

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

**COMPLAINT OF CLEAN POWER DEVELOPMENT, LLC  
AGAINST PUBLIC SERVICE OF NEW HAMPSHIRE  
DE 09-067**

**CPD'S REPLY TO PSNH'S RESPONSE**

Now Comes Clean Power Development, LLC ("CPD") and, pursuant to Rule Puc 204.04, hereby replies to the response of Public Service of New Hampshire ("PSNH"), and in support hereof states as follows:

**INTRODUCTION**

1. PSNH filed its response to the charges in the CPD's Complaint on April 28, 2009.<sup>1</sup>
2. Rule Puc 204.04 provides that "... a complainant not satisfied with the utility's response shall so advise the commission."
3. For all of the reasons set out hereinafter, CPD is not satisfied with PSNH's response and, additionally, further complains that PSNH's conduct has violated RSA 356:2.
4. There are two competing wood-fueled biomass-energy facilities being developed in Berlin, NH: the CPD facility and the Laidlaw Berlin facility. The CPD facility is supported by the City of Berlin. The sustainable wood supply will not support the oversized Laidlaw Berlin project, let alone both projects.
5. Laidlaw Berlin announced in September, 2008 that it had reached an agreement with PSNH on the material terms of a contemplated 20-year power purchase agreement which would provide a "guaranteed" source of revenue for the Laidlaw project.
6. In stark contrast, CPD's overtures to PSNH have been repeatedly rebuffed by PSNH "because of Mel Liston and how he had testified against [PSNH] in other venues. He's just a bad person and we don't do business with people like him." Therefore, PSNH does not know whether or not the CPD Facility would have been better for its ratepayers and the State than the Laidlaw Berlin facility.
7. PSNH has arrogated to itself the determination of which renewable projects gets built in New Hampshire. The renewable energy projects that get to deal with PSNH are screened to

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<sup>1</sup> According to Rule Puc 204.02, PSNH should have provided a "written response to the complaint no later than 10 days from the date the complaint is received by the utility." Therefore, the Response should have been filed on April 24, not April 28.

make sure they fit PSNH's "business model" to the detriment of ratepayer interests and codified principles of least cost planning. This state of affairs simply cannot be reconciled with state energy law or public policy in support of renewable energy.

### **COMPLAINT I**

8. CPD has complained that PSNH, as a franchised utility, has breached its duty of candor toward the Commission. As specified in the Complaint, PSNH's representations to the Commission under oath have been flatly contradicted by the senior PSNH governmental affairs representative who told CPD straight-out that "the reason PSNH would never buy power from Clean Power is because of Mel Liston and how he had testified against them in other venues. He's just a bad person and we don't do business with people like him."

9. PSNH did not even respond to Complaint 1, much less deny it. The Commission, therefore, must conclude that PSNH has admitted the allegations in Complaint 1. PSNH's activities with respect to renewable resource suppliers cannot be reconciled with its on-the-record representations to the Commission. This is an extremely serious matter that the Commission must deal with, notwithstanding PSNH's attempt to look the other way.

10. PSNH's credibility is a key issue in this proceeding and ultimately to the success of the Commission in advancing the State's policies in support of renewable energy deployment. For example, in its Response, PSNH intentionally obfuscated whether it has in fact contracted with Laidlaw stating that it "may (or may not)" have entered into an agreement with Laidlaw. PSNH's continuing attempts to obscure the status of its renewable energy supply efforts before the Commission are expressly contradicted by its prior statements:

#### **Laidlaw Reaches Agreement with Public Service Company of New Hampshire for Power Purchase Agreement for New Hampshire Biomass Project**

MANCHESTER, NEW HAMPSHIRE--(BUSINESS WIRE)-- September 29, 2008—Laidlaw Energy Group, Inc., through its affiliate, Laidlaw Berlin BioPower, LLC ("Laidlaw"), announced today that it has reached agreement with Public Service Company of New Hampshire ("PSNH") on the material terms of a contemplated 20-year power purchase agreement for Laidlaw's Berlin, New Hampshire Biomass Energy Project (the "Berlin Project"). The agreement between the parties contemplates the sale of 100% of the Berlin Project's electric output, capacity and renewable energy certificates to PSNH over the 20-year term. The Berlin Project is expected to have a gross capacity of 66 megawatts, making it one of the largest biomass-energy plants in North America.

Commenting on the arrangement, Laidlaw President and CEO Michael Bartoszek stated, "This is an important milestone in the development of the Berlin Project. Having a guaranteed source of revenue over the term of this agreement from a highly credit-worthy customer like PSNH adds

tremendous value to this project. We look forward to being an important part of New Hampshire's energy future as the state shifts toward renewable electricity generation to meet its Renewable Portfolio Standard and greenhouse gas commitments."

The agreement between the parties is subject to the execution of a definitive power purchase agreement, as well as approval by the New Hampshire Public Utilities Commission.

"The development of new native sources of renewable energy is essential for New Hampshire's energy future," said Gary Long, PSNH president and chief operating officer. "The purchase of power from the Berlin Project will help us to meet the requirements of the state's Renewable Portfolio Standard and add to our portfolio of CO2-neutral energy sources."

## COMPLAINT II

11. CPD has complained that PSNH has violated the terms of its Least Cost Plan approved by the Commission by Order No. 24,945 (February 27, 2009). The essence of Complaint II is that in its letter dated March 16 to Mr. Liston, PSNH appears to have adopted the position that PSNH has no need for the output of the CPD Facility (or by implication any other renewable facility).

12. This is a monumental departure from the proclamations made by PSNH in its Least Cost Plan which was approved by the Commission just two weeks earlier:

There has been a movement toward a "greener" environment, while the cost of energy and generating capacity has continued to increase. PSNH has successfully completed and placed in service Northern Wood Power, but is unable to materially add to its renewable generating capacity due to State policy.

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To meet the New Hampshire RPS requirements, PSNH will need to procure 261,000 MWh from Class I renewable resources, 13,000 MWh from Class II renewable resources, 601,000 MWh from Class III renewable resources, and 58,000 MWh from Class IV renewable resources to meet its RPS deficiency by 2012...

PSNH Least Cost Integrated Resource Plan at 5, 6 .

13. In its Response to CPD, PSNH declares that "the nation's and state's economies, has changed significantly since PSNH's 2007 LCIRP was being prepared in mid-2007." Further, PSNH asserts that its "LCIRP, filed over a year and a half ago, and prepared in the weeks and months prior to its actual filing date, accurately portrayed PSNH's then-current resource needs and plans."

14. This is an amazing turn of events. During the hearings in October 2008 in the Least Cost Planning proceeding (and the Lempster proceeding), PSNH portrayed future compliance

with the New Hampshire Renewable Portfolio standards as a daunting and heroic undertaking. Within just a few weeks, when it came to dealing with CPD and Mel Liston, however, its need for renewable power somehow evaporated. PSNH's abandonment of fundamental precepts in its approved Least Cost Integrated Resource Plan raises serious questions regarding the validity and sufficiency of its Least Cost Planning process, and heightens the need for Commission oversight.

15. RSA 378:41 requires that “[a]ny proceeding before the commission initiated by a utility shall include, within the context of the hearing and decision, reference to conformity of the decision with the least cost integrated resource plan most recently filed and found adequate by the commission.” PSNH’s unilateral pronouncement that it no longer will procure renewable power as provided in its Least Cost Plan means that its Least Cost Plan approved by the Commission in Order No. 24,945 cannot be relied upon by the Commission for the purposes of RSA 378:41.<sup>2</sup> This would presumably include the Commission’s pending decision in the Lempster proceeding in DE 08-077.

### **COMPLAINT III**

16. CPD has complained that PSNH has violated New Hampshire state energy policy as established by RSA 362-F, and RSA 378:37, 38 and 39 because it has an obligation to at least objectively consider a PPA with a proposed renewable facility. According to the Complaint, PSNH may not reject out-of-hand proposals from a renewable facility such as CPD, particularly where, as here, it has represented to the Commission that every developer would be treated “evenly and fairly.”

17. In its Response, PSNH contends that it “gave CPD an opportunity to present a *bona fide* proposal to sell the output from its proposed CPD Berlin facility. CPD failed to provide such a proposal.”

18. The “opportunity” PSNH purportedly gave to CPD to “unilaterally propose a power purchase agreement” was nothing more than a stratagem – a stunt – to draw CPD further into the web of deception. In the same letter to CPD wherein PSNH purported to solicit the unilateral proposal from CPD, PSNH made it clear that it no longer needed any more renewable power and

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<sup>2</sup> Moreover, PSNH’s actions have the effect of constraining the market for, and deployment of renewable resources in contravention of RSA 378:39, further undercutting the sufficiency of its Integrated Least Cost Resource Plan.

that PSNH would only be willing to pay the short-term QF rate (subject to being withdrawn at FERC by PSNH. )

19. In any event, CPD did make a *bona fide*, very specific proposal to PSNH:

With respect to pricing terms for the output of the CPD Berlin facility, CPD, like Laidlaw needs a “guaranteed source of revenue.” Accordingly, it would be appropriate for PSNH to pay CPD an amount equal to 95 per cent of the prices it has agreed to pay Laidlaw for the output of Laidlaw’s Berlin project.

20. PSNH has rejected out-of-hand a proposal from CPD without even objectively considering it, notwithstanding that it has represented to the Commission that every developer would be treated “evenly and fairly.” The fact of the matter is that the current PSNH management will never treat Mel Liston objectively because he’s a “bad person” due to having spoken out against them in the past. The failure of PSNH to consider lower cost (and more sustainable) renewable supplies than those for which it has announced a power purchase agreement are antithetical to least cost planning and contrary to rate payer interests.

#### **SUPPLEMENTAL COMPLAINT IV**

21. By way of further and additional complaint, for the reasons set forth above, CPD now claims that PSNH has violated RSA 356:2, II (d) which prohibits “every conspiracy... which has the purpose or the effect of... [r]efusing to deal, or coercing, persuading or inducing any person to refuse to deal, with another person...

22. In a civil conspiracy, express agreement is not necessary, and all that is required is that there be a tacit understanding, as where two automobile drivers suddenly and without consultation decide to race their cars on the public highway. PSNH and Laidlaw have agreed to a “guaranteed” rate for the Laidlaw project which has the effect of constraining deployment of renewable (and competitive) power supplies to clear the path for the Laidlaw project and PSNH’s (unauthorized) objective to own rate-based renewables. PSNH’s activities amount to an intentional pattern of conduct designed to advance its long term objective for greater risk-free return on investment at the expense of ratepayers and market-based suppliers.

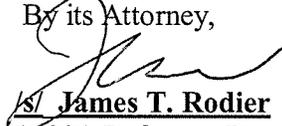
#### **CONCLUSION**

PSNH exhorts the Commission to view the Complaint as “an attempt by a disappointed and disgruntled merchant generator to force its output on an unwilling buyer.”

CPD suggests that the Commission view the conduct outlined by CPD in the Complaint and this Reply as a transparent attempt by a devious utility to extend its hegemony over the

development of renewable energy in New Hampshire. CPD believes that Laidlaw is nothing more than a placeholder for PSNH's entry into the renewable energy business, pending PSNH's perennial efforts to get the law changed.

Respectfully submitted,  
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