

James T. Rodier, Esq.
Attorney-at-Law
1500 A Lafayette Road, No. 112
Portsmouth, NH 03801-5918

603-559-9987
jtrodier@comcast.net

March 12, 2009

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



Re:

**COMPLAINT OF CLEAN POWER DEVELOPMENT, LLC
AGAINST PUBLIC SERVICE OF NEW HAMPSHIRE
Docket No. DE 09-067**

Dear Ms. Howland:

I am responding on behalf of Clean Power Development, LLC to PSNH's letter to the Commission in this proceeding dated March 10, 2010. In its letter, PSNH "respectfully requests that the Commission delay the date for filing legal memoranda regarding the nature and extent of PSNH's duty to negotiate with and contract for power from CPD until one month after there is a final, unappealable [sic] order in FERC Docket No. QM10-4-000."¹

The apparent basis for PSNH's request is its assertion that:

PSNH is already on record in this docket many times concerning any obligation to negotiate or contract with CPD. PSNH has repeatedly stated that except for obligations under PURPA, there are no other obligations requiring PSNH or any other electric distribution utility in New Hampshire to enter into negotiations with or agree to a long term power contract with any electric generator.

For the reasons stated hereinafter, CPD objects to PSNH's request for an extension to the March 26, 2009 deadline for the filing of legal Memoranda with respect to PSNH's obligations under for the under New Hampshire law, other than LEEPA. CPD has not contended that PSNH has any obligation

¹ PSNH's request by letter is a Motion. Puc 102.08. Accordingly, PSNH has not complied with the requirements of the Commission's rule requiring that any Motion shall be filed in writing in the form of a pleading. Puc 203.07 (b)

under LEEPA. Moreover, CPD does not object to PSNH's request for an extension for submitting memoranda with respect to PSNH's obligations under PURPA.²

On February 24, 2010, the Commission issued an Order Commencing Adjudicative Proceeding which required "that legal memoranda regarding the nature and extent of PSNH's duty to negotiate with and contract for power from CPD shall be due on or before March 26, 2010." Order No. 25,075 at 2. The principal issue identified at the Prehearing Conference on November 9, 2009 was whether "PSNH has a duty to consider in good faith any bona fide offer" from a renewable energy developer under state law. In response to questioning from the bench, CPD clearly articulated that PSNH has a duty to consider in good faith any bona fide offer:

CHAIRMAN GETZ: Okay. Well, in talking about the nature and extent of PSNH's legal obligation -- well, if you're turning to that, because I was trying to I was going to try and paraphrase what I understood your position to be.

MR. RODIER: Please.

CHAIRMAN GETZ: Which I'm taking it to be that **the duty here on PSNH is to consider in good faith any bona fide offer.** Is that a fair characterization of the legal argument you're making? I mean, there may be other sources —

MR. RODIER: Yes.

CHAIRMAN GETZ: -- for that legal argument, whether it's in just and reasonable rates or least cost planning principles. But that's the fundamental legal duty you're arguing?

MR. RODIER: That's a good way to put it.

CHAIRMAN GETZ: And, then, what you're basically saying, in recounting some of the factual history, is that they breached that duty?

MR. RODIER: Correct.

CHAIRMAN GETZ: Okay.

Transcript (November 3, 2009) at 16 (Emphasis added).

In contrast, counsel for PSNH appeared to disagree with the legal proposition that PSNH has a duty to consider in good faith any bona fide offer:

CHAIRMAN GETZ: Mr. Bersak, you've been focusing on, and I assume this is all in the context of the nature and extent of PSNH's legal obligation, the things that PSNH is not

² As noted in the CPD's Motion to Intervene in the proceeding at FERC, on numerous occasions PSNH has represented to CPD and the Public Utilities Commission that there is no requirement for it to enter into a long-term power purchase agreement with CPD. In direct contrast, PSNH's filing with the Commission on January 10, 2010 seeks authorization to terminate the mandatory power purchase obligation.

required to do or the things that are beyond our jurisdiction or beyond, in your position, beyond our authority. But, what is the nature of the duty that PSNH owes here? I've read a number of the documents that have been filed -- well, I've read all the documents, but, in some of the documents filed by PSNH, it didn't seem to me that PSNH was taking a very different position from what I discussed with Mr. Rodier earlier, when I tried to paraphrase Clean Power's position. **That at least, in essence, there's at least one duty we're dealing with here, that PSNH should give due consideration to bona fide offers.** Do you agree with that formulation? Disagree with that? Because, in some of the documents, it seems that you're taking the position that you have indeed given due consideration.

MR. BERSAK: Is there a legal obligation that we consider any and every proposal that comes in the door? No, there is no legal obligation to do that. Is there a good business obligation to do that? Yes, there is.

Id. at 58,59. (Emphasis added.)

There is clearly a fundamental difference of opinion on whether "PSNH has a duty to consider in good faith any bona fide offer" from a renewable energy developer under state law. This matter needs to be resolved as soon as possible since time is of the essence.

CPD objects to PSNH's request for an extension to the March 26, 2009 deadline for the filing of legal Memoranda with respect to PSNH's obligations under New Hampshire law, other than LEEPA. CPD will submit a memorandum on or before March 26th addressing PSNH obligations under state law, specifically, whether PSNH has a duty to consider in good faith any bona fide offer from a renewable developer.

Please feel free to contact me should you have any questions or wish to discuss this matter. I have sent a copy of this letter to the Parties on the Service List in this proceeding.

Sincerely,

/s/James T. Rodier

A handwritten signature in blue ink that reads "James T. Rodier". To the right of the name, there is a handwritten mark that appears to be a stylized "J" or a similar character, possibly a initials or a personal mark.