

**STATE OF NEW HAMPSHIRE  
SITE EVALUATION COMMITTEE**

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June 27, 2024

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Re: Docket No: 2024-03 Joint Petition to Change Ownership or Transfer  
Certificate of Site and Facility from Berlin Station LLC to North Country  
Generation Holdings LLC

Dear Attorney Holahan & Attorney Dean:

On April 10, 2024, the Site Evaluation Committee (SEC) received your clients' Joint Petition to Change Ownership or Transfer the Certificate of Site and Facility from Berlin Station LLC to North Country Generation Holdings LLC ("NCGH") (the "Transfer Petition"). Shortly after receiving the Transfer Petition, the SEC posed the following questions to your clients concerning their Transfer Petition, considering the ongoing bankruptcy case (the "Bankruptcy Case") pending before the U.S. Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"):

- (i) Was the Transfer Petition barred by the automatic stay under 11 U.S.C. § 362, including 11 U.S.C. § 362(a)(3), because of Berlin Station's ongoing Chapter 11 cases?
- (ii) Was the Transfer Petition incomplete due to the Transfer Petition's lack of evidence sufficient for NCGH to satisfy the requirements of N.H. Admin. R., Site 301.03(c)(6)?
- (iii) Was the Transfer Petition incomplete or untimely because Berlin Station, LLC has no authority to transfer or to contract to transfer the Berlin Facility and its certificate to NCGH;

- (iv) Was the Transfer Petition incomplete or untimely because any sale or disposition of the Berlin Facility is subject to Berlin Station, LLC's Chapter 11 plan, which is not scheduled for a confirmation hearing until May 24, 2024?

Your clients responded to the SEC's inquiries (the "Response") on April 29, 2024. Their Response indicated that they understood the SEC's concerns regarding standing and ownership. Still, your clients argued that their Transfer Petition could be decided through an SEC proceeding running parallel to the Bankruptcy Case, provided that the approval of the Transfer Petition would be expressly conditioned on the Bankruptcy Court's final approval of the Chapter 11 plan. *See* Response at 4. Your clients also indicated that the final approval of the Chapter 11 plan would occur at the Sale Hearing and Confirmation Hearing (collectively, the "Confirmation Hearing") scheduled for May 21, 2024.

To "administratively approve" a petition in compliance with RSA 162-H:8, VI (Supp. 2023), the SEC must receive evidence and determine, within the ninety-day period provided for in the statute, whether the proposed transferee possesses the "adequate financial, technical, and managerial capability to assure [...] operation of the facility in continuing compliance with the terms and conditions of the certificate." RSA 162-H:8, VI (Supp. 2023). If the SEC cannot make those determinations within the ninety-day period, the SEC must deny the petition. *See* RSA 541-A:29, II(a), III (2021).

Turning to your clients' Transfer Petition, the ninety-day period for the SEC to determine NCGH's "adequate financial, technical, and managerial capability" and "administratively approve" your clients' Transfer Petition ends on July 9, 2024. *See* RSA 162-H:8, VI (Supp. 2023). However, in the time since the SEC received your clients' Transfer Petition and subsequent Response, your clients have postponed the Confirmation Hearing multiple times. Most recently, your clients have rescheduled the Confirmation Hearing to July 12, 2024. *See* Notice of Resch'd Sale Hr'g and Confm'n Hr'g at 2, *In re Burgess BioPower, LLC, et al.*, No. 24-10235 (LSS) (Jointly Admin'd) (Bankr. D. Del. Jun. 20, 2024), ECF No. 389. As a result, the Bankruptcy Court will not consider and rule on the Chapter 11 plan until July 12, 2024, at the earliest. *See id.*

Accordingly, since the SEC cannot review the Transfer Petition within the ninety-day review period provided for in RSA 162-H:8, VI (Supp. 2023) unless and until the Bankruptcy Court has approved the creditor sale described in the Transfer Petition, your clients' Transfer Petition is dismissed without prejudice. *See* RSA 162-H:4, V (Supp. 2023). If your clients disagree with this order, they may appeal it to the full SEC. Any such appeal must be filed within ten (10) calendar days and request that the SEC review this procedural decision at its next scheduled meeting.

Sincerely,



Daniel C. Goldner  
Chairman, Site Evaluation Committee