

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE**

Docket No. 2009-02

**Application of Laidlaw Berlin BioPower, LLC, for a Certificate of Site and Facility
for a 70MW Biomass Fueled Energy Facility in Berlin, Coos County,
New Hampshire**

**DECISION GRANTING
CERTIFICATE OF SITE AND FACILITY
WITH CONDITIONS**

November 8, 2010

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I. APPLICATION

On December 16, 2009, Laidlaw Berlin BioPower, LLC (“Applicant” or “Laidlaw”) filed an Application for a Certificate of Site and Facility (“Application”). The Applicant petitioned the Site Evaluation Committee (“Committee”) for a Certificate of Site and Facility (“Certificate”) in order to site, construct, and operate a renewable energy facility (“Facility”) nominally capable of generating 70 Megawatts (MW) of electric power. Ex. Laidlaw 1; Tr. 08/24/2010, Morning Session at 87. The Facility, as proposed, will use whole tree wood chips and other low grade clean wood (generally referred to as biomass) as fuel. Ex. Laidlaw 9, at 2. The Facility is proposed to be located on the northern side of Community Street, Coos Street and Hutchins Street in Berlin, Coos County, New Hampshire (“Site”) and consists of a bubbling fluidized bed boiler, steam turbine generator, wood handling system, round wood chipping facility, ash handling system, storm water management systems, two re-circulating water systems for steam generation and cooling, air pollution control systems, including a fuel gas recirculation system, bag house, selective catalytic reduction system, 50,000 gallon ultra low sulfur diesel fuel tank, and switchyard adjacent to the turbine building and consisting of a step up transformer and a single breaker. Ex. Laidlaw 1; Tr., 08/23/2010, Morning Session, at 45. The Chairman of the Committee accepted the Application as complete on January 26, 2010. See, Order Accepting Application for Certificate of Site and Facility and Designating a Subcommittee Pursuant to RSA 162-H:6-a (January 26, 2010).

The Applicant is a Delaware limited liability company, registered to do business and with a principal place of business in the State of New Hampshire. Ex. Laidlaw 1, at 23. At the time of the hearing, 100% of the Applicant’s shares were owned by Laidlaw BioPower, LLC (“LBP”). Ex. Laidlaw 6, at 23. However, the Subcommittee has been advised that NewCo

Energy Inc. (“NewCo”) has agreed to buy 100% of LBP’s share of the Applicant by August 31, 2010¹. Ex. Laidlaw 6, at 23. NewCo has entered into a contract with Homeland Renewable Energy, Inc (“HRE”) whereby HRE agreed to provide services to the Applicant for development, construction, and management of the Facility. Ex. Laidlaw 36, at 4.

The Facility will be built on sixty two (62) acres of land constituting a southern portion of the property alternately known as the Burgess Mill, Berlin Mill, and Fraser Pulp Mill. Ex. Laidlaw 1, at 25. The Applicant leased the Site on December 23, 2008 in connection with a “sale/leaseback” financing agreement with PJP Holding, LLC (“PJP”). Ex. Laidlaw 1, at 24.

The Applicant proposes to convert an existing boiler (manufactured by Babcock & Wilcox) at the Site to a bubbling fluidized bed boiler that will use whole tree wood chips as its primary fuel, and ultra low sulfur diesel oil as auxiliary fuel. Ex. Laidlaw 1, at 44. The boiler and associated emissions control systems will be located within and adjacent to the existing boiler building. Ex. Laidlaw 1, Appendix D, LM-0-1; see also, Ex. Laidlaw 11, 12, 72. A steam turbine generator will be located in a new turbine building adjacent to the boiler building. Ex. Laidlaw 1, Appendix D, LM-1.

A wood handling system will consist of the main wood fuel storage area, secondary wood storage area, round wood chipping facility, and fuel processing building. Ex. Laidlaw 1, at 45-46. The secondary wood storage area will be located on the northern part of the Site. Ex. Laidlaw 1, at 45. The main wood fuel storage area will be located within the vicinity of the boiler building. Ex. Laidlaw 1 at 45. Trucks will transport round wood and wood chips to the Facility where round wood will be unloaded and stored in the secondary wood storage area and

¹ It is the understanding of the Subcommittee that the final sale of LBP has not been accomplished to date.

wood chips will be unloaded and stored in the main wood fuel storage area. Ex. Laidlaw 1, at 45. Round logs stored in the secondary wood storage facility will be transported by a mobile crane arm and grapple equipment to the round wood chipping facility adjacent to the secondary wood storage facility. Ex. Laidlaw 1, at 45. There, an electronic-driven chipper will reduce the wood logs to fuel-size chips, which will then be transported to the processed wood chip fuel storage piles within the main wood fuel storage area. Ex. Laidlaw 1, at 45. The main wood fuel storage area will also have an unprocessed fuel storage pile. Ex. Laidlaw 1, at 45. Unprocessed wood from the main storage area will be transported to the fuel processing building where it will be processed and stored in the processed wood fuel storage area. Ex. Laidlaw 1, at 45-46. Three 50 ton per hour mechanical reclaim hoppers located under the storage area will supply a single boiler feed conveyer. Ex. Laidlaw 1, at 46. The boiler feed conveyer will feed the shuttle conveyers, which will distribute fuel to individual boiler chutes. Ex. Laidlaw 1, at 46.

The ash handling system will consist of two systems to handle fly ash and bottom ash, respectively. Ex. Laidlaw 1, at 46. Fly ash will be collected using a dry mechanical system and will be stored in a silo located between the steam turbine building and the boiler building. Ex. Laidlaw 1, at 46; Tr. 08/25/2010, Morning Session, at 56. Ash from the storage silo will be mixed with water in a pug mill to minimize dust and then transported outside the Facility for reuse or disposal. Ex. Laidlaw 1, at 46. Bottom ash will be containerized within the Facility and then transported outside the Facility for reuse or disposal. Ex. Laidlaw 1, at 46-47; Laidlaw 1, Appdx. C p. 5. In addition, a small stream of sand from the bed of the boiler will be continuously removed, screened and returned to the boiler. Ex. Laidlaw 1, at 46-47.

The Facility will be equipped with two re-circulating water systems for steam generation and cooling. Ex. Laidlaw 1, at 47. The water will be converted to superheated steam as a result

of circulating through the metal tubes within the boiler. Ex. Laidlaw 1, at 47. This steam will be used to power a turbine which will mechanically drive an electric generator. Ex. Laidlaw 1, at 47. When steam leaves the turbine, it will be cooled to a liquid state in a condenser. Ex. Laidlaw 1, at 47. The heated cooling water will be delivered from the condenser to a cooling tower. Ex. Laidlaw 1, at 47. Once cooled, it will be returned through feedwater pumps, which will supply the water to the boiler. Ex. Laidlaw 1, at 47.

In addition, the Facility will be equipped with air pollution control systems, which will include a bag house. Tr., 08/23/2010, Morning Session, at 45. The Facility will also be equipped with a comprehensive storm water management system to ensure the proper handling of storm water runoff. Ex. Laidlaw 1, at 49. The Applicant also proposes to renovate an existing 50,000 gallon ultra low sulfur diesel fuel tank to store ultra low sulfur diesel fuel. Ex. Laidlaw 1, at 49.

The Facility will be capable of generating 70 MW of electricity with a fuel-to-gross-power-output efficiency of approximately 25 percent at 37.5% fuel moisture content. Ex. Laidlaw 1, at 38. For the purposes of delivering the generated power to the electric grid, the Applicant seeks to install a step up transformer and a single breaker in a new switchyard proposed for construction adjacent to the turbine building. Ex. Laidlaw 1, at 49. The new switchyard is proposed to be connected to the existing East Side Substation 300 operated by the Public Service Company of New Hampshire (“PSNH”). Ex. Laidlaw 1, at 40. A new 115kV transmission line will be installed for this purpose. Ex. Laidlaw 4, at 1. Portions of the transmission line will run both underground and overhead. Ex. Laidlaw 4, at 1-2. The underground portion of the transmission line will leave the Site near the intersection of Coos and Community Street and generally follow the route of the former rail bed from the south end of the Site to the north end of Shelby Street. Ex. Laidlaw 4, at 1. The transmission line will transition

to overhead conductors at the east side of Devent Street to the existing PSNH East Side Substation 300. Ex. Laidlaw 4, at 1. The underground portion of the transmission line is proposed to run for an estimated length of 3,200 feet and the overhead portion of the transmission line is estimated to be 800 feet. Ex. Laidlaw 4, at 2.

The Applicant stated that it has the financial, technical and managerial capabilities to construct and operate the Facility. Ex. Laidlaw 1, at 90-91. As to the technical and managerial support, the Applicant asserted that HRE is capable of engineering and managing the Facility given that HRE, through its affiliates, designed, constructed, oversaw and managed a 55 MW plant fueled with different forms of biomass. Ex. Laidlaw 6 at 9. According to the Applicant's original estimate, the cost of construction of the Facility would be \$110 million dollars. Ex. Laidlaw 1, at 91. However, during the hearing the Applicant stated that its revised estimate of [See p. 40] the total Project cost is \$167 million. Ex. Laidlaw 65; Tr. 08/26/10 Morning Session, at 19.

II. PROCEDURAL BACKGROUND

On December 16, 2009, the Applicant filed the Application for construction of a renewable energy facility. See, RSA 162-H:7. Upon filing of the Application, as required by RSA 162-H:6-a, I, and New Hampshire Code of Administrative Rules Site 301.01, copies of the Application were made available to each state agency having jurisdiction to regulate the siting, construction, or operation of the Facility. Notice of the filing of the Application was also provided by Counsel to the Committee to the following entities: the City of Berlin; the Town of Gorham; and, to the North Country Council, the regional planning commission for communities in Coos County and portions of Grafton and Carroll Counties.

On January 13, 2010, the New Hampshire Division of Historical Resources (“NHDHR”) advised the Committee that it had requested the Applicant to prepare a Project Area Form and to seek public comment from groups or individuals who may have concerns about the potential for direct and visual effects of the Facility on historic properties. These actions are required under federal law, Section 106 of the National Historic Preservation Act, administered by NHDHR. On July 23, 2010, NHDHR issued a Final Report concluding that the construction and operation of the Facility will not present new or additional visual effects to surrounding historic neighborhoods. Ex. Laidlaw 49.

On January 14, 2010, the New Hampshire Department of Environmental Services (“DES”), Air Resources Division, advised the Committee that Applicant’s Application for an Air Permit was deemed to be administratively complete.

On January 14, 2010, the Water Division of DES advised the Committee that Applicant’s application for the Alteration of Terrain Permit and an application for a Shoreland Permit were deemed to be complete. However, the Water Division also stated that the Applicant’s application for an Industrial Wastewater Indirect Discharge Request was incomplete because it lacked the signature of the appropriate town authority and an application fee. The Water Division also advised that the Applicant’s Sewer Connection Permit application was incomplete because it lacked the following required elements: signature of the appropriate town authority; design drawings; technical specifications; and, the filing fee. On January 15, 2010, the Chairperson of the Committee advised the Applicant that the Water Division did not find the application to be complete and, therefore, the Application was deemed incomplete for the purposes of RSA 162-H. The Applicant promptly cured the deficiencies in the Water Division permits applications.

On January 21, 2010, the Water Division advised the Committee that it had received the design drawings and technical specifications that were previously missing and that the application fees had been paid. The Water Division advised the Committee that it now had sufficient information to conduct its technical review of the Industrial Wastewater Indirect Discharge Request and the Sewer Connection Permit application. On January 22, 2010, the Committee was advised that the appropriate official of the City of Berlin had signed off on the Industrial Wastewater Indirect Discharge Request and the Sewer Connection Permit application. Thus, the Chairperson of the Committee accepted the Application as complete on January 26, 2010. See, Order Accepting Application for Certificate of Site and Facility and Designating a Subcommittee Pursuant to RSA 162-H:6-a (January 26, 2010). A Subcommittee was then appointed to consider the Application. See, Order Accepting Application for Certificate of Site and Facility and Designating a Subcommittee Pursuant to RSA 162-H:6-a (January 26, 2010). Thereafter, the Applicant amended and supplemented its Application.

On March 11, 2010, the Subcommittee held a prehearing conference and issued a Report of Prehearing Conference dated March 12, 2010, scheduling discovery and hearings and addressing some other related procedural issues.

Pursuant to the Report of Prehearing Conference, the Subcommittee held a Site visit and conducted a public information hearing on March 16, 2010, at the Berlin Junior High School in Berlin, New Hampshire. At the informational hearing, the Applicant presented general information about the project to the Subcommittee and the public. The Applicant also answered questions from interested members of the public, Counsel for the Public and the Subcommittee.

The parties participated in two technical sessions held on May 5, 2010, and June 25, 2010, at the Berlin City Hall in Berlin, New Hampshire. During the sessions the parties were

given the opportunity to ask the Applicant various questions about the Facility and the Applicant. The technical sessions were conducted in public.

Additionally, the Subcommittee solicited and received various comments from interested members of the public regarding the proposed Project. The Subcommittee received negative as well as positive comments from the public relating to the proposed Facility. Some members of the public expressed concerns regarding the potential effects of the Facility on the ecosystem and economy of the region while others welcomed a new business in the area and agreed with the Applicant's assertions that the Facility would contribute to the orderly development of the region. . The transcripts of public comments can be reviewed on the Committee's website or at the Office of the Chairman of the Committee. Written public comment was also reviewed by the Subcommittee and is available for public review at the office of the Chairman of the Committee.

III. INTERVENTION, MOTIONS, AND HEARINGS

A. Intervention

On February 16, 2010, Wagner Forest Management, Ltd. ("WFM"), a major supplier of the forest products to local wood users, sought to intervene, asserting that its economic interests might be affected by the Project. WFM stated that the Facility will use wood biomass as a fuel and the Facility's demand and consumption will consequently influence and inadvertently change the local wood market. In addition, WFM advised the Subcommittee that it has an industrial wind farm in the early stages of development which may compete for limited transmission capacity on the transmission system known as the Coos County Loop ("Coos Loop"). According to WFM, its interests will be affected by the Facility which also seeks to use the limited transmission capacity of the Coos Loop.

Clean Power Development, LLC (“CPD”), a limited liability company intending to construct, own and operate a biomass facility (“CPD’s Facility”) fueled by whole tree chips in Berlin, New Hampshire² sought intervention and alleged that its interests might be affected in the following ways: (1) the Applicant’s consumption of whole tree wood chips would allegedly affect the local biomass market by increasing demand for whole tree wood chips and thereby affect its pricing; (2) the Applicant would have a “monopoly utility advantage” because the Applicant has entered into a Power Purchase Agreement (“PPA”) with PSNH whereby PSNH agreed to purchase 100% of the Facility’s electric output for 20 years with a favorable pricing formula; (3) the Facility might cause contamination of the Androscoggin River, a possible future source of water for CPD’s Facility; and (4) CPD and the Applicant would have to compete for the limited transmission capacity of the Coos Loop.

The Applicant objected to WFM’s and CPD’s requests to intervene arguing that potential competition for transmission capacity on the Coos Loop and biomass fuel is an insufficient justification to allow intervention. The Applicant argued that such competition is natural for a market economy and cannot be classified as legal harm. In addition, the Applicant stated that WFM and CDP failed to allege any specific injuries and, therefore, their Petitions should be dismissed. The Subcommittee found the Applicant’s argument unpersuasive. In an Order on Pending Motions dated March 24, 2010, the Subcommittee found that both CPD and WFM have identified substantial interests which may be affected by the outcome of this docket.

² The CPD Facility is sized at 29MW and, therefore, is not within the primary jurisdiction of the Site Evaluation Committee. See, RSA 162-H:6-a. In a separate proceeding, the Committee denied a petition filed by two local residents requesting that the Committee assert discretionary jurisdiction. See, Petition of Michael LaFlamme and Howard Jones (including 116 registered voters from Berlin and 104 registered voters from Gorham) for Review of a 29MW biomass power plant developed by Clean Power Development, LLC, and located in Berlin, Coos County, New Hampshire, NHSEC Docket No. 2009-03.

Specifically, the Subcommittee held that CPD, as a developer and operator of an electric generating facility, and WFM, as a manager of logging lands within affected forests, had a substantial interest in the sustainability and availability of biomass fuel from the northern forest and in the transmission capacity of the Coos Loop. However, the Subcommittee explicitly stated that WFM's and CPD's substantial interests were limited to the issues of biomass fuel in the northern forest and the ability to use the Coos Loop's transmission capacity. See, Order on Pending Motions, 5 (issued March 24, 2010). Therefore, the participation of WFM and CPD was limited to these two issues. See, Order on Pending Motions, 5 (issued March 24, 2010); see, N.H. Code of Admin. Rules Site 202.11(d). Ultimately, WFM decided not to participate in the adjudicative portion of the proceedings. See, Tr. Day 1, Morning Session, at 17; letter from Thomas Colgan (August 10, 2010).

On April 9, 2010, CPD filed a Contested Motion for Clarification and/or Rehearing alleging that the Subcommittee's limitation of the scope of CPD's intervention was unreasonable and unlawful. CPD requested the Subcommittee to find that CPD had a substantial interest because CPD had concerns about the power purchase agreement and the ownership structure of the Applicant. The Applicant objected to CPD's Motion for Clarification and/or Rehearing. On June 9, 2010, the Subcommittee denied CPD's Motion for Clarification and/or Rehearing, finding that the issues raised by CPD concerning the power purchase agreement and the Applicant's ownership structure were related to the competition between CPD and the Applicant and, as such, were outside of the Subcommittee's jurisdiction. See, Order on Clean Power Development's Contested Motion for Clarification and/or Rehearing (issued June 9, 2010).

The New Hampshire Sierra Club ("NHSC"), a voluntary non-profit organization with members residing in Coos County, sought intervention in these proceedings in order to ensure

that the Facility will not have an adverse effect on the ecosystem of the region (*i.e.*, soil, forest, and native plants and animals). The Applicant did not object to the NHSC's petition to intervene. The Subcommittee granted NHSC's Petition to Intervene and limited NHSC's participation to the issue of forest sustainability, the Applicant's forest management plan and the impacts of that plan on the northern forest. See, Order on Pending Motions, 5 (issued March 24, 2010). Eventually NHSC decided not to participate in further adjudication of the Application. See, Tr. 08/23/2010, Morning Session, at 17;

Three days prior to the scheduled adjudicative hearings, on August 20, 2010, Industrial Consultants, Inc. ("Industrial Consultants") filed a Motion to Intervene. Industrial Consultants identified itself as a developer of "poly-generating facilities that use natural resources in the most efficient and ecologically safe manner". Industrial Consultants alleged that it had an interest in the proceedings because the proposed Facility will utilize the available wood supply, thereby precluding Industrial Consultants from building its own wood burning plant in the area. In addition, Industrial Consultants explained that if permitted to intervene, it would argue that its boiler design and technology should be substituted for the boiler design and technology contained in the Application. Tr., 08/23/2010, Morning Session, at 32-34. The Applicant objected to Industrial Consultants' Motion to Intervene, stating that the Motion was untimely and failed to assert facts demonstrating that Industrial Consultants had any right, duty, or other substantial interest that might be affected by the proceedings. Although the Subcommittee allowed Industrial Consultants to make a public statement during the first day of the hearing, it found that the interests asserted by Industrial Consultants were speculative and denied its request to intervene. See, Order Denying Motion to Intervene Filed by Industrial Consultants Inc. (issued August 26, 2010); Tr. 08/23/2010, Morning Session, at 31-36.

Mr. Jonathan Edwards of Berlin sought to intervene as a citizen, rate payer, and a real estate broker who owns a business in Berlin, New Hampshire. Mr. Edwards claimed that his interest in the proceeding arose from his concerns that the development of the Facility will adversely affect the economy of the region. Specifically, Mr. Edwards argued that the construction of the Facility will adversely influence the real estate market in the region and, therefore, adversely impact the owners of real estate in the area. The Applicant objected to Mr. Edwards' request and alleged that Mr. Edwards failed to demonstrate that he had a sufficient specific and particularized interest in the matter and that his position was not different than that of the public at large. The Subcommittee considered Mr. Edwards' Petition and the Applicant's Objection and found that Mr. Edwards failed to allege a substantial interest which would be different from the interest of the public at large. Therefore, for the purposes of the prompt and orderly disposition of the proceeding, the Subcommittee denied Mr. Edwards' request for intervention. See, Order on Pending Motions, 6 (issued March 24, 2010). On March 26, 2010, Mr. Edwards filed a motion for rehearing "requesting the Subcommittee to reconsider its decision." The Applicant objected to the motion for rehearing. On April 6, 2010, the Subcommittee denied Mr. Edwards' motion for rehearing, finding that the motion essentially repeated the arguments already presented and considered by the Subcommittee and did not present "good reason" or "good cause" for rehearing. The Subcommittee also explained that the motion for rehearing failed to explain how the denial of the intervention to Mr. Edwards was unjust, unlawful or unreasonable. See, Order Denying Motion for Rehearing of Jonathan Edwards (issued April 6, 2010). On May 3, 2010, Mr. Edwards filed an appeal from the denial of intervention to the New Hampshire Supreme Court. Mr. Edwards later withdrew his appeal and the New Hampshire Supreme Court (Hicks, J.) granted withdrawal.

The City of Berlin filed a Petition to Intervene asserting that the City's interests will be directly affected by the construction of the Facility. The Coos County Commissioners also sought intervention based on the County's interest in the development of the County's economy. The Applicant did not object to these two petitions. The Subcommittee acknowledged the significance of the views of municipal and regional planning agencies and municipal governing bodies with respect to the orderly development of the region and granted the motions of the City of Berlin and Coos County Commissioners and allowed them to participate as intervenors. See, Order on Pending Motions (issued March 24, 2010) at 6; see, RSA 162-H:16, IV (b); RSA 541-A:39.

Pursuant to the New Hampshire Administrative Rule, Site 202.04, Senior Assistant Attorney General, K. Allen Brooks, was appointed by the New Hampshire Attorney General as a Counsel for the Public in order to "represent the public in seeking to protect the quality of the environment and in seeking to assure an adequate supply of energy." RSA 162-H: 9, I. Counsel for the Public is accorded all the rights, privileges and responsibilities of an attorney representing a party in a formal action. Senior Assistant Attorney General Peter Roth also participated as co-counsel with Counsel for the Public.

B. Motions

The Subcommittee considered a number of Motions filed by the Applicant, including: (1) Motion for Protective Order and Confidential Treatment of Appendix Q; (2) Partially Assented-To Motion for Protective Order and Confidential Treatment for Certain Confidential, Commercial and Financial Documents; (3) Partially Assented-To Motion for Protective Order and Confidential Treatment for Power Purchase Agreement and Steady State System Impact Study; (4) Assented-To Motion for Protective Order and Confidential Treatment for Pre-EPC

Contract and Draft Biomass Fuel Supply Agreement; and (5) motion for Confidential Treatment of the Amendment to Draft Biomass Fuel Supply Agreement.

On December 23, 2009, the Applicant filed a Motion for Protective Order and Confidential Treatment of Appendix Q (ISO-NE Interconnection Feasibility Study) of the Application, alleging that Appendix Q contains confidential commercial and financial information. The Subcommittee addressed the Applicant's request in its Order on Pending Motions and found that the public interest in the disclosure of the requested information is outweighed by the likelihood of substantial harm to the competitive position of the Applicant. See, Order on Pending Motions, 6 (issued March 24, 2010). As a result, the Subcommittee granted Applicant's request for Protective Order and Confidential Treatment of Appendix Q, sealing Appendix Q subject to review of Appendix Q by Counsel for the Public to ensure an adequate supply of energy. See, Order on Pending Motions, 7 (issued March 24, 2010).

In addition, as a result of the first technical session held on March 5, 2010, Counsel for the Public requested the Applicant to provide a number of documents and information, including the following: (1) documents demonstrating Applicant's business plan/financial model; (2) information pertaining to the interest of financial firms in providing debt and equity financing for the project; and (3) documents pertaining to ownership interests and relationships among the various entities involved in construction and operation of the Facility. On May 17, 2010, the Applicant filed its Partially Assented-To Motion for Protective Order and Confidential Treatment for Certain Confidential, Commercial and Financial Documents seeking confidential treatment and a protective order for the requested documents and information. The Applicant did not object to the disclosure of the documents pertaining to the Applicant's business plan/financial model to the Committee and to Counsel for the Public and was willing to disclose

documents pertaining to the ownership interests to the Committee, Counsel for the Public, and the City of Berlin. Counsel for the Public, City of Berlin, and CPD assented to the relief sought by the Applicant. On June 9, 2010, the Subcommittee found the documents and information referenced in the motion to be confidential financial and commercial information and, therefore, exempt from the provisions of the Right to Know law. See, RSA 91-A:5, IV. The Applicant's request for a protective order and confidential treatment of the identified documents and information was granted. See, Order on Partially Assented-To Motion for Protective Order and Confidential Treatment for Certain Confidential Commercial and Financial Documents (issued June 9, 2010).

On July 9, 2010, the Applicant filed a "Partially Assented-To Motion for Protective Order and Confidential Treatment for Power Purchase Agreement and Steady State System Impact Study" seeking to limit disclosure of the power purchase agreement (PPA) by treating it as confidential and allowing disclosure only to the Committee and to Counsel to the Public. The Applicant also requested limited disclosure of the Steady State System Impact Study. Counsel for the Public assented to the relief sought and CPD assented to confidential treatment of the Steady State System Impact Study but objected to the balance of the Applicant's motion. On August 6, 2010, the Applicant filed an amended Motion requesting confidential treatment of the PPA and Steady State System Impact Study, but allowing the public to review a redacted version of the PPA³. The Subcommittee Granted this Motion on August 19, 2010. See, Order on Pending Motions, 7 (issued August 19, 2010).

³ At the same time Public Service Company of New Hampshire (PSNH) filed a motion for approval of the PPA with the New Hampshire Public Utilities Commission. As part of that filing PSNH released the redacted version of the PPA to the public.

On August 23, 2010, the Applicant advised the Subcommittee that it had entered into a Pre-Engineering Procurement and Construction Agreement (“Pre-EPC Agreement”) with Babcock & Wilcox Construction Co., Inc. (Babcock & Wilcox) and a Draft Biomass Fuel Supply Agreement with Cousineau Forest Products (“Cousineau”) of Henniker, New Hampshire. Tr. 8/23/2010, Morning Session at 55, 79. The Applicant made an oral motion for confidential treatment of these agreements during the first day of the adjudicatory hearing. Tr. 8/23/2010, Morning Session at 76. On August 24, 2010, the Applicant filed an “Assented-To Motion for Protective Order and Confidential Treatment for Pre-EPC Contract and Draft Biomass Fuel Supply Agreement” requesting non-disclosure and confidential treatment of the agreements, stating that they contained confidential commercial and financial information. The Subcommittee granted Applicant’s “Assented-To Motion for Protective Order and Confidential Treatment for Pre-EPC Contract and Draft Biomass Fuel Supply Agreement” allowing non-disclosure and confidential treatment of said agreements. Tr. 8/24/2010, Morning Session at 11.

Finally, the Applicant requested non-disclosure and confidential treatment of an amendment to the Draft Biomass Fuel Supply Agreement with Cousineau in accordance with the Stipulation between the Applicant and Counsel for the Public. Ex. Laidlaw 76-A; Tr. 09/10/2010, Morning Session, at 6-10. CPD objected. Tr. 09/10/2010, Morning Session, at 8-9. However, the Applicant’s Motion was granted and the amendment to the Cousineau contract was accorded confidential treatment. Tr. 09/10/2010, Afternoon Session, at 6.

During the hearing, the Applicant presented a number of exhibits to the Subcommittee. Some of the exhibits presented by the Applicant had previously been found to be confidential commercial and financial documents that are exempt from public disclosure pursuant to RSA 91-

A: 5, IV⁴. The Applicant also presented five additional exhibits that previously had not been filed with the Subcommittee. The Applicant moved for confidential treatment of each of the new exhibits. The additional exhibits are identified as:

1. The First Amended Development Agreement (Ex. Laidlaw 38-A CONFIDENTIAL)
2. A draft Pre-EPC Contract between the Applicant and Babcock & Wilcox Construction Co., Inc. (Ex. Laidlaw 61 CONFIDENTIAL);
3. A draft Biomass Fuel Supply Agreement between the Applicant and Cousineau Forest Products, Inc. (Ex. Laidlaw 62 CONFIDENTIAL);
4. A redacted version of the draft Biomass Fuel Supply AGREEMENT BETWEEN the Applicant and Cousineau Forest Products, Inc. (Ex. Laidlaw 63 CONFIDENTIAL); and
5. An amendment to the draft Biomass Fuel Supply Agreement between the Applicant and Cousineau Forest Products, Inc. (Ex. Laidlaw 76-A CONFIDENTIAL).

The Applicant moved that the exhibits be subject to a protective order, treated confidentially and not disclosed to the public. The Applicant asserted that each of the exhibits is a confidential commercial or financial document that is exempt from disclosure pursuant to RSA 91-A: 5, IV. The Applicant also explains that public disclosure of the exhibits would cause harm to the Applicant's competitive position within the renewable energy industry. The Applicant further asserted that the potential harm from disclosure outweighs any benefit that the public would derive from disclosure of the documents.

⁴ Documents that were previously determined to be exempt from public disclosure in this docket are the System Feasibility Study prepared for ISO-New England and prepared on August 28, 2009 and revised on October 29, 2009 and on November 9, 2009 (Ex. Laidlaw 1, App. Q CONFIDENTIAL); a Development Agreement and Associated Documents (Ex. Laidlaw 38 CONFIDENTIAL); an unredacted Power Purchase Agreement (Ex. Laidlaw 39 CONFIDENTIAL); a Comfort Letter from Hancock Financial (Ex. Laidlaw 41 CONFIDENTIAL); a Comfort Letter from KBCM (Ex. Laidlaw 42 CONFIDENTIAL); the Applicant's Pro Forma document (Ex. Laidlaw 43 CONFIDENTIAL) and the Steady State System Impact Study performed for ISO-New England (Ex. Laidlaw. 56 CONFIDENTIAL).

Counsel for the Public and the intervenors, CPD and the City of Berlin, assented to the relief requested in the Applicant's motions pertinent to the First Amended Development Agreement (Ex. Laidlaw 38-A CONFIDENTIAL), the draft Pre-EPC Contract between the Applicant and Babcock & Wilcox Construction Co., Inc. (Ex. Laidlaw 61 CONFIDENTIAL), the draft Biomass Fuel Supply Agreement between the Applicant and Cousineau Forest Products, Inc. (Ex. Laidlaw 62 CONFIDENTIAL), and the redacted version of the draft Biomass Fuel Supply Agreement between the Applicant and Cousineau Forest Products, Inc. (Ex. Laidlaw 63 CONFIDENTIAL). CPD objected, however, to the Applicant's request of confidential treatment of the amendment to the draft Biomass Fuel Supply Agreement between the Applicant and Cousineau Forest Products, Inc. (Ex. Laidlaw 76-A CONFIDENTIAL).

The New Hampshire Right to Know Act generally provides that the public has the right to inspect all records created, accepted, or obtained by, or on behalf of, any public body or agency in furtherance of its official function and such documents are in possession or custody of the public body or agency. See, RSA 91-A:1-a; RSA 91-A:4, I. However, the Right to Know Act contains exemptions from public disclosure pertaining to confidential commercial and financial information. See, RSA 91-A:5, IV. Thus, the first prong of the exemption analysis is to determine whether each of the documents contains confidential commercial or financial information. RSA 91-A: 5, IV.

Exhibit 38-A CONFIDENTIAL is the First Amended Development Agreement. In the Order dated June 9, 2010, the Subcommittee addressed the issue of confidentiality of the original Development Agreement. See, Order on Partially Assented to Motion for Protective Order and Confidential Treatment for Certain Confidential, Commercial and Financial Document (June 9, 2010). The Subcommittee found that the Development Agreement contained confidential

commercial information and that the public interest in disclosure of this information did not outweigh the Applicant's interest in its preservation. Id. The first amended version of the Development Agreement contains the same type of information as the original version of the Development Agreement: commercial information pertinent to the financing of the Project. The relationship between borrowers and lenders fits within the definition of commercial information and it is a type of information which is typically kept confidential. Therefore, this information contained in the first amended version of the Development Agreement appears to be confidential commercial information within the scope of the exemption provided from disclosure at RSA 91-A:5, IV⁵.

Exhibit 61 is the draft Pre-EPC Contract between the Applicant and Babcock & Wilcox Construction Co., Inc. The Applicant asserted that Babcock & Wilcox preliminarily agreed to assist the Applicant with the construction of the Facility in accordance with the terms outlined in this agreement. Therefore, the Applicant stated that this agreement contains confidential commercial and financial information and should be treated as confidential.

In addition, during the adjudicatory hearing, the Applicant advised the Subcommittee that it developed a draft Biomass Supply Agreement with Cousineau. (Biomass Supply Agreement), Ex. Laidlaw 62 CONFIDENTIAL. The Applicant stated that this document outlines preliminary terms of the agreement between the Applicant and Cousineau. The Applicant further asserted that in accordance with this agreement Cousineau preliminarily agreed to supply biomass to the Applicant. The Applicant produced this Agreement as Ex. Laidlaw 62 CONFIDENTIAL. In addition, the Applicant produced a redacted version of the Biomass Supply Agreement as Ex.

⁵ However, during the hearing it was determined that many of the attachments contained within Exhibit 38 Confidential and 38-A Confidential were documents that had already been recorded at the registry of deeds and therefore those documents are already public and were excluded from the protective order.

Laidlaw 63 CONFIDENTIAL. The Applicant also introduced an amendment to the Biomass Fuel Supply Agreement, which was marked as Ex. Laidlaw 76-A CONFIDENTIAL. The Applicant asserted that both versions of the Biomass Supply Agreement and the Amendment to the Biomass Supply Agreement contain confidential commercial and financial information.

Contracts containing important commercial and financial terms clearly fit within the exemption to the Right to Know law. See, RSA 91-A: 5, IV. The information contained within these agreements include the terms and conditions for the purchase and sale of biomass and address specific pricing terms, calculations and requirements. Likewise, the pre-EPC contract includes the specific terms of the agreement including the costs and pricing information. Therefore, the information contained in the Pre-EPC Contract, unredacted Biomass Supply Agreement, redacted version of the Biomass Supply Agreement and the amendment to the Biomass Fuel Supply Agreement is properly considered to be confidential commercial and financial information.

However, confidential commercial and financial information is not automatically exempt from public disclosure on a *per se* basis. The agency must perform a balancing test to determine whether the records should be protected or if the public's interest in disclosure is outweighed by the Applicant's interests in protecting its confidential financial and commercial information. See, Union Leader Corp. v. New Hampshire Housing Finance Authority, 142 NH 540, 553 (1997). In this case, the information contained within the First Amended Development Agreement, if made available to the public, could be commercially damaging to the Applicant. Disclosure of this information could negatively affect the Applicant's competitive position by exposing otherwise confidential financial information and alerting competitors to financing entities with whom the Applicant is in negotiations. Furthermore, the information contained in

the Pre-EPC Contract, both versions of the Biomass Supply Agreement, and Amendment to the Biomass Supply Agreement, is the type of information which could cause commercial damage to the Applicant's business relationships and could put the Applicant at a competitive disadvantage in its industry if it became publicly available.

Therefore, the First Amended Development Agreement (Ex. Laidlaw 38-A CONFIDENTIAL), Pre-EPC Contract (Ex. Laidlaw 61 CONFIDENTIAL), the un-redacted Biomass Supply Agreement (Ex. Laidlaw 63 CONFIDENTIAL), the redacted Biomass Supply Agreement (Ex. Laidlaw 62 CONFIDENTIAL), and the Amendment to the Biomass Supply Agreement (Ex. Laidlaw 76-A CONFIDENTIAL) shall be considered to be confidential and shall not be publicly disclosed without a further order from the Subcommittee. However, consistent with the agreement of the parties, CPD was provided a copy of the redacted Biomass Supply Agreement (Ex. Laidlaw 62 CONFIDENTIAL). Additionally, because Counsel for the Public has an important statutory role in the proceedings and full and vigorous participation of Counsel for the Public is necessary to insure the goals of RSA 162-H, Counsel for the Public was provided with copies of all of the confidential exhibits.

In order to properly consider the various confidential documents, the Subcommittee conducted some of the hearings in non-public session. In order to understand the confidential commercial and financial information contained within the exhibits, members of the Subcommittee needed to question the Applicant's witnesses regarding the confidential exhibits. Counsel for the public participated in the non-public sessions. The non-public sessions were limited solely to the confidential exhibits and were conducted in such a manner that the transcript reflects each document considered in an orderly fashion. After each non-public session, the

Subcommittee unanimously voted to maintain the transcript of the sessions as confidential documents, not subject to public disclosure⁶.

C. Adjudicatory Hearings

Between August 23, 2010 and September 21, 2010, the Subcommittee held adjudicatory hearings. The Subcommittee met in adjudicatory hearings for 6 days and heard the testimony of ten witnesses.

After careful consideration of the criteria for the granting of a Certificate of Site and Facility under RSA 162-H: 16, and following intensive deliberations, the Subcommittee voted to approve the Application and to issue the Certificate of Site and Facility for the Facility as set forth in the Application, subject to a number of conditions. See, RSA 162-H:4, I(b) (authorizing the Committee to grant a Certificate subject to conditions.)

IV. POSITIONS OF THE PARTIES

A. Applicant

As a part of its Application, the Applicant submitted the pre-filed testimony of the following individuals:

Michael B. Bartoszek, Chief Executive Officer of Laidlaw Energy Group, Inc. See, Ex. Laidlaw 33;

Carl Strickler, Senior Vice President and Chief Operation Officer of Fibrowatt, LLC. See, Ex. Laidlaw 51;

Louis T. Bravakis, Vice President of Business Development with Laidlaw Energy Group, Inc. See, Ex. Laidlaw 9;

⁶ The non-public sessions were held on the following dates: August 26, 2010 at 3 p.m. (designated as a Confidential Session at which the Subcommittee the Applicant, Counsel for the Public and CPD were present); August 26, 2010 at 4:41 p.m. (designated as a Highly Confidential session at which the Subcommittee, the Applicant and Counsel for the Public were present); August 27, 2010 at 8:41 a.m. (Highly Confidential); and September 10, 2010 at 1:25 p.m. (Highly Confidential).

Raymond S. Kusche, a Principal of Laidlaw Berlin BioPower, LLC. See, Ex. Laidlaw 54; and

Dammon Frecker, a Vice President of Energy & Industrial Services with ESS Group, Inc. See, Ex. Laidlaw 44.

Thereafter, the Applicant supplemented the pre-filed testimony of Louis T. Bravakis, and Raymond S. Kusche. See, Exs. Laidlaw 10 and 55. In addition, the Applicant amended the pre-trial testimony of Carl Strickler and supplemented and amended the testimony of Michael B. Bartoszek. See, Exs. Laidlaw 52, 34, 35 and 36. At the adjudicatory hearing, the Subcommittee permitted Curtis Richmond of Cousineau to provide testimony concerning the Draft Biomass Supply Agreement and the availability of fuel. During the adjudicatory hearing, the Applicant submitted additional Affidavits of Mr. Kusche and Mr. Richmond. See, Ex. Laidlaw 74 and 75, respectively. The Applicant also filed a Post Hearing Memorandum for consideration by the members of the Subcommittee.

The Applicant asserted that the information contained in the Application and its pre-filed testimony, and exhibits demonstrates that the Applicant has the financial, managerial and technical capability to construct and operate the Facility and that the Facility will not unduly interfere with the ordinary development of the region and will not have an adverse affect on the aesthetics, historic sites, air and water quality, natural environment, or public health and safety. The Applicant argued, therefore, that its Application should be granted and the Committee should issue a Certificate.

B. Counsel for the Public

Counsel for the Public and the Applicant signed a Stipulation addressing and resolving a number of issues raised by Counsel for the Public. Ex. Laidlaw 76; Tr. 09/10/2010, Morning Session, at 6-7. Counsel for the Public engaged in a course of negotiations with the Applicant and agreed to a series of conditions relating to forest sustainability, see, Ex. Laidlaw 76. Counsel for the Public also requested that the Subcommittee require the Applicant and all of its associated entities to be bound by the Certificate and all conditions. Tr., 08/26/2010, Morning Session at 46-49. Counsel for the Public has also requested that the issuance of a Certificate be conditioned upon compliance by the Applicant and all of its associated entities with all brownfield covenants, restrictions and other agreements pertaining to the Site. Id. Finally, Counsel for the Public requested that the Applicant be prohibited from changing the type of fuel used to generate power at the facility without prior approval of the Committee. Counsel for the Public did not file a post-hearing Memorandum.

C. City of Berlin

The City of Berlin submitted the pre-filed testimony of Pamela E. Laflamme, City Planner for City of Berlin. Ex. Berlin 3. Generally, the City asserted that the development of the Facility will be beneficial to the community. Ex. Berlin 3. However, the City expressed its concerns about the Facility's noise level, dust, particulate matter, and traffic. Ex. Berlin 3. The City's concerns were addressed by the Applicant. The Applicant and the City of Berlin conducted numerous meetings and engaged in intensive discussions to address the issues raised

by the City⁷. As a result, the Applicant and the City of Berlin entered into a agreement in principle for the siting, construction and operation of the Facility. See, Ex. Berlin 1. The agreement was subsequently amended and offered to the Subcommittee as Berlin Exhibit 5. See, Ex. Berlin 5. At the time of the adjudicative proceedings, the City of Berlin welcomed the construction of the Facility in the City and urged the Subcommittee to issue the Certificate subject to the conditions contained in the document labeled “City of Berlin Proposed Certificate Conditions.” Ex. Berlin 5; Tr. 08/23/2010, Morning Session, at 24-26, 59-60.

D. Coos County Commissioners

Prior to the hearing, the Coos County Commissioners unconditionally supported the construction of the Facility and stated that the issuance of the Certificate to the Applicant will be a catalyst for job creation for the entire county and will positively affect the orderly development of the region. See, Letter from Coos County Commissioners, July 9, 2010. During the hearing, the Chairman of the Coos County Board of Commissioners, Burnham Judd, made a public statement on behalf of the Board of Commissioners urging the Subcommittee to issue a Certificate to the Applicant. Tr. Day 1, Morning Session, at 26-27. In addition, New Hampshire District 1 Executive Councilor, Raymond Burton, spoke in support of the Project. Tr. 08/25/2010, Afternoon Session, at 6-7. The County Commissioners did not participate in the adjudicative portion of the proceedings.

⁷ In addition the City formed a Community EFSEC Advisory Committee to study and recommend conditions to the Certificate. See, Letter from Max Makaitis, Androscoggin Valley Economic Development Recovery Corp., dated September 9, 2010, p. 2.

E. Clean Power Development, LLC

CPD is a New Hampshire limited liability company which intends to construct, own, and operate a 29 MW biomass electric generating facility at 20 Shelby Street in Berlin, New Hampshire. The Facility, as proposed in this docket, will be located approximately 1½ miles from the CPD facility. Both facilities intend to use whole tree chips as biomass for fuel. In addition, both facilities will have access to the Androscoggin River and intend to use the Coos Loop for the transmission of generated electricity.

Prior to the hearing, CPD submitted the following pre-filed testimony to the Subcommittee:

Testimony of Melvin E. Liston, President of Clean Power Development, LLC. See, Ex. CPD 1; and

Testimony of William W. Gabler, Project Manager for Clean Power Development, LLC. See, Ex. CPD 2.

In addition, CPD filed the supplemental testimony of William W. Gabler. See, Ex. CPD

3. At the conclusion of the hearing, CPD filed a Post Hearing Brief.

CPD argued that the Subcommittee should deny the Applicant's request for a Certificate because the construction of the Facility will adversely affect the sustainability and availability of biomass fuel in the northern forest and will impair CPD's ability to transmit power through the Coos Loop.

F. Wagner Forest Management, Ltd. and New Hampshire Sierra Club

WFM manages over 692,000 acres of timberland within a 100-mile radius of the Facility. In its Motion to Intervene, WFM asserted its belief that the construction of the Facility will adversely impact the sustainability of the biomass fuel source around the Facility and adversely impact the WFM's potential usage of the Coos Loop.

NHSC is a voluntarily non-profit organization with its members residing within proximity of the Project. The NHSC shared its concerns with the Subcommittee that the development of the Facility may adversely affect the ecosystem of the northern forest.

Notwithstanding the allegations raised in their Motions to Intervene, WFM and NHSC decided not to participate in the final hearing on the matter. Tr. Day 1, Morning Session, at 17; Ex. Sierra Club 1.

V. ANALYSIS AND FINDINGS

A. State Permits

The construction and operation of the Facility requires the following state permits: (1) an Air Emissions Permit, from the Air Resources Division (ARD) of the Department of Environmental Services (DES); (2) an Alteration of Terrain Permit from the Water Division of DES; (3) a Shoreland Protection Permit from the Water Division of DES; (4) an Industrial Wastewater Indirect Discharge Permit from the Water Division of DES; and (5) a Sewer Connection Permit from the Water Division of DES.⁸

1. Air Emissions Permit

The owner of a wood fired facility with a design rating greater than or equal to 2,000,000 BTUs per hour of gross heat input must apply for and receive a Temporary Air Permit prior to the construction or installation of such device. N.H. Code of Admin. Rules Env-A 603.01 (a), 607.01(c). The purpose of this requirement is to ensure that the operation and modification of new and existing devices will comply with established air limits. See, N.H. Code of Admin.

⁸ The Industrial Wastewater Indirect Discharge Permit and the Sewer Connection Permit are normally first considered and approved by the local government prior to consideration and approval by DES.

Rules Env-A 601.01. The Facility, as proposed, will include a boiler which is a stationary source that uses biomass (wood chips) as a fuel and has a design rating greater than 2 MMBtu per hour of gross heat input. Ex. Laidlaw 1, App. C, at 14. Therefore, the Applicant is required to receive a Temporary Air Permit prior to the construction and operation of the Facility.

On December 15, 2009, the Applicant submitted a State Air Permit Application to the New Hampshire Department of Environment Services, Air Resources Division. Ex. Laidlaw 1, App. C. The Application stated that the Facility will be equipped with a variety of emissions control systems to secure compliance with all applicable New Hampshire State Air Pollution Control Regulations. In its Application, the Applicant stated that it anticipates the Facility will generate the following types of emissions: (1) nitrogen oxides; (2) carbon monoxide; (3) sulfur dioxide/sulfuric acid mist; (4) particulate matter; (5) volatile organic compounds; (6) ammonia; (7) hazardous air pollutants; (8) carbon dioxide; and (9) fugitive emissions. Ex. Laidlaw 1, App. C. With regard to air emissions, the Applicant stated that it will comply with all applicable elements of the State Implementation Plan (“SIP”) and all national standards by ensuring that its nitrogen oxide (NO_x) emissions do not exceed the Lowest Achievable Emission Rate (“LAER”), and by implementing Best Available Control Technology (“BACT”) for all regulated new source review (NSR) pollutants for which the emissions could exceed the significance levels defined in the Prevention of Significant Deterioration (“PSD”) of Air Quality Permit regulations. Ex. Laidlaw 1, App. C.

On January 14, 2010, DES determined that the Application for Air Permit was complete. However, DES requested the Applicant to re-evaluate portions of its proposal and to perform additional air quality impact evaluations to support its application. In response, on May 27, 2010, the Applicant submitted a revised air permit application. Ex. Laidlaw 48. Instead of using

an electrostatic precipitator as originally planned, the Applicant decided to use a fabric filter bag house with dry sorbent injection to control emissions. Ex. Laidlaw 48; Tr. 8/23/2010, Afternoon Session, at 5. The Applicant stated that a bag house with a dry sorbent injection will provide a lower particulate emission rate than would the electrostatic precipitator that was originally proposed. Tr. 08/23/2010, Afternoon Session, at 5-7.

After inviting public comment, conducting a Public Hearing in Berlin, and considering all provided documents and comment, the ARD approved Applicant's request for an Air Permit on July 26, 2010 and issued its Final Determination to Grant a Temporary Permit/Prevention of Significant Deterioration/Non-Attainment New Source Review Permit for Laidlaw Berlin BioPower, LLC ("Final Determination"). See, Ex. Laidlaw 50. Pursuant to RSA 162-H: 16, I, the Certificate in this docket will be conditioned upon the Applicant's compliance with the conditions and limitations identified within the Final Determination and said permit, including all of its enumerated conditions and limitations, is incorporated into the Certificate to be issued in this docket.

During the construction of the Facility, the Applicant may be required to amend its Air Permit and eventually will have to apply for and receive a Title V Operating Permit from the Air Resources Division of DES. See, New Hampshire Code of Administrative Rules, Env-A 609. Pursuant to RSA 162-H: 4, III, the Subcommittee delegates to DES, Air Resources Division, the authority to approve amendments to the Air Permit and to issue a Title V Operating Permit for air emissions, with conditions, which will become a part of the Certificate of Site and Facility.

2. Site Specific Alteration of Terrain Permit

Under New Hampshire law, no person shall “dredge, excavate, place fill, mine, transport forest products, or undertake construction in or on the borders of surface waters of the state” without obtaining an Alteration of Terrain Permit. See, N.H. Code of Administrative Rules, Env-Wq 1501.02 (a), 1503.02 (a).

On December 15, 2010, the Applicant submitted its Site Specific Alteration of Terrain Permit Application to the New Hampshire Department of Environment Services, Water Division. Ex. Laidlaw 1, App. D. The total area of contiguous disturbance caused by construction of the Facility will be 37.81 acres (1,646,797 square feet). Ex. Laidlaw 46. On April 21, 2010, the Water Division issued an Alteration of Terrain permit with recommended permit conditions. Ex. Laidlaw 46.

The Certificate of Site and Facility will be conditioned upon the Applicant’s compliance with the conditions and limitations identified by the Alteration of Terrain Permit issued by DES, and said permit, including all of its enumerated conditions and limitations, is incorporated into the Certificate to be issued in this docket. Pursuant to RSA 162-H:4, III, the Subcommittee delegates its authority to approve amendments to the Alteration of Terrain Permit and to incorporate them into the Certificate to the New Hampshire Department of Environmental Services, Water Division.

3. Shoreland Protection Permit

On December 15, 2009, the Applicant filed a Shoreland Protection Permit Application with the New Hampshire Department of Environment Services, Water Division. Ex. Laidlaw 1, App. E. The Applicant is required to obtain a Shoreland Protection Permit prior to the construction of the Facility due to the fact that the Facility, as proposed, will be constructed

within 250 feet of the high water elevation of the Androscoggin River. N.H. Code of Administrative Rules, Env-Wq 1401.02 (a).

The Applicant acknowledged that the construction of the Facility will require the disturbance of more than 100,000 square feet within the protected shoreland of the Androscoggin River, which is also listed as impaired and/or sensitive by DES. Tr. 08/24/2010, Morning Session, at 30-31. However, the Applicant alleged that it plans to remove an existing impervious cover (pavement, structural debris, etc.) located within the 50-foot Waterfront Buffer and to leave this area unaltered, with the exception of an existing building and an existing gravel path. Ex. Laidlaw 1, App. E. Furthermore, the Applicant alleges that total impervious area within the 250-foot protected shoreland buffer will be reduced from 59.4% to 38.2%. Ex. Laidlaw 1, App. E.

The Water Division issued a Shoreland Permit with conditions on April 21, 2010.

Pursuant to RSA 162-H: 16, I, the Certificate in this docket will be conditioned upon the Applicant's compliance with the conditions and limitations identified by Shoreland Program (Wetlands Bureau) within its recommended permit conditions. The Shoreland Permit, including all of its enumerated conditions and limitations, is incorporated into the Certificate to be issued in this docket. Pursuant to RSA 162-H: 4, III, the Subcommittee delegates its authority to approve amendments to the Shoreland Permit to the New Hampshire Department of Environmental Services, Water Division.

4. Industrial Wastewater Indirect Discharge Permit and Sewer Connection Permit.

As proposed, wastewater from the Facility will be discharged to the municipal sewer system which connects to the Berlin Waste Water Treatment Facility, where the wastewater will be treated and discharged. Ex. Laidlaw 1. To implement this treatment of the wastewater, the

Applicant is required to obtain both an Industrial Wastewater Indirect Discharge Permit and a Sewer Connection Permit. The Applicant submitted an Application for Sewer Connection Permit to DES, requesting DES to allow the connection of additional domestic wastewater to the Facility's existing wastewater collection, treatment and disposal system in the amount of 212,476 gallons per day. Ex. Laidlaw 1, App. H. The Applicant also submitted an Industrial Wastewater Indirect Discharge Request Application requesting DES to permit discharge of an average of 211,036 gallons per day of wastewater. Ex. Laidlaw 1, App. I.

On April 19, 2010, DES approved the Applicant's Industrial Wastewater Indirect Discharge Request, permitting an average daily process flow of 211,036 gallons per day and maximum daily process flow of 302,534 gallons per day from the Facility. Ex. Laidlaw 47. In addition, DES required the discharge permit to be conditioned upon the Applicant's adherence to the City of Berlin's Sewer Use Ordinance and state-specific discharge parameters, including monitoring to assure the discharge will not interfere with the treatment provided by, or pass through, the treatment facility. Ex. Laidlaw 47.

On April 21, 2010, the DES Water Division approved the Applicant's Sewer Connection Permit to allow connection of the Facility to Berlin's existing wastewater collection, treatment and disposal system to enable the discharge of 214,476 gallons per day. Ex. Laidlaw 45. This permit was conditioned upon the Applicant's compliance with the requirements of New Hampshire Code of Administrative Rules, Chapter Env-Wq 700, the Standards of Design and Construction for Sewerage and Wastewater Treatment facilities. Ex. Laidlaw 45.

On April 21, 2010, the Wastewater Engineering Bureau of DES issued the Sewer Connection Permit and Industrial Wastewater Indirect Discharge Permits containing the conditions required for compliance with the Permits. Ex. Laidlaw 46.

The Subcommittee adopts and incorporates and the enumerated conditions and limitations identified in each such permit, Sewer Connection Permit and the Industrial Wastewater Indirect Discharge Permit into the Certificate to be issued in this docket. In addition, pursuant to RSA 162-H:4, III, the Subcommittee delegates its authority to approve amendments to the Sewer Connection Permit and the Industrial Wastewater Indirect Discharge, and to incorporate such amendments including new conditions of such permits, into the Certificate, to the DES, Water Division.

The Subcommittee finds that DES has appropriately reviewed and considered Applicant's requests for permits. Furthermore, the Subcommittee finds that DES has met its statutory obligations by carefully considering the applications, plans, analyses, and demonstrations. As set forth more fully above, the Subcommittee hereby adopts all five permits and incorporates each permit and the conditions and limitations contained therein as conditions of the Certificate of Site and Facility to be issued in this docket.

B. Consideration of Alternatives

Under RSA 162-H:16, IV, the Subcommittee should consider "available alternatives" in deciding whether the objectives of the statute would be best served by the issuance of a Certificate. See, RSA 162-H:16, IV. The term "available alternatives" is not defined by the statute. See, RSA 162-H:1-16. Historically, the Committee considered alternatives presented by the Applicant. See, Decision Granting Certificate of Site and Facility with Conditions, Application of Granite Reliable Power, LLC, 2008-04 (July 15, 2009), ("[t]he Site Evaluation Committee normally considers the evidence of alternatives presented by an applicant. The Committee also considers any other evidence in the record pertaining to alternative sites."). In the past, the Committee has considered other locations for the Facility, technologies used by the

Facility, and other alternatives to the size of the Facility. See, Id. For example, in evaluating an Application for a Certificate for a wind turbine facility, the Committee considered the Applicant's site selection and the possibility of approving a smaller-sized project with fewer turbines. See, Id. at 27. In a Decision pertaining to the issuance of a Certificate for a gas compression unit, the Committee considered alternative sites, routes of pipeline approach, and operation methods. See, Decision Issuing Certificate of Site and Facility with Conditions, Tennessee Gas Pipeline Co., 2008-02, p. 12 (March 12, 2009).

CPD argued that the Subcommittee should consider other planned renewable energy facilities, including its own, as well as existing biomass facilities as alternatives to the Applicant's Facility. See, Post-Hearing Brief of Clean Power Development, LLC, Section B. (Sept. 16, 2010). CPD asserted that the Subcommittee must consider "all" available alternatives in order to strike "a balance between the environment and the need for new energy facilities in New Hampshire." RSA 162-H:1. CPD's argument requires the Subcommittee to consider matters that involve competition between and among the Applicant, CPD and other power producers as part of its alternatives analysis. The Subcommittee notes that the statute requires the Subcommittee to review "available alternatives." RSA 162-H:16, IV. The Subcommittee is not required to consider all "available alternatives" as argued by CPD. If CPD's argument, was adopted the Subcommittee would have to compare the efficacy and competitive positions of the Applicant, existing facilities, and other potential facilities such as the one proposed by CPD. In essence, CPD requests that the Subcommittee determine, in advance, who will be the winners and the losers in the renewable energy markets in Coos County. The statute does not require the Subcommittee to undertake such an analysis. Nothing in the statute requires consideration of every possible alternative. The statute requires only that the Subcommittee consider available

alternatives. The Subcommittee will not consider what the legislature might have said and add words that the legislature did not see fit to include in the statute. See, Dalton Hydro v. Town of Dalton, 153 N.H. 75, 78 (2005).

Furthermore, the Subcommittee notes that the interpretation of the statute offered by CPD would cause undue delays in the consideration of energy facility applications. Substantial delays would occur if the Subcommittee were required to consider every possible alternative to the facility under consideration. Such an interpretation would be in direct conflict with the purpose of RSA 162-H which establishes the Site Evaluation Committee in order to avoid delays in the construction of needed facilities and to provide full and timely consideration of environmental consequences. RSA 162-H:1. Assuming, *arguendo*, that the Subcommittee were required to consider a comparative analysis between the Applicant's facility and CPD's facility, it cannot be said that CPD necessarily presents a better alternative. In conducting such an analysis, the Subcommittee would likely consider (1) whether the CPD project better satisfies sound environmental principles; and (2) whether the CPD project better satisfies the State's demand for an adequate and reliable supply of energy. The Subcommittee notes that the quantity of electrical energy demanded by the state is currently met by existing power generation facilities that serve the ISO-New England market. However, the state has statutorily recognized the need to diversify its electrical energy production and to increase the supply of renewable energy. See, RSA 378:37. Both facilities would burn biomass for fuel and both would qualify as renewable energy facilities as defined by RSA 162-H: 6-a, but the Laidlaw facility would generate approximately twice as much electricity as would the CPD facility. The record does not reflect that the CPD facility necessarily provides a better environmental alternative. Indeed, the Applicant's facility will provide a new use for an existing industrial site, boiler and building

rather than requiring the dedication of greenfield space to a new industrial use as contemplated by the CPD facility. On this record we could not conclude that CPD's proposed facility necessarily represents a better alternative.

In its Application, the Applicant stated that while selecting the Site for the construction of the Facility, it considered the following factors: (1) whether the Site had an existing infrastructure; (2) proximity to fuel suppliers; (3) accessibility to truck routes and/or rail lines for the delivery of fuel; (4) proximity to transmission lines and electrical interconnections; (5) water supply and delivery system; (6) wastewater treatment infrastructure and treatment capacity; and (7) a local workforce with the skills necessary to operate a generating facility. Ex. Laidlaw 1, at 50. The Applicant asserts that the former pulp mill site in Berlin uniquely addressed all these considerations, given that the mill already had an installed boiler system, had access to the wood supply, was large enough to accommodate construction of the Facility, and was located in the area with a workforce with direct experience with the Site and boiler operations. Ex. Laidlaw 1, at 50; Tr. 08/24/2010, Morning Session, at 40. Furthermore, the nature of the proposed site being a preexisting industrial facility with an existing boiler minimizes the need to consider "off-site" alternatives. The Subcommittee agrees with the Applicant that, in this case, the redevelopment of this existing industrial site represents a better alternative than developing a site without a pre-existing industrial use.

As to the general design of the Facility, the Applicant indicated that initially it considered having alternative roadways that led to different access points to the Facility. Tr. 08/24/2010, Morning Session, at 40-41. However, taking into consideration Applicant's commitment to the development of additional uses or properties on the Site, the Facility's design was altered in order to leave the front portion of the Site available for future development and to allow the

roadways to provide easy access to these future developments. Tr. 08/24/2010, Morning Session, at 40-41.

The Applicant asserted that it considered an air cooled condenser as a cooling mechanism. Ex. Laidlaw 1 at 51. However, the Applicant has determined that a wet cooling tower would be more efficient, would produce fewer emissions, and would produce less noise compared to an air cooled condenser. Ex. Laidlaw 1 at 51. Therefore, the Applicant decided to use a wet cooling tower to meet the cooling needs of the Facility. Ex. Laidlaw 1 at 51. In addition, for the purposes of control of air emissions, the Applicant considered an electrostatic precipitator as an alternative to a bag house. Tr. 08/23/2010, Afternoon Session, at 5. However, the Applicant decided that a bag house will provide better air quality control compared to an electrostatic precipitator. Tr. 08/23/2010, Afternoon Session, at 5. The Subcommittee agrees that the use of a fabric filter bag house with a dry sorbent injection will provide better control of emissions as compared to an electrostatic precipitator. As to the waste water treatment, the Subcommittee notes that the use of the municipal sewer system represents a far better alternative than discharge of wastewater into the Androscoggin River.

The Applicant considered a number of alternative options for its electrical interconnection, including running an underground cable through the existing pipe, installing a new underground duct bank, and installing new above ground transmission poles and lines. Ex. Laidlaw 1 at 51. Nevertheless, the Applicant decided in favor of the underground cable to ensure less impact on natural resources. Ex. Laidlaw 1 at 51.

It is also noted that the Applicant rejected gasification technology as an alternative to the fluidized bed system. Gasification was rejected by the Applicant because the market does not currently provide a commercially reasonable gasifier design capable of supporting the size of the

facility. Tr. 08/24/2010, Morning Session, at 43-44. However, the Applicant considered a grate system as an alternative to the fluidized bed system. Tr. 08/24/2010, Morning Session, at 43-44. The Applicant discarded this alternative after it found that the grate system was not capable of generating the same amount of steam at a guaranteed rate as the fluidized bed system. Tr. 08/24/2010, Morning Session, at 43-44.

The Subcommittee has considered the alternatives in this record and finds that the Site and Facility, as proposed, are the preferred location and design for this renewable energy facility considering the purpose and goals of RSA 162-H.

C. Statutory Criteria

In deciding whether to issue a Certificate to the Applicant, the Subcommittee must consider the following statutory factors: (1) whether the Applicant has adequate financial, managerial, and technical capability to assure construction and operation of the Facility in continuing compliance with the terms and conditions of the Certificate; (2) whether the Facility will unduly interfere with the orderly development of the region, having considered the views of municipal and regional planning committees and municipal governing bodies; and (3) whether the Facility will have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety. See, RSA 162-H: 16, IV.

1. Financial, Managerial, and Technical Capability

The Subcommittee must consider the Applicant's "financial, managerial, and technical capability to assure construction and operation of the Facility in continuing compliance with the terms and conditions of the Certificate." RSA 162-H:16, IV (a). In this docket, we ultimately determine that the Applicant, subject to certain conditions, will have the requisite capabilities.

a. Financial Capability

The Applicant asserts that it has the financial capability to construct and manage the Facility. In support of this assertion, the Applicant stresses its corporate and capital structure, the Power Purchase Agreement with PSNH, its biomass supply agreement with Cousineau and its relationship with contractors Homeland Renewable Energy and Babcock & Wilcox.

i. Corporate and Capital Structure

At the time of the hearing, 100% of the Applicant's shares were owned by LBP. Ex. Laidlaw 6, at 23. However, the Subcommittee has been advised that NewCo, a limited liability company formed solely for the purposes of the construction and operation of the Facility, has agreed to buy LBP's interest in the Applicant. Ex. Laidlaw 8, 64, 65; Ex. Laidlaw 6, at 23; Ex. Laidlaw 6, App. A, at 1; Tr. 08/23/2010, Afternoon Session at 85-86. The Facility's land, buildings and other physical assets are owned by NewCo's affiliate, PJPD. Ex. Laidlaw 8, 38 CONFIDENTIAL, 38A CONFIDENTIAL, 64, 65. The Applicant asserts that the relationships among and between NewCo, PJPD and the Applicant demonstrate financial capability to construct and operate the Facility. Tr. 08/26/2010, Morning Session at 16-17.

According to the Applicant, NewCo is capable of financing the Facility because, among other factors, NewCo's owners and board of advisors include former and current managing partners of Accenture's utilities practice, which has been a consultant to 96 of the Fortune Global

100, more than three-quarters of the Fortune Global 500, and major government agencies around the world. Ex. Laidlaw 1 at 91. In partial support of NewCo's financing capacity, the Applicant provided NewCo's balance sheet. Ex. Comm. 1A.

In its Application, the Applicant stated that it anticipated that the capital structure of the Project will be comprised of \$80 million of debt and \$30 million of equity. Ex. Laidlaw 6, at 93. However, during the hearing, the Applicant advised the members of the Subcommittee that the Project's total budget has increased to \$167 million. Ex. Laidlaw 65; Tr. 08/26/2010, Morning Session, at 19. Laidlaw now estimates that the Project will incur debt in the amount of \$137 million. Ex. Laidlaw 65; Tr. 08/26/2010, Morning Session, at 19. The debt financing will be provided by various institutional investors and will be secured by the property owned by PJPD. Ex. Laidlaw 6, at 93; Ex. Laidlaw 35; Ex. Laidlaw 65; Tr. 08/26/2010, Morning Session at 16. The Applicant identified the John Hancock Insurance Company as an investor whose interest is demonstrated by a "comfort letter" to the Applicant, indicating intent to provide financing to the Project if certain conditions are satisfied, including the final execution and approval of the PPA. Ex. Laidlaw 41 CONFIDENTIAL, 42 CONFIDENTIAL; Tr. 08/25/2010, Morning Session, at 138-139; Tr. 08/27/2010 HI-CONFIDENTIAL, Morning Session, at 136-137. It is anticipated that the term of debt will coincide with the term of the PPA and will be 20 years. Ex. Laidlaw 42 CONFIDENTIAL; Tr. 08/27/2010 HI-CONFIDENTIAL, Morning Session, at 137.

The Applicant also asserts that \$18 million of equity in the Project will be provided by PJPD in the form of loan from Aware Energy Funding Company ("Aware") originally generated by NewCo. Ex. Laidlaw 6, at 93; Tr. 08/26/2010, Morning Session at 16; Tr. 08/27/2010, Morning Session at 54; Tr. 08/27/2010, HI-CONFIDENTIAL, Morning Session, at 124; Ex. Laidlaw

38 CONFIDENTIAL, 38A CONFIDENTIAL.⁹ PJPD will be reimbursed by the Applicant through a share of the cash flow from the Project, represented by a fixed rent paid by the Applicant and distributed through a depository agent. Tr. 08/27/2010, HI-CONFIDENTIAL, Morning Session, at 124-125. To substantiate its calculation, the Applicant submitted a confidential pro forma financial document to the Subcommittee. Ex. Laidlaw 43, CONFIDENTIAL.

The Applicant also expects to receive \$12 million in equity in the form of proceeds from the New Market Tax Credit Program. Ex. Laidlaw 65; Tr. 08/26/2010, Morning Session, at 19. The Applicant advised the Subcommittee that the Project has received an allocation of \$44.5 million in New Market Tax Credits. Tr. 08/25/2010, Morning Session, at 85-86; Tr. 08/26/2010, Morning Session at 14-15. Laidlaw anticipates that \$2.25 million of the New Market Tax Credits will be allocated to a community loan fund intended to benefit the community through the New Hampshire Business Finance Authority, Seedco Financial Services, and CEI Capital Management serving as allocatees. Tr. 08/25/2010, Morning Session, at 85-86; Tr. 08/26/2010, Morning Session at 14-15. It is also anticipated that \$500,000 of this credit will be distributed to the City of Berlin. Tr. 08/25/2010, Morning Session, at 85-86; Tr. 08/26/2010, Morning Session at 14-15.

Although the Applicant did not consider federal “stimulus funds” in its Application, the opportunity exists to receive an investment tax credit or grant through the American Recovery

⁹ It is noted that \$10 million was already provided by PJPD to the Applicant in accordance with the security agreement between Aware and PJPD. Ex. Laidlaw 38 CONFIDENTIAL, 38A CONFIDENTIAL; Tr. 08/27/2010, Morning Session at 54. In addition, \$2 million will be provided under a promissory note between PJPD and the Applicant. Ex. Laidlaw 38 , 38A; Tr. 08/27/2010, Morning Session at 54. The Applicant anticipates that at the time of financial closing, the security agreement will be substituted by some other agreement containing subordination provisions making Aware’s and NewCo’s interest in the Project subordinate to the rights of the First Mortgage Holder. Tr. 08/27/2010, Morning Session, at 58. This type of financing transaction is typical in the industry according to Mr. Bartoszek.

and Reinvestment Act (ARRA). Through such programs, the Applicant might receive as much as 30 percent of the construction cost of the Facility in grants if it commences construction by the end of the year or, alternatively, the Applicant may benefit from an investment tax credit under ARRA. Tr. 08/25/2010, Afternoon Session, at 11-13.

The Applicant stated that the investment tax credit “is an important part of financing the Project.” Tr. 08/25/2010, Afternoon Session, at 122. Additionally, the Applicant requested the Public Utilities Commission to conduct expedited review of the PPA based partially on the fact that the Applicant has to begin construction of the Facility by the end of the year in order to qualify for this credit. On this point, questioning of the Applicant’s CEO, Michael Bartoszek, regarding the importance of the credit is instructive:

- Q. What would the impact on the project be if, for whatever reason, you were not able to meet qualifying criteria for one or both of those tax credits?
- A. (Bartoszek) “That’s a good question. As I mentioned earlier with respect to financial model that we provided in the confidential documents, we’ve not included either of those, taking credit for either of those in that financial model. But to give you the response I got from Key Bank when I discussed this with them, the basic response is every bit of equity of this type is helpful to the financing of the transaction.”

Tr. 08/25/2010, Afternoon Session, at 58-59.

After reviewing all relevant exhibits and testimony, the Subcommittee concludes that although the tax credits are “important” and “helpful” to the Applicant, they are not crucial to the Applicant’s ability to raise capital for the financing of the Facility. The Applicant submitted its financial plan to the potential lenders without including the proceeds from the credits or grants and still obtained a “comfort letter” indicating a lender’s interest in financing the Project. As was represented by the Applicant, the tax credits and/or grant will simply increase the likelihood of successful financing. Tr. 08/25/2010, Afternoon Session, at 59.

Despite the Applicant's positive efforts to establish a corporate structure that is appealing to lenders, the Subcommittee recognizes that this Applicant does not have the cash or assets to self-fund the construction of the facility. CPD argues that this fact disqualifies the Applicant and dooms the Application.

While a project completely funded with equity would be optimal, it is neither a realistic nor necessary component to demonstrate financial capability. The Committee has recognized that utility scale renewable energy projects are rarely financed from a developer's balance sheet. Such projects routinely rely on project financing. See, e.g., Application of Granite Reliable Power, LLC, NHSEC Docket No. 2008-04, Decision, p. 31–32 (July 15, 2009). The Applicant has demonstrated a sufficient plan and capability to successfully obtain project financing for the construction and completion of the Facility. However, in order to assure the Applicant's financial capability to construct and operate the Facility, the Applicant, as a condition of the Certificate, will be required to obtain and close a complete financing package for the Facility prior to the commencement of construction of the Facility, and to provide a copy of all financial closing documents to the Subcommittee.

PJPD owns the real property and assets of the Applicant. Aware Energy Funding, LLC (Aware), is a vehicle for financing of the Facility. NewCo is the Applicant's and PJPD's parent company. Each of these entities is structured as a limited liability company. While this was originally a concern, the Applicant, PJPD, Aware and NewCo agreed to guarantee the performance of all requirements of the Certificate, if granted. Tr. 08/26/2010, Morning Session, at 21; Tr. 08/26/2010, Morning Session, at 46-49. Therefore, as a condition of the Certificate issued in this docket, the Applicant, PJPD, Aware, NewCo, LBB and their successors and assigns will all be required to guarantee performance of all the terms and conditions of the

Certificate and to be jointly and severally liable for the performance of said conditions. Such guarantees shall be in form and substance reasonably acceptable to the Subcommittee, and shall be fully executed and accepted by the Subcommittee prior to commencement of construction. In addition, each entity will be identified in the Certificate and the Committee may pursue enforcement activity against any or all of the entities.

Finally, the Subcommittee acknowledges that its decision to grant the Certificate is partially based on our finding that the senior management of the Applicant, NewCo, PJP, Aware, and LBB are highly qualified and capable of raising capital for construction and operation of the Facility. Therefore, as a further condition of the Certificate, it is required that the Applicant, NewCo, PJP, Aware, and LBB provide a notice of any change in senior management to the Subcommittee. In addition, neither the Applicant, NewCo, PJP, Aware Funding LLC, nor LBB shall permit any changes in ownership or ownership structure without prior written approval of the Committee.

ii. Power Purchase Agreement

The Applicant and Public Service Company of New Hampshire (PSNH) have entered into a PPA. The PPA also demonstrates the Applicant's ability to finance the operation of the Facility. The PPA will provide a cash flow supporting the Applicant's financial capability. Ex. Laidlaw 6, at 92; Tr. 08/25/2010, Morning Session, at 116. Under the terms of the PPA, PSNH agreed to purchase 100% of the Facility's electricity output and capacity for 20 years. Ex. Laidlaw 6, at 92-93; Laidlaw 39 CONFIDENTIAL, 40 REDACTED.

CPD claims that the PPA will be used by the Applicant as a mechanism for passing the price of the biomass to the ratepayers of PSNH. The Applicant disputes this position and claims that the purpose of the PPA is to insure that the Applicant receives adequate compensation for

electricity generation. Tr. 08/25/2010, Morning Session, at 112. Under the terms of the PPA, the energy price paid by PSNH to the Applicant will be revised on a quarterly basis to incorporate a Wood Price Adjustment (“WPA”). Laidlaw 39 CONFIDENTIAL, 40 REDACTED; Tr. 08/25/2010, Morning Session, at 108. The WPA considers the actual price per ton that PSNH pays for biomass fuel at the Northern Wood Power Plant, Schiller Station¹⁰, in the immediate preceding quarter. Laidlaw 39 CONFIDENTIAL, 40 REDACTED; Tr. 08/25/2010, Morning Session, at 108-109. In essence, the WPA captures the difference between the PPA base price and the price paid for biomass at the Schiller Station. Laidlaw 39 CONFIDENTIAL, 40 REDACTED; Tr. 08/25/2010, Morning Session, at 111. The Applicant asserts that the WPA as a price adjustment will benefit rate payers because the cost of biomass will be tied to the index controlled by PSNH and regulated by the New Hampshire Public Utilities Commission instead of being tied to Applicant’s procurement costs. Tr. 08/25/2010, Morning Session, at 127-129; Tr. 08/27/2010, CONFIDENTIAL, Morning Session, at 12. Moreover, the Applicant asserts that the PPA provides certainty of revenue for the Project and, therefore, demonstrates the Applicant’s continuing capacity to finance the operation of the Project. Tr. 08/25/2010, Morning Session, at 84.

The PPA is not yet approved by the Public Utilities Committee (“PUC”)¹¹. It plainly appears that financing of the project depends on the approval of the PPA by the PUC. The John Hancock “comfort letter”, Ex, Laidlaw, 41 CONFIDENTIAL, requires an approved and final PPA as a condition to financing. If the PPA is not approved by the PUC, it is unlikely that the project will go forward. Therefore, as a condition of the Certificate, the Applicant is required to

¹⁰ The Northern Wood Project at Schiller Station is a 55 MW biomass fueled generator owned and operated by PSNH and located in Newington, NH.

¹¹ PSNH is a public utility distribution company. Its contracts for the purchase of renewable energy certificates, combined with or independent of a power purchase agreement, must be determined by the PUC to be in the public interest pursuant to RSA 362-F:9.

demonstrate PUC approval of the PPA prior to commencement of construction. In addition, the Applicant shall: (i) notify the Subcommittee of approval or rejection of the PPA; (ii) if approved, provide a copy of the approved PPA to the Subcommittee; (iii) identify all changes to the PPA made or caused to be made by the PUC; and (iv) provide supplemental documentation demonstrating the Applicant's financial capability to construct and operate the Facility based upon an approved but amended PPA. Upon receipt of said information and documentation from the Applicant, the Chairman of the Subcommittee will determine whether an additional meeting of the Subcommittee will be required in order to determine if all conditions of the Certificate have been satisfied such that construction may commence.¹²

¹² The review of the PPA as a component of the financial capabilities of the Applicant in this docket differs markedly from the review of the PPA that is conducted by the PUC. This Subcommittee reviews the PPA because the Applicant has proffered the document and its terms as one prong supporting its claim that it will have adequate financial capability to site, construct and operate the Facility. See, RSA 162-H:16, IV(a).

The detailed terms and conditions of the PPA are not relevant to the Subcommittee's determination. The creation and maintenance of the cash flow for the PPA is our main consideration. Importantly, we make no determination regarding whether the PPA serves the public's interest, or whether the PPA is a prudent endeavor for the ratepayers of PSNH. Those determinations are not relevant to the siting consideration and are left to the jurisdictional authority of the PUC. The analysis conducted by the PUC is likely to be more concerned with specific commercial provisions of the PPA and public disclosure of these commercial provisions may be necessary in the PUC proceedings so that the public understands and can follow the determinations made by the PUC in that context.

iii. Fuel Supply Agreement

During the adjudicative hearing, the Subcommittee was advised that the Applicant had entered into a preliminary draft Fuel Supply Agreement with Cousineau of Henniker, New Hampshire. Tr. 8/23/2010, Morning Session at 55; Ex. Laidlaw 62 CONFIDENTIAL, 63 CONFIDENTIAL. Under the terms of the agreement, Cousineau agreed to supply biomass to the Facility for the twenty (20) year term of the PPA. Tr. 8/23/2010, Morning Session at 56. The agreement is subject to the specifications listed in the PPA and conditions identified in the procurement policy. Ex. Laidlaw 62 CONFIDENTIAL, 63 CONFIDENTIAL; Tr. 8/23/2010, Morning Session at 56-58. In order to comply with the Fuel Supply Agreement, Cousineau will be required to supply clean biomass fuel as defined by the New Hampshire Renewable Portfolio Standards, RSA 362-F:2, II, based on a pricing structure established in the Fuel Supply Agreement. Ex. Laidlaw 62 CONFIDENTIAL, 63 CONFIDENTIAL; Tr. 8/23/2010, Morning Session at 61. The procurement policy that is part of the Fuel Supply Agreement incorporates Sustainability Conditions developed by the Applicant and addressed in more detail later in this Decision. Ex. Laidlaw 76; Tr. 8/23/2010, Morning Session at 56-57. The Applicant argues that the agreement with Cousineau is an important component of its financial capability. Working in conjunction with the PPA, the Fuel Supply Agreement will provide certainty with respect to the sourcing and pricing of fuel. Tr. 08/25/2010, Morning Session, at 84.

The Subcommittee acknowledges that the Fuel Supply Agreement is an integral and important part of the Applicant's ability to provide financial support for the construction and operation of the Facility. Therefore, as a condition to the Certificate, the Applicant is required to obtain a final executed Fuel Supply Agreement materially consistent with the Fuel Supply Agreement confidentially provided in draft to the Subcommittee, and to provide a copy of such

executed agreement to the Subcommittee as soon as it becomes available and not later than the commencement of construction of the Facility.

The Subcommittee carefully reviewed all the exhibits, testimony, and comments regarding the financial capability of the Applicant and finds, subject to the conditions contained herein, that the Applicant has demonstrated the financial capability to construct and operate the Facility in accordance with the terms and conditions of the Certificate.¹³

b. Managerial and Technical Capability

In order to assure sufficient managerial and technical capacity, NewCo, the Applicant's proposed parent company, has entered into a contract with Homeland Renewable Energy (HRE) pursuant to which HRE agrees to oversee and manage the development, construction, and management of the Facility. Ex. Laidlaw 36, at 4; Ex. 64, 65; Tr. 08/23/2010, Afternoon Session at 61-62, 68. HRE, through its subsidiary company Fibrowatt Operations, LLC ("Fibrowatt"), will oversee the construction and operation of the Facility. Ex. Laidlaw 1 at 90-91; Tr. 08/23/2010, Afternoon Session at 62; Tr. 08/25/2010, Afternoon Session, at 73-74. According to the Application, Fibrowatt managed the construction of and operates a 55MW biomass (poultry litter) power plant in Benson, Minnesota ("Fibrominn Plant"). Ex. Laidlaw 1 at 90. During the construction phase of the Fibrominn Plant, Fibrowatt's team met the performance requirements of the relevant permits, managed the performance of various contractors involved in designing and constructing the plant, and operated and maintained the plant to secure an approximate 85 percent capacity factor. Ex. Laidlaw 1, at 90; Tr. 08/23/2010, Afternoon Session

¹³ On August 4, 2010, CPD file a pleading entitled Proposed Ruling of Law Pursuant to RSA 541-A: 31, VI (E). CPD argues that the Subcommittee, as a matter of law, cannot issue a Certificate until and unless the PUC has approved the PPA. CPD's request for such a ruling is denied to the extent that CPD claims that a Certificate cannot be conditioned upon PUC approval of the PPA. As set forth above the Subcommittee has required PUC approval of the PPA as a condition of the Certificate in this docket.

at 67. Fibrowatt employs 32 people to manage and operate the Fibrominn Plant including, among other staff, a Plant Manager, Operations Manager, Maintenance Manager, Fuel Manager, Administrative Assistant, Warehouse and Purchasing Specialist. Ex. Laidlaw 1, at 90. In essence, the Applicant relies on HRE's and Fibrowatt's experience in asserting that it has the technical and managerial expertise to construct and operate the Facility. Ex. Laidlaw 1, at 90. In its Application, the Applicant explicitly stated that it "intends to use the operating philosophy and experience gained in the Fibrominn biomass plant to structure the operations of the Berlin Facility." Ex. Laidlaw 1 at 90. Specifically, it is anticipated that the Facility will have a plant manager who would be responsible for the day-to-day operations of the Facility and would report to Fibrowatt's Vice President of Operations. Tr. 08/23/2010, Afternoon Session at 65-66. Fibrowatt's capacity to manage and operate a renewable power facility was not disputed by other parties.

In addition to the HRE arrangement, the Applicant entered into a preliminary Engineering and Procurement Contract (EPC) with Babcock & Wilcox. Ex. Laidlaw 61 CONFIDENTIAL; Tr. 08/23/2010, Morning Session at 47. The preliminary EPC is the first step toward the development of a final EPC Agreement. Babcock & Wilcox will assist the Applicant with design, construction, start-up, commissioning, and testing of the Facility. Tr. 08/24/2010, Morning Session, at 21-22. Babcock & Wilcox was the manufacturer of the existing boiler at the Facility and has extensive experience with the maintenance and servicing of black liquor recovery boilers and fluidized bubbling boilers. Babcock & Wilcox has previously converted black liquor recovery boilers to bubbling fluidized beds in Tennessee and Kentucky. Tr. 08/24/2010, Morning Session at 26. Babcock & Wilcox is well qualified to assist with

construction of the Facility generally and conversion of the Facility's liquor boiler into a fluidized bubbling bed boiler. Tr. 08/23/2010, Afternoon Session at 145-146.

The Subcommittee finds that the Applicant, as an entity supported by the HRE development team and Babcock & Wilcox, will have sufficient managerial and technical capability to construct and operate the Facility in accordance with the terms of the Certificate. However, the Subcommittee recognizes the fact that the Applicant's ability to provide managerial and technical support for the Facility is based on the contracts with HRE and Babcock & Wilcox. Therefore, as a condition of the Certificate, the Applicant will be required to obtain final agreements with terms materially similar to the ones represented to the Subcommittee prior to the commencement of construction of the Facility. Furthermore, once executed, such agreements shall be provided to the Subcommittee. In addition, the Subcommittee shall be notified of any subsequent material changes to the final agreements. Such changes shall be subject to the Subcommittee's approval.

Finally, the Subcommittee acknowledges that its finding regarding the Applicant's ability to construct, manage and operate the Facility is based on the qualifications and experience of HRE and Babcock & Wilcox. In order to ensure that the Facility will be constructed and operated in accordance with the represented set of skills, the Subcommittee requires the Applicant to notify the Subcommittee of any changes in major contractors providing construction, operation, or management services for the Facility.

Subject to the aforementioned conditions, the Subcommittee finds that the Applicant has demonstrated its financial, managerial, and technical capability sufficient to assure the construction and operation of the Facility in accordance with the terms of the Certificate.

2. Orderly Development of the Region

RSA 162-H:16, IV (b) requires the Subcommittee to consider whether the proposed project will unduly interfere with 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).

a. Views of Municipal and Regional Planning Commissions and Municipal Governing Bodies

The Application is broadly supported by regional and municipal planning and governing bodies. The Coos County Board of Commissioners expressed its support of the Application and stated that the Facility “would most positively affect the orderly development of the region and return our forests to their historical use as working forests.” Ex. Laidlaw 31. The Board of Commissioners supports the Applicant’s position that local forests have a sufficient supply of wood fiber to meet the Facility’s needs without adversely affecting the orderly development of the region. Ex. Laidlaw 31. Finally, the Board of Commissioners stated that the construction of the Facility will improve the orderly development of the region by creating new jobs in the region. Ex. Laidlaw 31.

The City of Berlin supports the construction of the Facility, subject to certain conditions addressed below. Ex. Berlin 3, Pre-filed testimony of Pamela E. Laflamme at 3. Generally, the City welcomed the construction of the Facility in the region as an opportunity to continue Berlin’s historic role as a center of the forestry, wood products, and energy generation industries. Tr. 08/23/2010, Morning Session, at 24-26. However, the Subcommittee notes that although the City provided its support to the Applicant, not all citizens of the City agreed that the construction of the Facility is consistent with the orderly development of the region. See, e.g., Public Comment of Jonathan Edwards, Tr. 08/23/2010, Morning Session at 37-41. Similarly, City

Councilor Thomas McCue expressed reservations about the Facility and the negotiated conditions. Tr. 08/27/2010, Afternoon Session, pp. 179-187. Additionally, some potential competitors of the project testified against the Facility, asserting that it would interfere with their ability to purchase fuel. See, Public Comments of Timothy Chase, Indeck Energy, Tr. 08/27/2010, Afternoon Session, pp. 174-178; Mark Saltsman, Concord Steam, Tr. 09/10/2010, Morning Session at 16; Robert Berti, North Country Procurement, Tr. 09/10/2010, Morning Session at pp. 17-30; Michael O’Leary, Bridgewater Power, Tr. 09/10/2010, Morning Session, pp. 31-34. However, the majority of public comment expressed support for the project.

The City and the Applicant entered into a series of negotiations that resulted in the development of the City of Berlin Proposed Certificate Conditions that were introduced to the Subcommittee as Berlin’s Exhibit 5. The Conditions relate to: (1) the appearance of the Facility; (2) noise; (3) water and air quality; (4) truck traffic; and (5) community benefits. Ex. Berlin 5.

In addition, the Androscoggin Valley Economic Recovery Corporation expressed its support of the Application conditioned upon enforcement of the City of Berlin Proposed Certificate Conditions. See, Letter from Androscoggin Valley Economic Development Director, Mr. Max Makaitis (September 9, 2010).

Finally, it is noted that the North Country Council, the regional planning commission for Coos County and parts of Grafton and Carroll Counties, neither supported nor challenged the Applicant’s assertion that the Facility will benefit the orderly development of the region. See, Letter from Planning Director, Tara E. Bamford (July 9, 2010). However, the North Country Council did advise the Subcommittee of the North Country’s energy goals. The development of the Facility appears to be consistent with those goals. Id.

The Subcommittee notes that the redevelopment of an abandoned industrial site will not adversely impact the orderly development of the region. The Project will restore industrial activity to a site that previously housed heavy industry and will support the reestablishment of aspects of the forest products industry that existed prior to the demise of paper mills in the region.

Considering the views of the municipal and regional planning commissions and municipal governing bodies, the Subcommittee will condition the Certificate upon the Applicant's compliance with the conditions and limitations identified within the City of Berlin Proposed Certificate Conditions, Berlin Ex. 5. Furthermore, to ensure the enforcement of the City of Berlin Proposed Certificate Conditions, as a condition of the Certificate, the Applicant shall develop an informal complaint resolution procedure together with the City of Berlin. The complaint resolution procedure may employ an ombudsman or such other process that is satisfactory to the City and the Applicant. The complaint resolution process shall remain in effect for the duration of the construction of the Facility and for the first twelve months of operation of the Facility. The Applicant shall provide the Subcommittee a copy of the agreed upon complaint resolution procedure prior to commencement of the construction of the Facility.

b. Indirect Economic Impacts

The Facility's effect on the economy and the forestry of the region was vigorously disputed by the parties in terms of the "orderly development of the region" as that phrase is contained in RSA 162-H:16, IV (b). However, it is unclear whether the term "orderly development" encompasses the issues of secondary economic impacts raised by the parties.

The term "orderly development" is not defined within RSA 162-H. In the absence of a statutory definition, the term should be interpreted in accordance with the plain language of the

statute. The statute requires consideration of whether the project will interfere with the development of the region in an orderly manner. The term “orderly development” is best thought of as the organized and methodical creation or production for commercial, residential or other purposes. In the absence of a more specific definition, the Committee must look to the statute as a whole and to the general purposes of the law. See, North Country Environmental Services v. Town of Bethlehem, 150 NH 606, 616 (2004). RSA 162-H: 2 sets forth the purpose of the overall statute. Within the purpose description, the statute states that the siting of energy facilities will have a significant impact on the “location and growth of industry, the overall economic growth of the state” and that the construction of energy facilities be “treated as a significant aspect of land use planning in which all environmental, economic, and technical issues are resolved in an integrated fashion.” In the context of the statute’s declaration of purpose, it would appear that orderly development is addressed in the context of land use planning and is cabined by the requirement that the Committee give due consideration to the views of regional and municipal planning agencies and municipal governments. The requirement to give due consideration to planning agencies suggests that the Committee should not delve too deeply into issues of indirect economic impacts that may be better viewed from the close up lenses of the local planning agencies that report their views to the Committee. The Committee has historically followed a conservative approach in this regard. In one pipeline case, the Committee opined:

Another aspect of this finding is the potential positive impact on development. This pipeline will permit EnergyNorth, the local delivery company, to increase its daily deliverability of natural gas by around 20 percent. EnergyNorth supplies gas mostly to residential customers, but also to light commercial and industrial customers. The availability of additional natural gas pipeline capacity should result in savings for these customers as the additional supply will offset the use of more expensive (and more vulnerable to accident) liquid supplies, particularly during peak winter months.

Application of Tennessee Gas Pipeline, Norex Project, NHSEC Docket No. 1989-01, p. 5. Even the Norex decision does not undertake a detailed analysis of the indirect or secondary economic impacts of the project, but considers only the direct impact of the capacity of the Norex pipeline. A review of other Site Evaluation Committee decisions reveals that the Committee has generally considered the orderly development of the region without regard to the indirect economic impacts of a project and focused on the more traditional land use impacts such as the physical location of the proposed facility within the community.

The Committee, in considering how far to go in determining indirect economic impacts, should also consider that the Applicant is a wholesale merchant power plant that will operate in a substantially deregulated industry. With some notable exceptions, the industry is populated by similar wholesale merchant plants, whether they be biomass-fueled, hydro-powered or wind powered. The most vocal critic of the project is a competitor in the industry. In the past, the New Hampshire Supreme Court has been careful to warn regulators against taking actions that may indirectly result in inverse condemnation – the diminishment of the value of property so as to constitute a governmental taking without compensation. In 1982 the Supreme Court reversed a decision of the PUC that denied a request to issue securities to finance Unit 2 at Seabrook Station. The Court’s concern extended to investment backed expectations:

The United States Supreme Court recently reaffirmed its holding in *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 43 S.Ct. 158, 67 L.Ed. 322 (1922), that a State's action that “substantially furthers important public policies may so frustrate distinct investment-backed expectations as to amount to a ‘taking.’” *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 127, 98 S.Ct. 2646, 2660, 57 L.Ed.2d 631 (1978). Likewise, in *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982), the Court explicitly reminded us that “the economic impact of ... regulation, especially the degree of interference with investment-backed expectations, is of particular significance” in determining whether a taking has occurred. *Id.*, 102 S.Ct. at 3171.

Appeal of Public Service Company, 122 NH 1062, 1071 (1982). Although the prudence of the Applicant's investment is not the issue in this case, the Committee must avoid a wide ranging review of indirect economic impacts that amounts to economic regulation of the industry and the determination of which firms invested in the industry will succeed or fail.

c. Direct Economic Impacts

The Applicant asserts that the construction and operation of the Facility will have a significant, positive effect on the City and the region. Ex. Laidlaw 1 at 98. For example, it is anticipated that the construction and operation of the Facility will decrease unemployment in the area by employing a number of workers needed for the construction and operation of the Facility and providing 40 permanent positions. Ex. Laidlaw 1 at 99-100.¹⁴ In addition, the Applicant estimated that approximately 210 other jobs will be created in the region due to the construction and operation of the Facility. Tr. 08/26/2010, Morning Session at 95; Ex. Committee 11.

The Applicant also anticipates an increase in the employment rate of the region, particularly in the forestry and logging industry. The Applicant notes that: (i) the Fuel Supply Agreement with Cousineau will contain a requirement to use best efforts to prioritize the purchase of wood fuel from local owners and operators; (ii) the City of Berlin Proposed Certificate Conditions, Berlin Ex. 5, require the Applicant "[t]o the extent feasible and economically reasonable . . . [to] . . . use its best efforts to prioritize the purchase of wood fuel from local owner/operator . . ."; and (iii) the Agreement with Babcock & Wilcox will contain a provision requiring Babcock & Wilcox to employ workers from the building trades of New

¹⁴ The Applicant stated that 2 out of 40 previously identified positions will be filled with Cousineau's personnel. Tr. 08/24/2010, Morning Session, at 59. However, the Applicant asserted that these positions will be substituted with 2 positions for the employees who will be working with Cousineau and the fuel procurement at the Facility. Tr. 08/25/2010, Morning Session, at 35.

Hampshire. Ex. Berlin 5; Tr. 08/24/2010, Morning Session, at 61-62; Tr. 08/23/2010, Afternoon Session at 104-106.

The Applicant also suggests that additional growth will occur in the employment rate in the region because it is anticipated that the wood suppliers will return to the region and new positions will appear as a result of the introduction of new harvesting and chipping technologies. Tr. 08/25/2010, Morning Session, at 36-37.

Furthermore, the Applicant asserted that the construction of the Facility will improve the local economy by bringing increased economic activity to the City during the construction and operation phases, and by adding to the tax base of the City of Berlin without burdening public service. Ex. Laidlaw 1 at 98. The Applicant stated that annual property tax revenue for the City of Berlin associated with the Facility is anticipated to be in excess of \$1 million. Ex. Laidlaw 1 at 100.

In addition, the Applicant indicated that the construction of the Facility will have an additional positive effect on the development of the region because the Applicant has entered into an agreement/memorandum of understanding to provide the Fraser paper mill in Gorham with hot water from the waste heat generated by the Facility. Tr. 08/23/2010, Afternoon Session at 120; Tr. 08/24/2010, Morning Session at 24. Any excess heat not used by the Gorham mill will be available to any business co-locating with the Facility on the Site. Tr. 08/23/2010, Afternoon Session at 121-122. None of the parties disputed the fact that the supply of hot water heated by the Facility to the Gorham mill will have a beneficial effect on the development of the region.

CPD disputes the Applicant's arguments regarding the economic impact of the Facility on the region. CPD claims that the people of Coos County will be disincentivized from

expanding their operations and investing in logging equipment because they will know that Cousineau has the ability and intends to deliver biomass fuel from different locations. Tr. 08/27/2010, Afternoon Session, at 89-90. CPD also disagrees with the Applicant's statement that it will benefit the local economy. CPD argues that construction of the Facility, as proposed, will cause other existing facilities to be unable to successfully compete with the Applicant. Tr. 08/27/2010, Afternoon Session, at 94-95. The CPD argument is premised on the assumption that there is not enough biomass in the region for all currently existing and proposed future biomass facilities. Tr. 08/27/2010, Afternoon Session, at 94-95.

The Subcommittee acknowledges that the construction of the Facility will likely change the region's economic landscape to some degree. Although the Subcommittee cannot predict future economic patterns with any certainty, it acknowledges that it is possible that some businesses may fail to successfully compete with the Applicant and will cease their operations. However, it is also possible that some existing facilities will fail regardless of the Applicant's entry into the market. The consideration of such secondary economic impacts is well beyond the statutory consideration of orderly development envisioned by RSA 162-H:16, IV (b).

As will be discussed in detail below, the Subcommittee does not find that there is insufficient biomass in the region for all facilities. It is impossible to predict, with any accuracy, how much biomass will be on the market, the price of biomass, and the ability or inability of other facilities to purchase such biomass. In addition, the Subcommittee notes that the business development of other facilities is outside of the Subcommittee's control. Numerous economic factors may cause the prosperity or demise of other facilities. Therefore, the Subcommittee does not find that the construction of the Facility will unduly interfere with the orderly development

of the region, particularly given that the business operations of other facilities are subject to market forces that are outside of the regulatory jurisdiction of this Subcommittee.

d. The Forestry and Energy Industries

An issue that has been the subject of much debate in this docket is whether the siting, construction and operation of the proposed Facility will interfere with the orderly development of the region by disrupting either the local forestry industry or the existing small power producing industry in Coos County.

In filing its Application, the Applicant included Appendix P containing a study entitled “Research Report Phase I: Biomass Supply Study for Laidlaw BioPower Plant, Berlin NH.” The study contained in Appendix P was supplemented by an Addendum identified as Ex. Laidlaw 2. (The report and addendum are collectively referred to hereafter as the “LandVest Study”). The LandVest Study concludes that there are between 760,830 and 1,284,330 tons of low grade wood fiber available above current consumption levels on an annual basis. Ex. Laidlaw 2, p. 4. The Applicant claims that the proposed Facility will consume approximately 750,000 tons of low grade wood fiber per year. Ex. Laidlaw 1, p. 98. The Applicant proffered the LandVest Study in order to demonstrate that there is a sufficient fuel supply within a 100 mile radius of Berlin to operate the Facility. The Applicant also offered the testimony of Louis Bravakis, Vice President of Laidlaw Energy Group and lead developer for the Project, Stephen Mongan, Vice President of LandVest, Inc., and Curtis Richmond of Cousineau in support of the Applicant’s position. Each of the witnesses concluded that there was sufficient biomass available to fuel the proposed Facility. Tr. August 24, 2010, Morning Session p. 139 – 150.

In response to the LandVest study and the Applicant’s claims, CPD offered the testimony of Melvin E. Liston. Mr. Liston is a principal in CPD and has significant experience in the

wood-fired power industry. See, Pre-filed testimony of Melvin E. Liston, CPD Ex. 1. Mr. Liston disputed virtually every aspect of the LandVest Study and other claims made by the Applicant. According to Mr. Liston, the appropriate radius to study is no more than 50 miles. See, Tr. 08/27/2010, Afternoon Session, at 20. He also claims that there is only sufficient biomass to fuel a 30 MW facility. See, Ex. CPD 1. Included among the claims that Mr. Liston disputes are: the Applicant's stated fuel requirements, see, Ex. CPD 1, p. 7; the LandVest Study's estimate of current biomass use, see, Ex. CPD 1, p. 13; LandVest's description of the "wood basket;" see, Ex. CPD 1, p. 18; and, the LandVest Study's assumptions and theories concerning utilization rates, see, Ex. CPD 1, p. 22. Mr. Liston concludes that the proposed Facility would consume all of the available biomass and do so with the advantage of a Power Purchase Agreement with a regulated utility (PSNH) that would pass all costs to ratepayers, thereby shielding the Applicant from pricing sensitivity. Under these circumstances, Liston predicts CPD would not go forward with its project and that other existing biomass users will cease to operate because they will be unable to successfully compete with the Applicant. The Subcommittee also heard a number of public comments from potential competitors of the Applicant echoing the arguments made by Mr. Liston¹⁵. Given this scenario, CPD argues that the granting of a Certificate to the Applicant would interfere with the orderly development of the region.

In order to more fully understand the arguments set forth by the parties, the Subcommittee required the Applicant to produce a number of additional studies including:

¹⁵ See, public comment of Indeck-Alexandria Energy, Tr. Day 5, p. 75; public comment of D.G. Whitefield Biomass Power Plant, Tr. Day 5, p. 209; public comment of Concord Steam Corporation, Tr. Day 6, p. 15; public comment of North Country Procurement, Tr. Day 6, p. 29; public comment of Bridgewater Power Company, Tr Day 6, p. 32.

“LandVest Research Report, Timber Supply Study for the North Country of New Hampshire, Prepared for North Country Council, Inc.,” Ex. Comm. 2; “Vermont Wood Fuel Supply Study and Examination of the Availability and Reliability of Wood Fuel for Biomass Energy in Vermont,” Ex. Comm. 3; “Biomass Fuel Availability, Berlin, New Hampshire, Prepared For Clean Power Development, May 2008” prepared by Innovative Natural Resource Solutions, LLC,” Ex. Comm. 4; “Modeling Projects Summary Report for New Hampshire Timberland Owners Association and Society for the Protection of New Hampshire Forests,” Ex. Comm. 5; “A Forest Resource Model of the States of New York, Vermont, New Hampshire and Maine,” Ex. Comm. 6; “An Assessment of Biomass Harvesting Guidelines from the Forest Guild January 2009,” Ex. Comm. 7; “Revised Assessment of Biomass Harvesting and Retention Guidelines from the Forest Guild April 2010,” Ex. Comm. 8; and, “Forest Biomass Retention and Harvesting Guideline for the Northeast May 2010,” Ex. Comm. 9.

Having reviewed the testimony of the witnesses and the studies provided, the Subcommittee does not believe that any single study conducted to date can accurately estimate the amount of biomass that will be available for fuel, either for the proposed Facility or for existing or other proposed facilities. The studies presented were each commissioned for different purposes and did not evaluate the same variables. The studies are further complicated by the fact that biomass does not drive the forest industry market. The highest use for most forestry is saw log production. Pulp and low grade fiber production, which collectively comprise what is commonly referred to in the industry as “biomass”, are the by-products of such higher uses. Timber owners will not cut trees for the sole purpose of supplying the pulp and low grade fiber markets. Additionally, the studies presented employ different methods of measurement of the “wood basket”. There is no agreement on an appropriate radius within which to define the

“wood basket” for the proposed Facility. Additionally, there appears to be no consistent measure of the amount of low grade fiber that can be responsibly removed from the forest, thus further confusing the issue of biomass supply.

None of the parties disputed the assertion that the prior existing paper mill consumed from 1.2 to 1.3 million tons of pulp per year. Tr. 08/27/2010, Afternoon Session, at 70. In addition, CPD conceded that the biomass previously used by the mills found new markets and was redistributed among currently existing biomass facilities and other paper mills located in Maine or possibly even in Quebec. Tr. 08/27/2010, Afternoon Session, at 72. Consequently, nothing would prevent the market from shifting again and supplying the Facility (and perhaps other facilities) with the biomass previously consumed by the former paper mill. The question remaining is how such a shift of the market would affect the price of the biomass and other facilities. CPD claims that the PPA with PSNH will give the Applicant a competitive advantage over CPD and existing producers of biomass-fueled power in the region. This issue, however, is outside of the regulatory powers of the Subcommittee and is instead subject to the laws of the market. The Applicant, CPD and other existing power producers operate in a competitive market. While RSA 162-H:16, IV, (b) speaks about orderly development of the region, the statute does not imbue the Subcommittee with the authority to regulate the business models, contractual relationships, or pricing decisions made by an individual applicant in the market place. It is not the role of the Subcommittee to determine who succeeds and who fails in the market.

It appears that there is an adequate supply of biomass in the region to fuel the proposed Facility. Thus, the Subcommittee finds that the issuance of a Certificate to the Applicant will not unduly interfere with the forest industry or the renewable energy industry in the region.

e. Coos Loop

The Facility will be nominally capable of generating approximately 70 MW. Ex. Laidlaw 1 at 38. This results in a net generation capacity of approximately 63 MW accounting for the Facility's parasitic load. For the purposes of collection and transmission of the generated power, the Applicant seeks to construct a new switchyard, consisting of a step up transformer and a single breaker, adjacent to the turbine building. Ex. Laidlaw 1 at 49. The new switchyard is proposed to be connected to the existing East Side Substation 300 of the Coos Loop owned and operated by PSNH. Ex. Laidlaw 1 at 40. The Applicant intends to seek additional efficiencies in order to raise the net generation capacity of the Facility to 70 MW.

ISO New England (ISO-NE) is the regional electric transmission organization charged with the task of maintaining the electric grid in New England. In Coos County, electricity producers are constrained by the existing electric transmission infrastructure known as the Coos Loop. In order to transmit electricity to the grid, the Applicant must conduct several engineering studies. To date, the Applicant has conducted a Feasibility Study, Laidlaw Ex. 1, Appx. Q CONFIDENTIAL, and a System Impact Study, Laidlaw Ex. 43, CONFIDENTIAL. Neither study demonstrated any factors that will prohibit the Applicant from transmitting electricity to the Coos Loop. However, the Coos Loop has limited capacity to transmit electricity. ISO-NE provides access to the Coos Loop under Minimum Interconnection Standards (MIS). Under MIS, the existing capacity of the transmission line is examined, as is the type and size of the new unit. Under MIS, ISO-NE, through its vendors, determines whether a new unit can operate on the system, without regard to the output of other generators. To the extent that upgrades are necessary to enable a proposed new unit to connect to the existing transmission system, the developer proposing the new facility must bear the costs for all upgrades, whether they stem

from the Feasibility Study or the System Impact Study. Nothing in the Applicant's feasibility study or System Impact Study will cause a bar to connection to the grid. However, because the Coos Loop is constrained in its capacity, ISO-NE will continue to operate the Loop under "economic dispatch" conditions. This means that all power producers on the Coos Loop will be required to bid in for the sale of power during each hour of the next day. The lowest bidders will be dispatched first (meaning that their power will be purchased first). Thus, on some days, it is possible that all producers of electricity on the Coos Loop will not be able to transmit all of their capacity to the grid. Indeed, on some days some producers may not be able to transmit power to the grid at all.

CPD complains that the Applicant will have an advantage at auction under economic dispatch conditions due to its advantageous PPA with PSNH. In short, CPD believes that the PPA will permit the Applicant to bid in the ISO-NE day-ahead auction at lower prices than its competitors. CPD claims that this will result in disruption to the orderly development of the region because the Applicant's electricity will be dispatched to the grid before electricity generated by other plants that do not have the advantage of a PPA. Nothing in RSA 162-H would permit the Committee to deny a Certificate on this basis. MIS and economic dispatch are simply an economic reality in the electricity market. The MIS and rules for economic dispatch have applied to all electricity generators on the Coos Loop for many years. The construction of another Facility will not change the previously established mechanism of dispatching electricity to the market. The fact that one Facility may or may not be dispatched more often than might otherwise be the case is outside of the Subcommittee's control. The Subcommittee will not intervene in the processes of the current market and artificially regulate competition in the electricity market.

As a condition of the Certificate in this docket the Applicant must complete all studies required by ISO-NE and finalize an Interconnection Agreement that will permit operation at a gross generation capacity not exceeding 70 MW.

3. Adverse Effects

Under New Hampshire law, the Subcommittee may issue a Certificate only if it finds that the Facility will not have an unreasonable adverse effect on the following: (1) aesthetics; (2) historic sites; (3) air and water quality; (4) the natural environment; and (5) public health and safety. See, RSA 162-H:16, IV (c).

a. Aesthetics

The Subcommittee must consider whether the Facility will have an unreasonable adverse impact on the aesthetics of the region. See, RSA 162-H:16, IV(c).

The Site is located within the Industrial/Business zoning area and consists of the southern portion of the property formerly known as the Burgess Mill, Berlin Mill, and the Fraser Pulp Mill. Ex. Laidlaw 1, at 78. Currently, there are no manufacturing activities conducted on the Site. However, an unused boiler structure and appurtenances remain on the Site. Ex. Laidlaw 1 at 94. The existing infrastructure has a highly industrial appearance with an exposed metal superstructure, piping, and tanks. Ex. Laidlaw 1, at 94. In addition, the Site shows significant evidence of the prior demolition activities, including demolition rubble, and large areas of unmaintained vegetation and gravel areas that are experiencing erosion. Ex. Laidlaw 1, at 94. The Applicant asserts that it intends to put siding on the existing structures to appear similar to a modern commercial facility and to paint these structures with non-glaring colors that harmonize with the background environment. The Applicant also intends to landscape the areas along the border of the Site. Ex. Laidlaw 1, at 94. The Applicant claims that these measures will improve

the appearance of the Facility and will have a positive aesthetic impact on the surrounding area. Tr. 08/24/2010, Morning Session, at 17. Ex. Laidlaw 1 at 94. To substantiate its position, the Applicant provided to the Subcommittee a number of photographs depicting a visual simulation of a proposed structure inserted into an existing viewscape. Ex. Laidlaw 11, 12, 72. This visual simulation incorporates all major parts of the Facility and includes the tallest structures: the ash silo, the boiler stack (320 feet above finished grade) and the boiler building (approximately 165 feet above finished grade). Ex. Laidlaw 11, 12, 72.

The City of Berlin and the Applicant entered into extensive negotiations addressing, among other issues, the issue of the Facility's effect on the aesthetics of the City. As a result of the negotiations, the City and the Applicant executed the City of Berlin's Proposed Certificate Conditions which includes the visual appearance of the Site. See, Ex. Berlin 5. The City of Berlin conducted a number of public discussions as to the impact of the facility on the City. These discussions informed the City in its negotiations with the Applicant.

In addition to the documents and testimony provided by the Applicant, and the evidence heard during the hearings, the members of the Subcommittee visited and inspected the Site on March 16, 2010. The members of the Subcommittee inspected the structures within the Site and were able to observe the surrounding businesses and infrastructure. The Subcommittee finds that the reconstructed Facility will not have an unreasonable adverse aesthetic effect compared to the current partially demolished site.

As a result, subject to inclusion of the City of Berlin's Proposed Certificate Conditions as a part of the Certificate of Site and Facility, the Subcommittee concludes that the presence of the proposed Facility conforms to the visual and aesthetic characteristics of the area and would not have an unreasonable adverse impact on aesthetics.

b. Historic Sites

In order to issue a Certificate, the Subcommittee must determine that the construction and operation of the Facility will not have an unreasonable adverse impact on historic sites. See, RSA 162-H:16, IV(c).

The Applicant acknowledged that the City of Berlin has a number of historic properties, including properties listed on the National Register of Historic Places. Ex. Laidlaw 1 at 29. The Applicant listed the Congregational Church, St. Anne Church, and Holy Resurrection Orthodox Church as examples of such properties. Ex. Laidlaw 1 at 29. However, the Applicant explained that the development of the Facility will not have an adverse affect on these sites when compared to the effect generated as a result of the operation of the previously existing pulp mill. Ex. Laidlaw 1 at 94. The New Hampshire Division of Historic Resources (NHDHR) reviewed the documents provided by the Applicant and concluded that the Facility “will present no new or additional visual effects to surrounding historic neighborhoods.” Ex. Laidlaw 49, Final Report. Nonetheless, the Applicant agreed to cooperate with the NHDHR to minimize any unanticipated adverse effect that the construction of the Facility may have on historic sites.

The evidence does not demonstrate an unreasonable adverse effect on historic sites. However, the Subcommittee is cognizant that the excavation conducted for the purposes of the construction of the Facility may reveal some unanticipated subsurface archeological resources. In the event of such a discovery, the Applicant shall immediately notify the NHDHR of said discovery, and NHDHR shall in turn shall determine whether there is a need for any evaluation, studies or mitigation conditions. In addition, the Applicant shall notify the NHDHR of any material changes in the construction plans for the Facility and of any new community concerns pertaining to any historic property affected by the Facility. With these conditions as part of the

Certificate, the Subcommittee concludes that the Facility will not have an unreasonable adverse effect on historic sites.

c. Air and Water Quality

The Subcommittee may issue a Certificate only if it concludes that the Facility will not have an unreasonable adverse effect on air and water quality. See, RSA 162-H:16, IV(c).

i. Air Quality

The United States Environmental Protection Agency and the New Hampshire Department of Environmental Services, Air Resources Division have established a number of requirements to ensure that any source of air emissions, including the Facility, will not adversely impact human health and the environment. The Applicant acknowledged that the Facility will be a major stationary source of NO_x emissions, and, consequently, will be subject to the state's nonattainment review and will have to meet the Lowest Achievable Emission Rate (LAER) for the NO_x emissions. Ex. Laidlaw 1, App. 1. The Applicant advised the Subcommittee that it will follow existing rules and regulations by achieving the LAER by using the Bubbling Fluidized Bed and Selective Catalytic Reduction technologies. Ex. Laidlaw 1, App. 1.

The Facility is also a subject to the Prevention of Significant Deterioration of Air Quality ("PSD") requirements implemented by DES. The Applicant conducted an air quality impact analysis to demonstrate that the Facility would not cause or contribute to an exceedance of the National Ambient Air Quality Standards, and that the maximum increases in pollutant concentrations over the existing baseline would not exceed the allowable incremental increases established by the PSD requirements. Ex. Laidlaw 1, App. 1.

In addition, the Applicant is expected to comply with the regulations imposing specific emissions limitations or control requirements for certain pollutants. All of these requirements

are contained within the Air Permit issued by DES for the Facility. See, Ex. Laidlaw 50; see, section V. 1, above. The Air Permit includes limitations and conditions securing the prevention or mitigation of potential impacts by the Facility on air quality. Ex. Laidlaw 50. Compliance with the Air Permit shall be a condition of the Certificate issued in this docket.

The Applicant is also required to comply with a number of federal requirements and regulations: including New Source Performance Standards and National Emissions Standards for Hazardous Air Pollutants. The Applicant stated that it will operate within the limits set by these regulations and will assure continuous compliance with present and future applicable requirements.

In addition, it is anticipated that the Facility will generate approximately 120 tons per week of fly ash and from 100 to 250 tons per week of bottom ash. Tr. 08/23/2010, Afternoon Session at 54; Tr. 08/24/2010, Morning Session, at 111. However, the Applicant submitted to the members of the Subcommittee that it has entered into negotiations with the Androscoggin Valley Regional Refuse Disposal District which has confirmed its capacity to accept all ash generated by the Facility at the Mount Carberry landfill, located just to the east of the Facility. Tr. 08/23/2010, Afternoon Session at 54-55; Tr. 08/24/2010, Morning Session, at 112. In addition, the Applicant indicated that the Applicant will not store fly ash within the boiler building, but will instead construct a separate storage silo for this purpose. Tr. 08/23/2010, Afternoon Session at 55-57. The silo will be located between the steam turbine building and the boiler building. Ex. Laidlaw 72; Tr. 08/25/2010, Morning Session, at 56. Bottom ash will be stored in containers within the Facility. Tr. 08/24/2010, Morning Session, at 113.

The Subcommittee reviewed the documents, exhibits, permits, and testimony provided and concludes that the Facility as proposed and subject to the conditions contained within the air permit will not impose an unreasonable adverse effect on air quality.

ii. Water Quality

The Facility, as proposed, will use water provided by the Berlin Water Works municipal supply and distribution system and will discharge wastewater to the City of Berlin's sewer system. Tr. 08/23/2010, Afternoon Session at 59. The Applicant alleged that the Facility will use approximately 1.8 million gallons of water per day. Ex. Laidlaw 1, at 89. The Berlin Water Works distribution system has a total storage capacity of 5 million gallons per day. Ex. Laidlaw 1, at 89. Therefore, the Applicant submits that the City of Berlin has adequate infrastructure for meeting the Facility's water and waste water requirements. Ex. Laidlaw 1, at 89. Additionally, it is anticipated that the Facility will discharge up to 300,000 gallons per day of wastewater to the municipal sewer. Ex. Laidlaw 1, at 89. Therefore, the Applicant has filed a Sewer Connection Permit Application and an Industrial Wastewater Indirect Discharge Request Application with the DES, Water Division. Ex. Laidlaw 1, App. H, I. As discussed above, the DES, Water Division, approved the Applicant's Sewer Connection Permit, thereby allowing the discharge of additional wastewater to Berlin's existing wastewater collection, treatment and disposal system in the amount of 214,476 gallons per day. Ex. Laidlaw 46. On April 19, 2010, the DES also approved the Applicant's Industrial Wastewater Indirect Discharge Request, thereby permitting an average daily process flow of 211,036 gallons per day and maximum daily process flow of 302,534 gallons per day from the Facility. Ex. Laidlaw 47.

In addition, the Subcommittee notes that the issue of water quality was addressed by the Department of Environmental Service during consideration of the Applicant's Site Specific

Alteration of Terrain Application and Shoreland Protection Permit Application. Ex. Laidlaw 1, App. D, E. See, discussion at sections V. 2 above. As a result of such review, DES identified the Conditions with which the Applicant is expected to comply to ensure that no contamination will flow from the Facility into the Androscoggin River. Ex. Laidlaw 46.

Having considered the testimony of all witnesses, and taking into account the comprehensive process employed by the DES in its consideration of the Air Permit, Sewer Connection Permit Application, Industrial Wastewater Indirect Discharge Request Application, Site Specific Alteration of Terrain Application, and Shoreland Protection Permit Application, the Subcommittee finds that the Facility, as proposed, will not have an unreasonable adverse impact on air and water quality. Each of the aforementioned permits shall become a condition of the Certificate in this docket.

D. Natural Environment

The Subcommittee must consider whether the Facility will have unreasonable adverse impact on the natural environment. See, RSA 162-H:16, IV (c).

i. Pre-Existing Environmental Conditions

At the outset it is again worth noting that the proposed Facility makes use of an abandoned and partially demolished industrial site. Ex. Laidlaw 1, p. 44. This re-use is preferable to the environmental disturbance that would be caused if a previously undeveloped or “greenfield” site were chosen for the construction of this new facility. However, the Site itself has been the subject of some previous environmental contamination and review. In the past, there was PCB contamination found in the area of the T-1 transformer on the property. It is understood that this area was treated and capped. Tr. 08/23/2010, Afternoon Session p. 23. EPA, the State of New Hampshire and the prior owner entered into a settlement pertaining to this area, entitled “Agreement for Addressing PCB Contamination at the T-1 Transformer Area”. Ex. PC 2. Additionally, an area to the north of the project site has been determined to be an EPA Superfund site due to contaminants and pollutants found on that property. As a result, the Applicant is a party to certain “brownfield” agreements, including a document entitled “Covenant Not to Sue in re: Acquisition of Berlin/Gorham Mills; the Mt. Carberry Landfill; and Certain Hydroelectric Assets”. See, Ex. PC 1. Each of these documents contains rights and responsibilities that run with the land included within the Site. Each document is binding on the successors, heirs and assigns of the Applicant. However, Counsel for the Public has identified a concern that the corporate structure of the Applicant and its associated entities PJPD, Aware Funding LLC, and NewCo, may cause confusion or undermine the efficacy of these agreements. The Subcommittee shares this concern. Therefore, as an additional condition of the Certificate in this docket, each of the Applicant’s associated companies, PJPD, Aware Funding LLC and NewCo will be jointly and severally subject to all of the conditions and responsibilities set forth in the environmental documents identified as Ex. PC 1 and Ex. PC 2, and shall provide written

assurance and guarantee to the Subcommittee in form and substance reasonably acceptable to the Subcommittee that each associated company accepts such responsibilities and conditions before the commencement of construction.

ii. Groundwater

The issue of groundwater contamination was raised by the Counsel for the Public and CPD. See, Post Hearing Brief of Clean Power Development; Tr. 08/23/2010, Afternoon Session, at 9. The Applicant acknowledged that property north of the Site has significant mercury contamination. Tr. 08/23/2010, Afternoon Session, at 12-13. Under the Covenants not to Sue in re: Acquisition of Berlin/Gorham Mills; the Mt. Carberry Landfill; and Certain Hydroelectric Assets, the owner of the Site, PJPD, is not responsible for any “liability with respect to or arising out of Existing Contamination.” Ex. PC 1, §2(a). However, the PJPD will be held responsible for: (i) claims based on the release of additional pollutants, contaminants or hazardous substance; (ii) claims based on negligent or reckless aggravation of existing contamination; and (iii) claims based on criminal liability. Ex. PC 1, §4(a); Tr. 08/24/2010, Morning Session, at 92. The Applicant has submitted a Soils Management Plan. See, Ex. Laidlaw 1, Appdx. M.

The Applicant assured the Subcommittee that it was not going to disturb contaminated groundwater. The Applicant explained that the groundwater table level at the Site is approximately 10 feet or more below the surface. The deepest anticipated foundations for the Facility are 8 feet. Tr. 08/23/2010, Afternoon Session, at 9-10. The Applicant further noted that investigation of the Site conducted in 2003 demonstrated that 7 of 13 groundwater monitoring wells did not show levels of any metals or organics above the groundwater quality concentrations codified in the New Hampshire regulations. The remaining three wells demonstrated slightly elevated levels. Tr. 08/23/2010, Afternoon Session, at 14. Therefore, the Applicant submitted

that even assuming that some groundwater will be disturbed during the construction of the Facility, it will be able to control the levels of organics found in the water where they are relatively low-part-per-million type levels of readily treatable organics that can be well managed. Tr. 08/23/2010, Afternoon Session, at 10

The Applicant acknowledged that the studies of the groundwater on the Site were not conducted by the Applicant. Tr. 08/23/2010, Afternoon Session, at 17. However, the Applicant stated that it will conduct a subsurface investigation to ensure that all of the construction activity occurs without causing any harm to public safety. Tr. 08/23/2010, Afternoon Session, at 9-11. The Applicant also agreed to provide financial support to the City of Berlin in conducting the study of the Site including the sampling of the soil and groundwater at the Site. Tr. 08/23/2010, Afternoon Session, at 9-11; Ex. Berlin 5, at 8-9, §13.

Furthermore, the Applicant acknowledged currently existing subsurface PCB contamination along the river bank, between the proposed roadway and the building for the emission control systems – the T-1 site. Ex. PC 2; Tr. 08/23/2010, Afternoon Session, at 22-23. This area is currently covered by asphalt and the Applicant expressed its intention not to conduct any project activities in the area of identified contamination. Ex. PC 2; Tr. 08/23/2010, Afternoon Session, at 23-24. However, under an agreement with PJP, the Applicant will be responsible for maintenance of this area. Tr. 08/25/2010, Afternoon Session, at 106. Specifically, the Applicant will be obligated to maintain the fence line and to ensure that the impervious cap remains in place. Tr. 08/25/2010, Afternoon Session, at 104. In addition, the Applicant expressed its willingness to replace the currently existing cap in the event of its deterioration. The additional subsurface evaluation and the maintenance of the T-1 area will be conditions of the Certificate in this docket. Tr. 08/27/2010, Morning Session, at 71.

Additionally, as an extra measure of caution, the Applicant's environmental monitor shall supervise excavations, and excavated soils shall be screened for the presence of contamination by hazardous substances in accordance with a work plan approved prior to the construction by the DES Waste Management Division. Any contaminated soils discovered during the construction of the Facility shall be reported to DES in accordance with New Hampshire statutory and regulatory requirements and shall be managed in accordance with state and federal requirements and subject to approval by DES in accordance with the approved work plan.

iii. Wildlife and Habitats

In considering the effects of the proposed Facility on the natural environment, the Subcommittee must also review the proposed Facility's potential impact on wildlife and habitats. The Applicant advises that it has engaged in communication with the New Hampshire Natural Heritage Bureau ("NHNHB") and the United States Fish and Wildlife Service ("USFWS") in order to determine whether there are any endangered species or habitats within or adjacent to the project area. The USFWS found no federally-listed or proposed, threatened or endangered species or critical habitats under its jurisdiction in the Project area. Ex. Laidlaw 1, Appendix K. Consequently, the USFWS indicated that a Biological Assessment or further consultation with the USFWS was not required. Ex. Laidlaw 1, Appendix K.

In addition, NHNHB advised the Applicant that the Bald Eagle, a threatened species, and the Common Nighthawk, an endangered species, had been identified within the project's area. Ex. Laidlaw 1, Appendix K. NHNHB advised the Applicant that the Bald Eagle would not be affected by the construction and operation of the Facility provided that no trees would be removed within 50 feet of the Androscoggin River. The Applicant agreed not to cut trees within 50 feet of the river bank. As to the Common Nighthawk, the NHNHB observed that it did not

have breeding reports for this species in Berlin for a number of years and, therefore, did not expect that the development of the Facility would have any impact on the species. Id. No exemplary natural community or threatened habitats were identified within the project area. Id.

iv. Sustainability of the Northern Forest

In considering the natural environment, the Subcommittee will also consider the effect of the Project on the sustainability of the Northern Forest. The Subcommittee has already spent significant time considering the effect of this Project on the orderly development of the forestry industry in Coos County. See, Section C.2, ii, above. The sustainability of the forest is, in part, based upon the quantity of trees, saw logs, pulp and low grade fiber removed from the forest. Although the various studies do not provide a reliable measure of how much wood will be removed from the forest as a result of this Project, the northern forest did previously support the pulp needs of the pulp and paper mills that once populated the City of Berlin and the surrounding areas. There is no dispute that the Burgess Mill itself consumed almost 1.3 million tons of pulp per year. The pulp used by the Burgess Mill was for the most part obtained from the Northern Forest. However, in addition to the quantity of wood harvested in the forest, the Subcommittee must consider adverse impacts due to the manner in which wood is harvested. To this end, the Applicant has entered into two relevant stipulations in this docket.

The Applicant and Counsel for the Public reached a stipulation containing sustainability conditions for the harvesting of biomass and requested that the sustainability conditions become conditions of the Certificate. See, Ex. Laidlaw 76. The sustainability conditions amongst other things: address the qualifications required of the Applicant's procurement personnel; identify the procurement standards and practices that must be followed; prohibit the Applicant from purchasing wood from repeat violators of timber harvesting laws; and, require the Applicant to

engage in certain education, outreach and scholarship endeavors. See, Ex. Laidlaw 76. The sustainability conditions agreed to by the Applicant are significant in that they represent the acceptance of responsibility by a purchaser of wood products for the actions of its contracted foresters and loggers. In the past this responsibility was directed to the owners of timberland and their loggers and foresters. See, e.g., Good Forestry in the Granite State, (1997) p. 13. In addition, the sustainability conditions contain certain reporting and verification requirements that must be followed by the Applicant. Among other things, the stipulation would require the Applicant to conduct quarterly surveys detailing and reporting: the volume of biomass supplied from certified timberland operations; the volume of timber sales managed by a licensed forester; the volume of biomass supplied by master loggers, NH professional loggers or loggers who have participated in other certification programs; and the number of loggers enrolled in a certification program due to Laidlaw's support fund. Laidlaw Ex. 76. The reporting and verification conditions will provide valuable data that will assist the Applicant in understanding and tracking the success of the sustainability conditions. In addition, the reporting and verification requirements will provide data that can be used to assist the New Hampshire Division of Forest and Lands and the Committee in understanding the source of biomass supply and the standards under which biomass is removed from the forest. Therefore, the sustainability conditions contained in Laidlaw Ex. 76 shall become conditions to the Certificate in this docket. In addition to maintaining the information required in the reporting and verification requirements of the sustainability conditions, the Applicant shall forward its quarterly surveys and annual reports to the New Hampshire Division of Forest and Lands and the Committee. In addition to the information required by the sustainability conditions, the Applicant shall also report to the New

Hampshire Division of Forest and Lands and the Committee the total amount of biomass supplied to the facility on a quarterly and annual basis.

The Subcommittee also recognizes that Section IV, paragraph 8, of the City of Berlin's Proposed Conditions requires the Applicant to give preference to local landowners and operators for the purchase of biomass so long as the fuel is procured from timber harvests that adhere to the sustainability conditions. See, Berlin Ex. 5. In order to understand the sourcing of biomass obtained under the sustainability conditions, the source location of all biomass purchased by the Applicant shall be included in both the quarterly and annual surveys and reports. The Applicant will be a significant consumer of biomass in the North Country. Understanding the nature of the Applicant's biomass purchasing and the underlying timber harvesting practices will assist the Committee in its jurisdiction over the operation of the Facility and in the event that enforcement action is required pursuant to RSA 162-H: 12.

v. Other Permits

In addition, it should also be noted that the permits issued by DES and referenced in Section V, A. above will also provide for the construction and operation of the Facility in accordance with conditions that protect the natural environment. Compliance with the terms and conditions of these permits is also a condition of the Certificate in this docket.

Having considered the Application, the testimony and all of the exhibits in this matter, we find that, subject to the conditions set forth herein, the proposed Facility will not have an unreasonable adverse impact on the natural environment.

E. Public Health and Safety

In determining whether to grant a Certificate, the Subcommittee must determine whether the proposed Facility will have an unreasonable adverse effect on public health and safety. RSA 162-:16, IV (c).

The Applicant has assured the Subcommittee that all of the Facility's equipment and activities will be designed, operated and maintained in accordance with applicable best engineering practices and the latest editions of the standards and regulations of all applicable government agencies and engineering associations, including the Occupational Safety and Health Agency, the National Electric Manufacturers Association, U.S. Department of Transportation, American Society of Mechanical Engineers, American National Standards Institute, and national Fire Protection Association.

a. Wood Storage Safety

The Applicant estimates that the Facility will store approximately 62,500 tons of biomass on the Site. Tr. 08/24/2010, Morning Session, at 60. The Applicant asserts that fire safety will be provided through the implementation of the National Fire Protection Association's specifications and a complete on-site fire protection system will be installed for emergency use. Ex. Laidlaw 1. In addition, the Applicant will implement a first-in/first-out delivery system to ensure constant inventory turnover and to prevent the appearance of stagnant piles of wood. Tr. 08/23/2010, Afternoon Session at 111. The Applicant intends to construct the piles in a manner that would shed water and minimize movement of the biomass. Tr. 08/23/2010, Afternoon Session at 111.

b. Fire Safety

Fire safety is a paramount concern at the Facility. The Applicant asserts that it will comply with all industry standards, fire and life safety codes relating to power plants. The most relevant fire safety code for electrical generating facilities is NFPA 850 Recommended Practices for Electric Generating Plants and High Voltage Direct Current Converter Stations. The Applicant will be required to conduct its operation of the Facility in accordance with NFPA 850, as may be amended, as a condition of the Certificate in this docket. Additionally, the City of Berlin's Proposed Conditions require the Applicant to "consult with and [to] inform the City Fire Department on its emergency and safety procedures and . . . [to] maintain and submit to the City's Emergency Planning Committee and Fire Department materials safety data sheets (MSDS) for any hazardous chemicals used or stored at the facility". Ex. Berlin 5, at 9, ¶14. These requirements will also become conditions of the Certificate in this docket.

c. Noise

Operation of the Facility is expected to have sound impacts on the surrounding neighborhoods. Engineers for the Applicant assert that the Facility will generate 70 decibels above reference noise, adjusted (dBA) or less during the daytime and 60 dBA or less during the night time measured at the property line of the Facility. Tr. 08/23/2010, Afternoon Session at 114. The Applicant submits that projected noise levels are within the range allowed by the City of Berlin's zoning ordinance. Tr. 08/24/2010, Morning Session at 64. Furthermore, the Applicant conducted a comprehensive study of the noise levels registered at different locations of the City of Berlin and potential impact of the noise that would be generated by the Facility at these locations. Ex. Laidlaw 1, Table (h)(3)(ii)-9. The results of the study were introduced to the Subcommittee in the form of a table demonstrating that the operation of the Facility will

cause an increase in the noise levels in the area in a range of 1 to 2 dBA. Ex. Laidlaw 1, Table (h)3(ii)-9; Tr. 08/24/2010, Morning Session at 66-70. The Applicant argues that sound pressure level changes of 3 decibels are almost imperceptible to most people. Tr. 08/24/2010, Morning Session at 70.

As a result of the sound studies, the Applicant and the City of Berlin have reached certain agreements which are contained within the City's Proposed Conditions for the Certificate. Pursuant to the City's Proposed Conditions, noise levels at the Applicant's property line shall be limited to less than 60 dB (decibels) between the hours of 10 p.m. and 6 a.m., Monday through Saturday, and 10 p.m. and 8 a.m. on Sundays. Under the Proposed Conditions, the Applicant is responsible to monitor the noise levels and take corrective action in the event that the noise levels exceed the aforementioned limits. In the event that corrective action is unsuccessful, the Applicant may be required to employ additional sound mitigation technologies or construct sound barriers. Berlin Ex. 5, Section II, Paragraph 1.

The City of Berlin's Proposed Conditions would also mitigate the noise impact of the Facility by requiring it to "assure that backup safety warning systems used in nighttime operation of yard equipment are of suitable design and operation to minimize noise in the surrounding community". Ex. Berlin 5, at Section II 2, ¶2. The noise impact of on-site chipping and debarking operations would be mitigated by requiring the Applicant to have "the equipment enclosed and operated in a sound protecting enclosed building". Ex. Berlin 5, at 3, ¶3. Furthermore, the City and the Applicant agreed to regulate the truck traffic issues by not allowing "wood fuel deliveries between the hours of 9:00 p.m. to 5:00 a.m. weekdays . . . [and] before 8:00 and or after 6:00 p.m. on Saturdays and Sundays," and subjecting all deliveries to the noise levels identified in the Proposed Certificate Conditions. Ex. Berlin 5, at 5, ¶1.

d. Decommissioning

One final public safety consideration is the issue of decommissioning of the Facility. While it is hoped that the Facility will be successfully constructed and operated for many years, the Subcommittee is concerned with the possibility of abandonment of the project. As noted previously, the Facility is highly industrial and located in the center of the City of Berlin. Abandonment of the project may create not only an eyesore but a public safety risk. Therefore, as a condition of the Certificate in this docket the Applicant shall, with the consultation of City officials, prepare a decommissioning plan. The plan must include decommissioning cost estimates and a method for creating, maintaining, and securing funding for the decommissioning of the Facility in a safe and secure manner. A final plan must be submitted to the Site Evaluation Committee for approval prior to the commencement of construction. Likewise, the Applicant will maintain all insurance coverages typically maintained in the industry, including liability insurance and provide copies of said policies to the Site Evaluation Committee prior to the commencement of construction.

Having considered the Application, the testimony and the exhibits, the Subcommittee hereby finds that subject to the conditions set forth herein, the proposed Facility will not have an unreasonable adverse impact on public health and safety.

VI. CONCLUSION

Throughout the pendency of this Application the Subcommittee has endeavored to be as transparent and inclusive as possible. A Public Information Hearing and technical sessions were conducted in Coos County. The Subcommittee accepted comments from the public both orally and in writing throughout the pendency of the proceedings. The parties have had a full and fair opportunity to raise all issues and present their arguments. As a consequence, we are confident

that we heard and understand the positions of all the parties pertaining to the potential impacts of the proposed project and the effects that it will have on Coos County and the state as a whole.

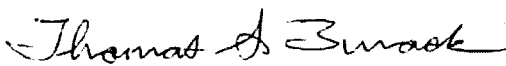
The Subcommittee has considered the Application, the exhibits, the testimony and the briefs and oral arguments. The Subcommittee has also considered available alternatives and fully reviewed the environmental impacts of the proposed facility. All other relevant factors bearing on the objectives of RSA 162-H have been argued and considered. Having done so, the Subcommittee finds, subject to the conditions discussed herein and made a part of the Order and Certificate, that:

The Applicant has adequate technical, managerial and financial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the Certificate;

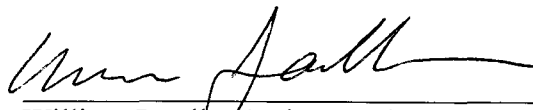
The construction and operation of the facility will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning committees and governing bodies;

The construction and operation of the facility will not have an unreasonable adverse effect on aesthetics, historic sites, air quality, water quality, the natural environment or public health or safety.

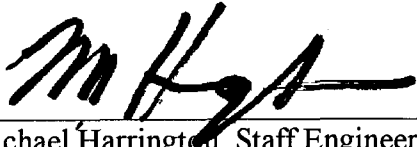
Therefore the Application for a Certificate of Site and Facility is granted subject to the conditions set forth in this decision and in the accompanying Order and Certificate.



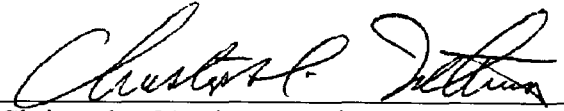
Thomas Burack, Chairman
Department of Environmental Services



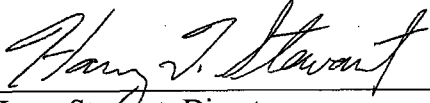
William Janelle, Assistant Director
Department of Transportation



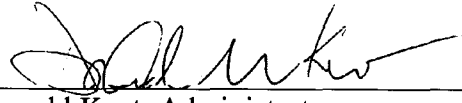
Michael Harrington, Staff Engineer
Public Utilities Commission



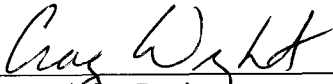
Christopher Northrop, Designee
Office of Energy and Planning



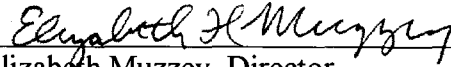
Harry Stewart, Director
Department of Environmental Services



Donald Kent, Administrator
NH Natural Heritage Bureau



Craig Wright, Designee
Air Resources Division




Elizabeth Muzzey, Director
NH Division of Historical Resources

Concurrence Statement of Commissioner Amy Ignatius

I concur with the decision to grant a Certificate of Site and Facility to the Applicant in this docket.

However, I do not join in that portion of the Decision at pages 38 through 39 that address the relative merits of the Applicant's proposed Facility as compared to the CPD facility. First, I do not believe that the Subcommittee is required under RSA 162-H: 16 to address such issues as part of its alternatives analysis. Second, I cannot agree that the CPD facility does not necessarily represent a better alternative on its merits. I do not believe that this finding is required by the statute or warranted on the record before us.

Otherwise, I join with the Subcommittee in finding that the Applicant has met its burden of proof under RSA 162-H: 16 and holding that a Certificate of Site and Facility with Conditions should be granted.



Amy Ignatius, Commissioner
Subcommittee Member