

**THE STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 09-067**

**ORDER OF NOTICE**

On April 7, 2009, Clean Power Development, LLC (CPD) filed a complaint against Public Service Company of New Hampshire (PSNH) pursuant to RSA 365:1 claiming that PSNH refused to enter into negotiations to purchase the energy, capacity and renewable energy certificates (RECs) associated with the output a 29-megawatt biomass-fueled combined heat and power energy facility CPD plans to build in Berlin, New Hampshire. CPD claimed that a purchase power agreement is a prerequisite to moving forward with the financing, construction and eventual operation of the Berlin CPD facility and that PSNH's refusal to negotiate with CPD constituted, among other things, a violation of PSNH's least cost plan approved by the Commission in Order No. 24,945 (February 27, 2009) in Docket No. DE 07-108 and RSA 362-F:1, the purpose section of the Electric Renewable Portfolio Standards law, RSA 378:37, the New Hampshire Energy Policy, and RSA 378:38 and 39, New Hampshire's law requiring electric utilities to file least cost integrated resource plans for approval by the Commission.

On April 14, 2009, pursuant to RSA 365:2, the Commission issued a secretarial letter directing PSNH to answer the charges in CPD's complaint. PSNH filed its answer to the complaint on April 28, 2009 denying any wrongdoing and stating that it had not violated RSA 362-F:1 or RSA 378:37 through 39. PSNH said that CPD had not made a *bona fide* offer of contract terms when it approached PSNH regarding the CPD facility. In addition, PSNH pointed out that there is no requirement in New Hampshire for any market participant, including a utility, to enter into a long-term power purchase agreement with any merchant generator. PSNH said

that if a generator is a “qualifying facility” within the meaning of the Public Utility Regulatory Policies Act of 1978 (PURPA) (16 U.S.C. §2601-2645) and the federal rules implementing PURPA (18 CFR 292), PSNH would be required to purchase the output at the short-term avoided cost rate approved by the Commission in PSNH’s restructuring docket. *See* Docket No. 99-099, *PSNH Proposed Restructuring Settlement*, 85 NH PUC 567, Order No. 23,549 (September 8, 2000). On May 29, 2009, CPD filed a request for a formal investigation by the Commission.

Concord Steam Corporation (Concord Steam), a facility that is developing a combined heat and power biomass facility in Concord, filed a petition to intervene on July 23, 2009.<sup>1</sup> Concord Steam claimed that it approached PSNH regarding the potential for PSNH to purchase power from the proposed facility and that PSNH had responded by saying that it had no interest in entering into a purchase power agreement with a renewable energy facility at this time.

During June and July, the Commission’s General Counsel, Anne Ross, met with CPD, PSNH and Concord Steam in an attempt to assist the parties in resolving the dispute on an informal basis. Despite several meetings and the submission of power purchase term sheets by CPD and Concord Steam to PSNH, the parties were not able to settle their differences.

On September 14, 2009, CPD again filed a motion requesting that the Commission open a formal investigation of CPD’s complaint against PSNH. PSNH filed a response on September 24, 2009 stating it had been in the process of reviewing CPD’s proposed long term purchased power agreement but would no longer do so, given CPD’s motion to open a formal investigation. CPD responded to PSNH’s filing on September 29, 2009. On October 1, 2009, Concord Steam filed a response to PSNH interpreting PURPA as requiring PSNH to purchase power from

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<sup>1</sup> The Commission also received copies of correspondence between David Bertrand, the Mayor of Berlin, and PSNH and several additional letters of comment from CPD.

qualified facilities at a rate different than that established by the Commission in Order No. 23,549.

Because there may be a basis for the dispute between the parties concerning the nature and extent of PSNH's legal obligation to purchase power from CPD, the Commission is opening an investigation into CPD's complaint pursuant to Puc 204.04 and RSA 365:4. In order to determine whether an adjudicative proceeding shall be commenced to resolve the CPD complaint and, if so, how such proceeding would be conducted, the Commission, consistent with Puc 204.05, will hold a prehearing conference to take the statements and hear the recommendations of CPD and PSNH.

**Based upon the foregoing, it is hereby**

**ORDERED**, that a Prehearing Conference, pursuant to N.H. Admin. Rules Puc 203.15, be held before the Commission located at 21 S. Fruit St., Suite 10, Concord, New Hampshire on November 3, 2009 at 10:00 a.m., at which each party will provide a preliminary statement of its position and any of the issues set forth in N.H. Admin. Rule Puc 203.15 shall be considered; and it is

**FURTHER ORDERED**, that, immediately following the Prehearing Conference, CPD, PSNH, the Staff of the Commission and any Intervenors hold a Technical Session, if necessary, to determine how to proceed with the investigation of the complaint; and it is

**FURTHER ORDERED**, that pursuant to N.H. Admin. Rules Puc 203.12, CPD shall notify all persons desiring to be heard at this hearing by publishing a copy of this Order of Notice no later than October 16, 2009, in a newspaper with general circulation in those portions of the state in which operations are conducted, publication to be documented by affidavit filed with the Commission on or before November 3, 2009; and it is

**FURTHER ORDERED**, that pursuant to N.H. Admin. Rules Puc 203.17, any party seeking to intervene in the proceeding shall submit to the Commission seven copies of a Petition to Intervene with copies sent to CPD, PSNH and the Office of the Consumer Advocate on or before October 28, 2009, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interest may be affected by the proceeding, as required by N.H. Admin. Rule Puc 203.17 and RSA 541-A:32,I(b).

By order of the Public Utilities Commission of New Hampshire this ninth day of October, 2009.

  
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Adele E. Leighton  
Assistant to the Executive Director

Individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability, should contact the Americans with Disabilities Act Coordinator, NHPUC, 21 S. Fruit St., Suite 10, Concord, New Hampshire 03301-2429; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Notification of the need for assistance should be made one week prior to the scheduled event.