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A Northeast Utilities Company

Robert A. Bersak
Assistant Secretary and
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June 18, 2010

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

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



Dear Secretary Howland:

By Secretarial letter dated June 14, PSNH was “directed to provide the Commission with a written response to the Clean Power June 8th complaint as well as providing an explanation of the PSNH letter dated May 17, 2010 attached thereto by June 18, 2010.” PSNH is providing this response pursuant to that directive and Rule Puc 204.02.

In its most recent complaint, Clean Power Development, LLC, accuses PSNH of “retaliation” and “demanding that Clean Power give up its lawful and constitutional rights to be heard before the PUC.” PSNH denies such accusations.

The new accusations result from PSNH’s response to CPD inquiries requesting easements involving approximately 4 acres of land owned by PSNH in Berlin, New Hampshire. That response, contained in the May 17, 2010 letter from PSNH Vice President Paul E. Ramsey to CPD’s Project Manger Bill Gabler, speaks for itself:

“CPD has initiated litigation against PSNH alleging certain civil and criminal misconduct. In its complaints, CPD has sought, amongst other things, adjudicative proceedings and the payment of unspecified reparations from PSNH.”

CPD has now filed three complaints against PSNH before this Commission – the first on April 7, 2009; it added its supplemental complaint against PSNH on May 1, 2009; and now its complaint of June 8, 2010. In CPD’s first complaint (April 7, 2009), CPD made three specific allegations of civil wrongdoing against PSNH. In that complaint, CPD requested the Commission to “Convene an adjudicative proceeding as provided in N.H. Admin. Rule PUC 2505.13” and to “Order PSNH to make reparation to Clean Power Development, LLC” for those alleged violations.

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In CPD's second complaint (May 1, 2009), CPD reiterated its three alleged violations from its first complaint, and then added a fourth supplemental complaint. This fourth allegation was "CPD now claims that PSNH has violated RSA 356:2, 11(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...'" RSA 356:2 is a criminal statute. Under RSA 356:4 – Penalties, "A person who knowingly and willfully engages in conduct prohibited by this chapter shall be guilty of a misdemeanor if a natural person, *or guilty of a felony if any other person.*" Hence, CPD has accused PSNH of felonious criminal misconduct.

As a result of CPD's complaints, the Commission decided in Order No. 25,075 dated February 24, 2010, that it would open an adjudicative proceeding. RSA 541-A:31 describes an adjudicative proceeding as a "contested case." Similarly, the Commission's regulations at Rule Puc 120.01 define an adjudicative proceeding to mean "a proceeding conducted pursuant to the procedure followed in contested cases, as set forth in RSA 541-A:31 through RSA 541-A:36 and the rules of the commission." Hence, by its repeated filing of complaints, CPD has indeed initiated litigation against PSNH.

CPD has clearly "initiated litigation against PSNH alleging certain civil and criminal misconduct," precisely as stated in Mr. Ramsey's letter. In its complaints, CPD has expressly sought "adjudicative proceedings and the payment of unspecified reparations from PSNH," also as stated in Mr. Ramsey's letter. These excerpts from CPD's own filings belie Mr. Gabler's reported statement in the June 10, 2010, Berlin Daily Sun, where, commenting on Mr. Ramsey's letter, he reportedly stated that Mr. Ramsey's "contention is not true and all misrepresentation."

In its most recent complaint, CPD claims, "PSNH is demanding that Clean Power give up its lawful and constitutional rights to be heard before the PUC on a matter where the PUC has found that 'further action is warranted' before it will even consider granting the easement to the City of Berlin for improvement of Shelby Street." This is not correct. PSNH has never demanded that CPD give up any "lawful and constitutional rights" it may have. Mr. Ramsey merely responded to CPD's requests to obtain certain rights on real property owned by PSNH by informing CPD that "PSNH is not in a position to consider your inquiries regarding the real estate issues in Berlin until the litigation initiated by CPD against PSNH has concluded."

There has been no demand by PSNH for CPD to do, or not do, anything. However, it is ironic to note that CPD's recent complaint appears to be seeking action from the State to force PSNH to give up its "lawful and constitutional rights" to possession and use of its private property. "The right to use and enjoy one's property is a fundamental right protected by both the State and Federal Constitutions. N.H. CONST. pt. I, arts. 2, 12; U.S. CONST. amends. V, XIV; *Town of Chesterfield [v. Brooks]*, 126 N.H. [64] at 68 (1985). Part I, article 12 of the New Hampshire Constitution provides in part that 'no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people.'" *Buskey v. Town of Hanover*, 133 N.H. 318, 322 (1990)

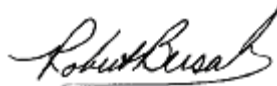
Absent the exercise of eminent domain, no provision of law requires a private citizen to sell property that it owns. PSNH is such a private citizen. As PSNH noted in its April 28, 2009 response to CPD's first complaint, the New Hampshire Supreme Court has held, "A utility such as PSNH does not surrender its right to manage its own affairs merely by devoting its private business to a public use." *Appeal of Public Service Company of New Hampshire*, 122 N.H. 1062, 1066-67 (1982); *Appeal of Roger Easton*, 125 N.H. 205, 211 (1984).

CPD is not a public utility. It does not have the right to exercise eminent domain. Thus, there is no basis for the Commission to become involved in what is purely a private real estate matter.

When the litigation initiated by CPD against PSNH has concluded, PSNH would then be in a position to consider CPD's real property inquiries. Only at that time will PSNH know whether it desires to grant the property rights requested, and, if so, at what price. This delay may be a consequence of protracted litigation, but such delays sometimes occur when litigation is involved.

Of course, PSNH is always available to meet with Commission Staff and others to discuss this, and any other issue of concern to the Commission.

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: (Via e-mail)

Raymond P. D'Amante, Esq., per Rule Puc 204.02(c)
Service List, Docket No. DE 09-067