempster wind farm,  
8 where it was the community itself that indicated that they  
9 weren't sure they had the resources to have the kind of  
10 comprehensive land-use planning review, as I recall, and I  
11 believe it's correct, they did not have local zoning, and  
12 had limited site plan regulations and that kind of thing.  
13 So, that's in contrast, where I think the City of Berlin  
14 has indicated they felt that they were competent and had  
15 the resources, had a full-time professional planner on  
16 staff that allowed them to address this as a significant  
17 aspect of land-use planning.

18 CHAIRMAN BURACK: Thank you. Further  
19 discussion of this element?

20 (No verbal response)

21 CHAIRMAN BURACK: Director Morin, do you  
22 have anything you want to add on this or any of the other  
23 elements?

1 Michael Harrington definitely expressed my similar  
2 feelings and opinions on what was brought before us. So,  
3 thank you.

4 CHAIRMAN BURACK: Thank you.  
5 Commissioner Getz, and then Commissioner Ignatius.

6 VICE CHAIRMAN GETZ: Thank you, Mr.  
7 Chairman. Yes. I think it's clear that the City of  
8 Berlin, as I and others have discussed, have treated this  
9 as a significant aspect of land-use planning. I just  
10 wanted to make one point about 162-H:1, the "Declaration  
11 of Purpose" and its relation to the language in 162-H:2,  
12 VII(g). In that section, it says that "a facility means  
13 any other facility and associated equipment that the  
14 Committee determines requires a certificate consistent  
15 with the findings and purposes of RSA 162-H:1." And,  
16 those four findings in 162-H:1 are the basis for the  
17 Legislature creating the Site Evaluation Committee. And,  
18 it lays out the four findings and says "Therefore, the  
19 Legislature hereby establishes a procedure for the review,  
20 approval, monitoring, and enforcement of compliance in the  
21 planning, siting, construction, and operation of energy  
22 facilities." And, my point specifically with this fourth  
23 finding is, there's no requirement that the city do  
24 exactly as the Site Evaluation Committee might do; either

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1 in terms of process or in substantive requirements or  
2 findings. I think there's -- we may assert jurisdiction,

3 if we determine a certificate is required, and I think the  
4 undertakings by the city are consistent with the findings  
5 and purposes. And, I look at that as setting forth that  
6 there be a -- a significant aspect of land-use planning is  
7 taking place at the city. So, I think that fourth finding  
8 is satisfied by the efforts that have been taken by the  
9 City of Berlin.

10 CHAIRMAN BURACK: Thank you.  
11 Commissioner Ignatius.

12 CMSR. IGNATIUS: One additional point  
13 that we mentioned before, but, in land-use planning, one  
14 of the cogs in a proceeding before the Site Evaluation  
15 Committee would be to hear from the Regional Planning  
16 Commission. And, we know that the North Country Council,  
17 which is the RPC in that area has been informed of the  
18 Project and has been on record as being in support of it.

19 CHAIRMAN BURACK: Thank you. Further  
20 discussion of this element? Director Scott.

21 DIR. SCOTT: When I looked at the fourth  
22 purpose statement, the only thing that remained in my eyes  
23 to be explored, and I think in questioning we did, is was  
24 the economic -- the word "economic" is in there. And,

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1 again, in my questioning, and to me it's not a -- if the  
2 plant is never built, then, obviously, there's no impact  
3 to the environment. The only issue that I had is, if the  
4 plant was half built, and then ran out of money and that  
5 created a problem. And, if I understood right, in my  
6 questioning with the Applicants, they had indicated that  
7 would be bonded. So, that would not be an issue either.

8 So, I think the fourth, as well as the first three of all  
9 these, have been met by the existing process.

10 CHAIRMAN BURACK: Thank you. Any  
11 further discussions or observations that anyone would like  
12 to offer with respect to any aspects of the elements here  
13 that we've been discussing?

14 (No verbal response)

15 CHAIRMAN BURACK: All right. What I'd  
16 like to do now, if we could, is just to get just an  
17 initial straw poll of folks. And, again, this is  
18 non-binding. Certainly, based on any further  
19 deliberations we have following a motion, people are  
20 certainly not bound by what they may indicate at this  
21 point. But I'm going to ask two questions first. Just by  
22 show of hands, how many are seriously considering  
23 suggesting that we should take jurisdiction and require a  
24 Certificate of Site and Facility? And, then, the second

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1 question will be "how many are seriously considering that  
2 we not take jurisdiction and not require a Certificate of  
3 Site and Facility?"

4 So, just by show of hands first, how  
5 many are seriously considering taking jurisdiction and  
6 requiring a Certificate for this facility?

7 (No indication given.)

8 CHAIRMAN BURACK: Okay. I'm seeing no  
9 hands there. Then, how many are seriously considering not  
10 taking jurisdiction and not requiring a certificate?

11 (Show of hands.)

12 DIR. MORIN: And, you can count my hand  
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13 there, too.

14 CHAIRMAN BURACK: Okay. Thank you,  
15 Joanne. If you were in the room, Joanne, you would see  
16 that all of the members of the Committee sitting here  
17 raised their hands.

18 Given that understanding, I think it  
19 probably appropriate at this point then to see if someone  
20 would like to make a motion regarding this matter?

21 Director Scott.

22 DIR. SCOTT: I'd like to move that we  
23 deny the petitions, based on the testimony and the  
24 documents we received.

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1 CHAIRMAN BURACK: Okay. So, you're  
2 suggesting this based on all of the documents that we've  
3 reviewed, including the Petitions, the response of Clean  
4 Power Development, correspondence from the City of Berlin,  
5 as well as all the testimony we've heard?

6 DIR. SCOTT: Correct.

7 CHAIRMAN BURACK: Okay. Thank you. Is  
8 there a second to that motion?

9 (Mr. Harrington indicating by raising  
10 his hand.)

11 CHAIRMAN BURACK: A second from  
12 Mr. Harrington. Further discussion of the motion? Any  
13 other --

14 DIR. MORIN: Chairman?

15 CHAIRMAN BURACK: Yes.

16 DIR. MORIN: Could you, it's -- Director  
17 Scott is a little hard to hear. Could you just tell me

18 exactly what the motion is?

19 CHAIRMAN BURACK: Yes. The motion is  
20 that, in effect, the Committee, having considered the  
21 Petitions, the response of Clean Power Development, the  
22 correspondence from the city of Berlin, and the other  
23 information we've heard here today, that the Committee not  
24 take jurisdiction of the matter and deny the Petitions.

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1 DIR. MORIN: Thank you.

2 CHAIRMAN BURACK: So, that's the motion.  
3 It was seconded by Mr. Harrington. Is there further  
4 discussion beyond all of the deliberations that we had  
5 leading up to this, this motion? Chairman Scott -- or,  
6 Chairman Getz.

7 VICE CHAIRMAN GETZ: Thank you, Mr.  
8 Chairman. I just wanted to address generally kind of my  
9 view of the statute. And, I think the Legislature, and  
10 it's somewhat consistent, I think, with some of the  
11 statements made by Mr. Rodier the other day, but the  
12 Legislature's drawn a line at 30 megawatts, but it's not a  
13 hard and fast line. The Committee can take jurisdiction  
14 of projects less than 30 megawatts, it also can exempt  
15 projects greater than 30 megawatts. And, the test for us  
16 to take something that is smaller than 30 megawatts is a  
17 finding that it's -- by us that it's required. At the  
18 same time, for a larger project, we can exempt a project,  
19 if there's adequate protection through other state or  
20 municipal ordinances or federal law.

21 And, so, in this case, I think it comes  
22 down to "is there a good reason for the Committee to take

23 jurisdiction over this Project?" And, I think there's two  
24 related questions there. And, the first is, "is there  
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1 something in particular about this facility that requires  
2 the state to step in?" And, the second is, "is there  
3 something critical that the City of Berlin is not doing  
4 that would require us to step in?" And, I think the  
5 answer to both questions is "no", in that I don't see  
6 anything in particular about this facility that requires  
7 the state to step in, and I don't think there's anything  
8 critical that Berlin is not doing that would require the  
9 state to step in.

10 So, that's why I would vote in favor of  
11 the motion and would deny the Petition that the Site  
12 Evaluation Committee take jurisdiction.

13 CHAIRMAN BURACK: Further discussion?  
14 Director Scott.

15 DIR. SCOTT: I'd like to also note that  
16 we can talk about the City of Berlin's ordinance that  
17 explicitly references 162-H. So, to me, it was apparent  
18 that the City actively was trying to do the same type of  
19 things this Committee did, and I think they have done  
20 that. So, I think they should be commended for that type  
21 of holistic look they have tried to do.

22 CHAIRMAN BURACK: Thank you. Further  
23 discussion of the motion?

24 (No verbal response)

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1 CHAIRMAN BURACK: Okay. Seeing none,  
2 hearing none, I'll call for a vote. All in favor of the  
3 motion, please signify by saying "aye"?

4 (Multiple members indicating "aye".)

5 CHAIRMAN BURACK: Any opposed?

6 (No verbal response)

7 CHAIRMAN BURACK: Any abstentions?

8 (No verbal response)

9 CHAIRMAN BURACK: I believe the  
10 Committee has unanimously supported the motion. We will  
11 ask our counsel to assist us in the drafting of an order  
12 setting forth the decision of the Committee here to  
13 Denmark the Petitions and the basis for our decision.  
14 And, we will circulate that within the Committee as  
15 expeditiously as we can, and seek to have that issued as  
16 soon as we quickly -- as soon as we can. But it's  
17 probably a matter of a week or two, I would think, before  
18 we can --

19 (Chairman Burack conferring briefly with  
20 Atty. Iacopino.)

21 CHAIRMAN BURACK: Okay. Our goal will  
22 be to issue an order by approximately the middle of  
23 February, it may be a little later than that, but that  
24 will be our goal.

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1 Is there anything further the Committee  
2 members would like to raise with respect to this matter?

3 (No verbal response)

4 CHAIRMAN BURACK: Very well. The  
5 Committee will stand adjourned. Thank you.

6 CPD-0203.txt  
7 (Whereupon the meeting ended at 9:58  
8 a.m.)  
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