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The Northeast Utilities System

**Robert A. Bersak**  
Assistant Secretary and  
Assistant General Counsel

June 1, 2009

Ms. Debra A. Howland  
Executive Director and Secretary  
New Hampshire Public Utilities Commission  
21 S. Fruit Street, Suite 10  
Concord, NH 03301-2429



**Re:   Docket No. DE 09-067**  
**Complaint of Clean Power Development, LLC**

Dear Secretary Howland:

By letter dated May 26, 2009, Clean Power Development, LLC ("CPD") requested the Public Utilities Commission (the "Commission") to conduct a formal investigation in the above-captioned matter. Public Service Company of New Hampshire ("PSNH") objects to CPD's request because it lacks merit.

CPD asserts that merely because it is not satisfied with PSNH's response to its complaint, it is the Commission's duty to conduct a formal investigation. In support of its argument, CPD cites to Order No. 23,734 for the proposition that the filing of a complaint "ordinarily comprises a triggering event of a formal investigation under RSA 365:4." *Complaint of Guillemette*, Docket No. DE 01-023, Order No. 23,734, June 28, 2001 at 22.

CPD's assertion is incorrect. RSA 365:4, not Order No. 23,734, provides the Commission with authority to conduct an investigation. Rule Puc §204.04(b) recognizes this, as it states, "If it appears to the commission that there may be a basis for the complainant's dispute, the commission shall conduct an independent investigation *pursuant to RSA 365:4*." (Emphasis added.) The Commission has recognized that not all complaints warrant action; "Chapter 365, which governs complaints to, and proceedings before, the Commission, provides the Commission with less than plenary authority to redress customer complaints." Order No. 23,734 at 11. The text of RSA 365:4 clearly states that an investigation is necessary only where it "appear[s] to the commission that there are *reasonable grounds therefor*." (Emphasis added.)

Accordingly, the Commission need not conduct an investigation in this case if "reasonable grounds" for such an action are absent. The cited Order No. 23,734 recognized this.

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In that case, prior to instigating an investigation, the Commission found that there were "reasonable grounds within the meaning of 365:4 to conduct a full and formal hearing." *Id.*

As noted in PSNH's April 29 response, the complainant in the instant case is not a customer; it is a disappointed and disgruntled merchant generator trying to use the RSA 365:1 complaint process to force its output on an unwilling buyer. If it was deemed reasonable to use the RSA 365:1 complaint process in this manner, conceivably the Commission could be flooded with complaints by other unhappy merchants and vendors that have been unsuccessful in their efforts to receive contracts from a utility regulated by the Commission.

If CPD desires to assert rights under PURPA (16 U.S. Code §§ 2601-2645) as a QF (18 C.F.R. Part 292) to "put" its output to PSNH, the company stands ready to comply with that legally-imposed purchase obligation. Otherwise, there simply is no requirement for PSNH, or any other utility or potential purchaser, to enter into long-term power purchase negotiations with CPD or any other generator.

Based on the contents of PSNH's April 28, 2009, response to CPD's complaint, and the matters set forth herein, there are no reasonable grounds to believe that PSNH committed any act in violation of any provision of law, or of the terms and conditions of its franchises or charter, or of any order of the commission. RSA 365:1. Therefore, formal investigation is neither required, nor reasonable, in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Bersak", with a stylized flourish at the end.

Robert A. Bersak  
Assistant Secretary and  
Assistant General Counsel

cc: Service List