

STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: July 21, 2010

AT (OFFICE): NHPUC

FROM: F. Anne Ross and Tom Frantz 

SUBJECT: DE 09-067 Clean Power Development, LLC Complaint
Against Public Service Company of New Hampshire

TO: Tom Getz, Clifton Below, Amy Ignatius and Debra Howland

Pursuant to the Commission's secretarial letter issued on June 28, 2010 Staff held meetings and telephone calls with representatives of Clean Power Development LLC (CPD) and also with representatives of Public Service Company of New Hampshire (PSNH) concerning CPD's request that PSNH negotiate the terms of an easement to be located on land owned by PSNH and situated along Shelby Street in Berlin, New Hampshire. The requested easement is purportedly needed to widen Shelby Street as a condition of CPD's local approval of its proposed biomass project in Berlin.

PSNH informed Staff today that it will agree to negotiate the requested easement with CPD. PSNH noted that it is still in the process of evaluating its title to the land in question and will be in touch with counsel for CPD later this week to outline the steps for moving the negotiations forward. Notwithstanding its written response of June 18, 2010, PSNH indicated that it will not hold up negotiation over the easement issues until resolution of the other issues presented in docket DE 09-067.

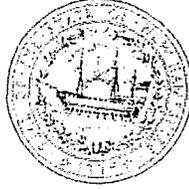
Staff believes PSNH's agreement to work with CPD on the real estate issues in Berlin is a positive and constructive outcome to this specific dispute without affecting either CPD's or PSNH's positions regarding other aspects of DE 09-067. Staff intends to continue discussions with both CPD and PSNH to see if a mutually agreeable solution to the CPD complaint can be reached.

THE STATE OF NEW HAMPSHIRE

CHAIRMAN
Thomas B. Getz

COMMISSIONERS
Clifton C. Below
Amy L. Ignatius

EXECUTIVE DIRECTOR
AND SECRETARY
Debra A. Howland



PUBLIC UTILITIES COMMISSION
21 S. Fruit Street, Suite 10
Concord, N.H. 03301-2429

Tel (603) 271-2431

FAX (603) 271-3878

TDD Access: Relay NH
1-800-735-2964

Website:
www.puc.nh.gov

June 28, 2010

Re: DE 09-067, Clean Power Development, LLC
Complaint Against Public Service Company of New Hampshire

To the Parties:

On May 17, 2010, Public Service Company of New Hampshire (PSNH) sent a letter to Clean Power Development, LLC (Clean Power) responding to inquiries that Clean Power made "regarding certain real property rights" desired by Clean Power in Berlin. PSNH noted that Clean Power had "initiated litigation against PSNH alleging certain civil and criminal misconduct." PSNH indicated to Clean Power that it was "not in a position to consider your inquiries regarding the real estate issues in Berlin until the litigation initiated by [Clean Power] against PSNH has concluded."

On June 9, 2010, Clean Power filed a letter with the Commission raising concerns relating to Public Service Company of New Hampshire's (PSNH's) refusal to discuss granting an easement to the City of Berlin to allow the widening of Shelby Street. According to Clean Power, Shelby Street must be widened in order to serve the Clean Power biomass project proposed for construction in Berlin. Clean Power also states that the easement issue is separate from the complaint proceeding, Docket No. DE 09-067, and that the two matters should not be linked. Clean Power asserts that the refusal to consider its easement request "appears to be a case of retaliation."

On June 18, 2010, PSNH filed a response to Clean Power. PSNH stated, among other things, that it "merely responded to [Clean Power's] requests to obtain certain rights on real property" and that "[t]here has been no demand by PSNH for [Clean Power] to do, or not do, anything." PSNH further states that it is a private citizen and that "no provision of law requires a private citizen to sell property that it owns." It contends that "there is no basis for the Commission to become involved in what is purely a private real estate matter."

PSNH, insofar as it goes, correctly cites the New Hampshire Supreme Court that: "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." (citations omitted) Such a broad statement, however, requires greater context because the right PSNH asserts is not absolute. As a public utility PSNH is subject to the general supervisory power of the Commission pursuant to RSA 374:3. Moreover,

June 28, 2010

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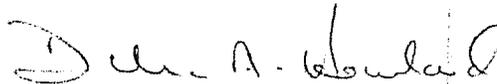
pursuant to RSA 365:5, the Commission has the authority to investigate or make inquiry "as to any act or thing having been done, or having been omitted or proposed by any public utility."

In its June 18, 2010 response, PSNH does not really explain why it is "not in a position" to consider Clean Power's request regarding an easement. The essence of PSNH's response is that it does not have an obligation to deal with Clean Power regarding such a request. Nevertheless, PSNH states that: "[w]hen the litigation initiated by [Clean Power] against PSNH has concluded, PSNH would then be in a position to consider [Clean Power'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."

PSNH's characterization of its refusal to consider Clean Power's easement request as something it is not in a position to do is fairly interpreted as an assertion that considering the request is something it cannot do. Considering the request may be something it prefers not to do but there is no apparent reason that it is something it cannot do. From the Commission's perspective, however, it is important to determine whether consideration of the request is something PSNH should reasonably do.

PSNH has made a link between Clean Power's request to consider an easement and the litigation in Docket No, DE 09-067 that is difficult to reconcile on its face. Furthermore, the circumstances of the easement that Clean Power seeks, how the City of Berlin is affected, whether the situation implicates energy policy matters that are properly considered, and the property rights that PSNH holds are not clear from the letters. Accordingly, to develop a sufficient basis on which it may take action the Commission has instructed Staff to inquire further into the facts and circumstances surrounding the easement issues raised by Clean Power and to file a report and recommendation as to how to proceed on or before July 13, 2010.

Sincerely,



Debra A. Howland
Executive Director



**Public Service
of New Hampshire**

780 N. Commercial Street, Manchester, NH 03101

Public Service Company of New Hampshire
P. O. Box 330
Manchester, NH 03105-0330
(603) 634-3355
(603) 634-2438

bersara@psnh.com

A Northeast Utilities Company

Robert A. Bersak
Assistant Secretary and
Assistant General Counsel

July 22, 2010

Raymond P. D'Amante, Esq.
D'Amante, Couser, Pellerin & Associates, P.A.
Nine Triangle Park Drive
P. O. Box 2650
Concord, New Hampshire 03302

Re: *Clean Power Development, LLC*

Dear Attorney D'Amante:

As a result of discussions with the Staff of the New Hampshire Public Utilities Commission, Public Service Company of New Hampshire (PSNH) has determined that it will consider the request for real property rights desired by Clean Power Development, LLC for the improvement of Shelby Street in Berlin, New Hampshire.

Your point of contact at PSNH for this matter will be Attorney Christopher J. Allwarden. His email address is allwacj@psnh.com and his phone number is 603-634-2459. Please provide Mr. Allwarden with the details of the real property rights that CPD is seeking (i.e., nature of rights desired, plans, metes and bounds descriptions, any proposed deeds, appraisals, etc.). Those materials should be sent to his attention at PSNH, Energy Park, 780 N. Commercial Street, P. O. Box 330, Manchester, NH 03105.

Depending upon the nature and location of the real property rights desired, the transaction may require approvals under PSNH's existing mortgage indenture and/or approval from the Federal Energy Regulatory Commission, amongst other processing.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert Bersak".

Robert A. Bersak
Assistant Secretary and
Assistant General Counsel

cc: F. Anne Ross, NHPUC
T. Frantz, NHPUC

D'AMANTE COUSER PELLERIN & ASSOCIATES, P.A.

ATTORNEYS AT LAW
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P.O. BOX 2650
CONCORD, NEW HAMPSHIRE 03302-2650
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RAYMOND P. D'AMANTE *
BRYAN L. PELLERIN **
ROY S. McCANDLESS ***
BRUCE J. MARSHALL
STEVEN A. SOLOMON
KATHRYN M. BRADLEY

RICHARD B. COUSER (1941-2008)

* ALSO ADMITTED IN NY AND CA
** ALSO ADMITTED IN MA
*** ALSO ADMITTED IN ME AND MA

October 12, 2010

Christopher J. Allwarden, Esq.
Public Service Company of New Hampshire
Energy Park
780 North Commercial Street
PO Box 330
Manchester, NH 03105

Re: City of Berlin/Clean Power Development, LLC
1) Road Connection
2) Power Line Clearance
3) Electric Service

Dear Attorney Allwarden:

This letter is a follow up to Robert A. Bersak's July 22, 2010 letter in response to discussions with and directions from the Staff of the New Hampshire Public Utilities Commission ("PUC") regarding Shelby Street in Berlin, New Hampshire and the Clean Power Project (the "Project").

Our office represents Clean Power Development, LLC ("Clean Power") in connection with an easement for Shelby Street, the Connector Road to Hutchins Street, and the Power Line Clearance, and Service. As an interim status report to Public Service of New Hampshire ("PSNH"), the Shelby Street easement matter is being researched and laid out by our engineer. It will take additional time to address that layout.

In the meantime, there are what we understand to be more minor matters that we would like to resolve as we address the larger Shelby Street issue.

These more minor matters are the proposed easement needed for the connection of Shelby Street to Hutchins Street f/k/a Unity Street (the "Connection"), the clearance assurances required

Christopher J. Allwarden, Esq.
Public Service Company of New Hampshire
October 12, 2010
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by PSNH under the existing PSNH service easement to the Waste Water Treatment Plant (the “Clearance” and the “Plant”, respectively), and the new electrical service for Clean Power from the PSNH service easement to the sewer Plant to the Clean Power Project.

The Connection

Currently, Shelby Street goes through a residential area. Along its southerly portion, Shelby Street is a commercial roadway, servicing a series of commercial uses. It is an appropriate practice to separate commercial traffic from a residential area whenever feasible. The City of Berlin seeks to address a historic traffic concern by redirecting Shelby Street’s commercial traffic to Hutchins Street (formerly Unity Street) south of the residential area thus limiting the intermingling of commercial and residential traffic through that residential area.

This Connection will increase safety in the residential area and reduce noise, inconvenience and travel conflicts for the residents of Berlin in this area regardless of any specific project. As a result, it will improve the residential neighborhood along Shelby Street to the north of the commercial uses and improve commercial access to the south end of Shelby Street for all property owners in the commercial area, including PSNH.

The ideal area for this connection is a narrow strip of land owned by PSNH as shown on **Exhibit A**. This layout is both feasible and even compelling. The total area of impact on PSNH land is approximately 0.2 acres, including the area for slopes and embankments in the gully crossing. The grade change between Shelby Street and Hutchins Street in this area is significant - approximately 15.42 feet.

Request is made for this Connection Road easement to be granted by PSNH for this roadway Connection in the public interest (the “Easement”).

Value of Connection

A good starting point to get a relative range of value for the property for the Connection, so we can see the value range we are talking about, is to look at the assessed value of the subject PSNH property. The City of Berlin assesses the PSNH property as follows:

<u>Parcel</u>	<u>Size</u>	<u>Amount</u>
PSNH Parcel 118-211	1 acre	\$1,700
PSNH Parcel 118-82	44.78 acres	\$335,500

The average value per acre is \$7,766.

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Public Service Company of New Hampshire
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Other property in the area corroborates the general land value:

<u>Parcel</u>	<u>Size</u>	<u>Amount</u>
City of Berlin Parcel 116-23	6.07 acres	\$25,600
Great Lakes Hydro Parcel 116-24	15.28 acres	\$70,000
Fraser Paper Parcel 118-212	18.67 acres	\$35,100

The average value per acre is \$3,266.

The equalization ratio in Berlin is 120.9. This means that overall in the community, the assessed values are 20.9% higher than the fair market values. Given the current recession, this over valuation is now a common occurrence in New Hampshire and elsewhere.

The equalized values of the above assessed values are as follows:

PSNH	$\frac{\$7,766}{120.9}$	=	\$6,423/Ac.
Other Parcels	$\frac{\$3,266}{120.9}$	=	\$2,701/Ac.

It is noted that the property owned by PSNH in the area of the Connection is narrow, short, has a considerable grade change and is not buildable. Consequently, its value is further limited from the above numbers based on the layout, narrowness, grade change and lack of viable use of that area of the property.

The general value of the Connection area, based on current PSNH assessments, is:

$$\underline{0.2} \text{ Acres} \quad \times \quad \$ \underline{6,423} \text{ /Ac.} = \$1,285.00$$

The roadway Connection improvement for Shelby Street could actually increase the usability and, therefore, the value of the remaining PSNH properties. This would further benefit the PSNH ratepayers without any cost to PSNH.

Given the relative values shown above, I submit that it would not be cost effective to conduct an appraisal. In the alternative, I suggest the parties negotiate a reasonable value for this Connection.

Christopher J. Allwarden, Esq.
Public Service Company of New Hampshire
October 12, 2010
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Clearance Under Power Easement

The layout of the Clean Power Project around the east side of the City's Waste Water Treatment Plant (the "Plant") includes a roadway for at-grade vehicle passage, as shown on **Exhibit B**, under the easement granted by the City to PSNH, as shown on **Exhibit B**.

The Berlin Planning Board wants Clean Power to provide assurances to PSNH that the Clean Power layout and use will not violate the clearances required under that line (the "Clearance"). Within the easement, there is a primary power line from the grid to the existing Plant with power at 13,500 volts.

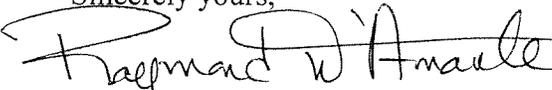
Clean Power hereby provides the assurance to PSNH that Clean Power's use will not interfere with PSNH's easement and the primary line. Clean Power will provide the assurances customarily required by PSNH for Clearances of this sort. If necessary, under the National Electric Code and related regulations, Clean Power will raise the power lines in the existing area easement, over the access way. Please advise as to the specific Clearance required by PSNH in this application and provide the agreement format between PSNH and Clean Power for the Clearance.

Electrical Service Connection

In addition, electric service will be extended from the existing primary line, servicing the Plant, as shown on **Exhibit B**, to the Clean Power facility (the "Service"). Clean Power will provide an easement to PSNH required for this Service and any assurances customarily required. **Exhibit C** attached is a copy of an easement to PSNH. Is that format suitable for this extension of the use? If not, please advise as to the changes required for this Service.

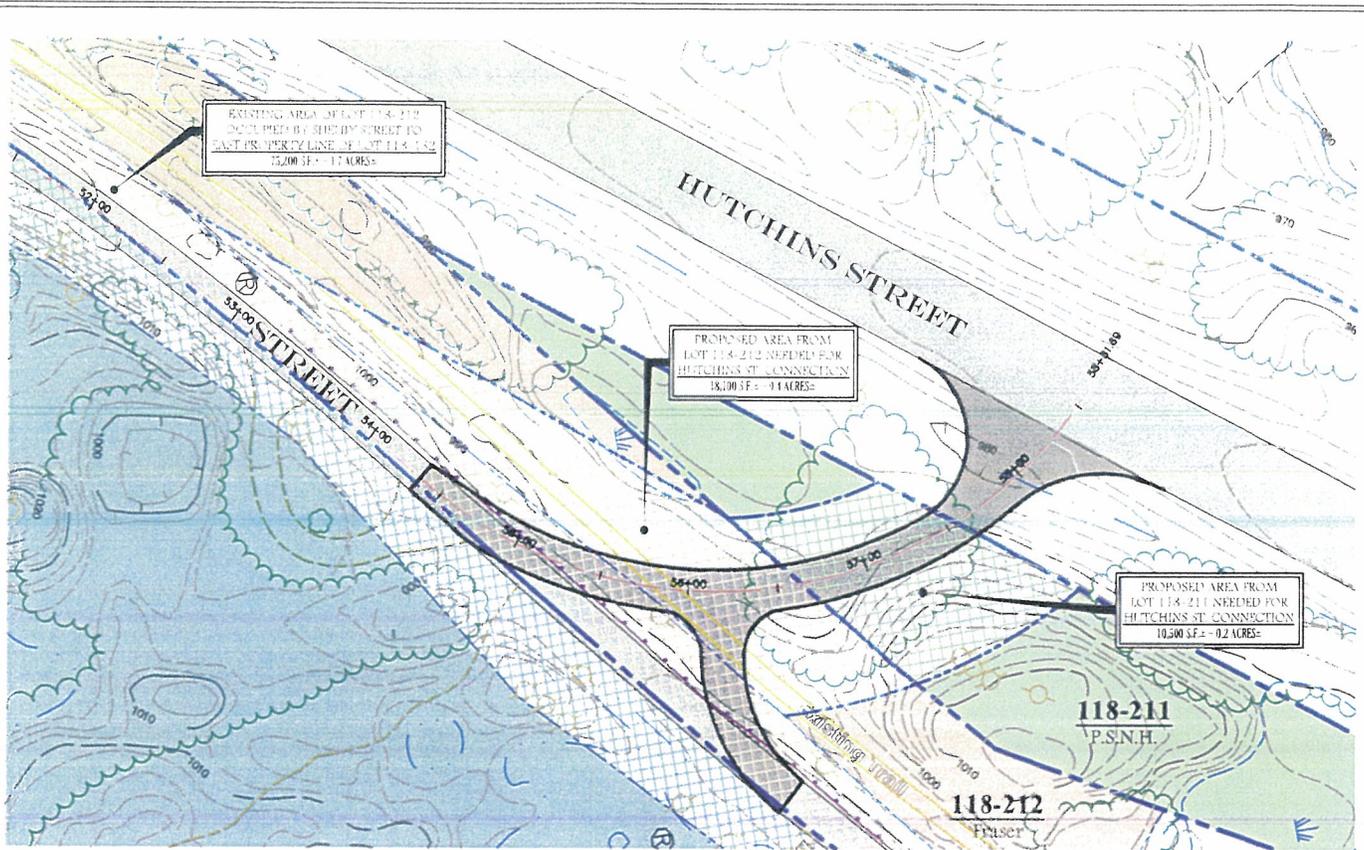
I look forward to hearing from you so we can move these minor matters forward as the research on the balance of Shelby Street continues.

Sincerely yours,



Raymond P. D'Amante

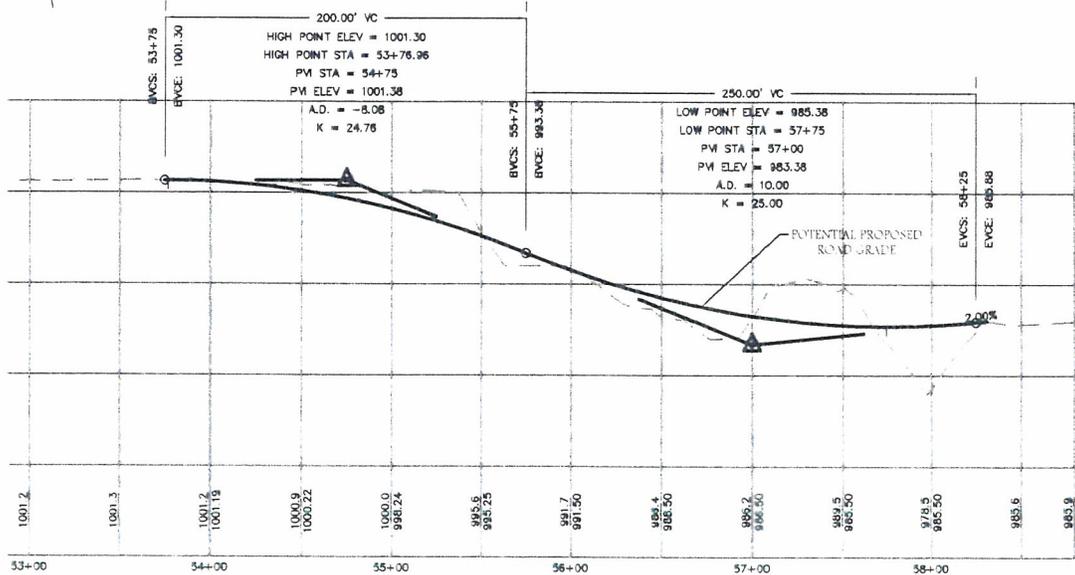
RPD/mlb
cc: Debra A. Howland, Executive Director and Secretary
Public Utilities Commission
Clean Power Development



PLAN
SCALE: 1" = 50'

NOTE:

MAPPING SHOWN ON THIS PLAN OBTAINED FROM THE CITY OF BERLIN GEOGRAPHIC INFORMATION SYSTEM. FINAL DESIGNS WILL REQUIRE ON-SITE SURVEY.



PROFILE

HORIZONTAL SCALE: 1" = 50'
VERTICAL SCALE: 1" = 10'



REQUIRED AREA OF ROW

NEEDED FOR
SHELBY ROAD
BERLIN, N.H.



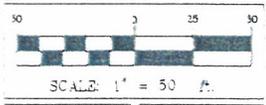
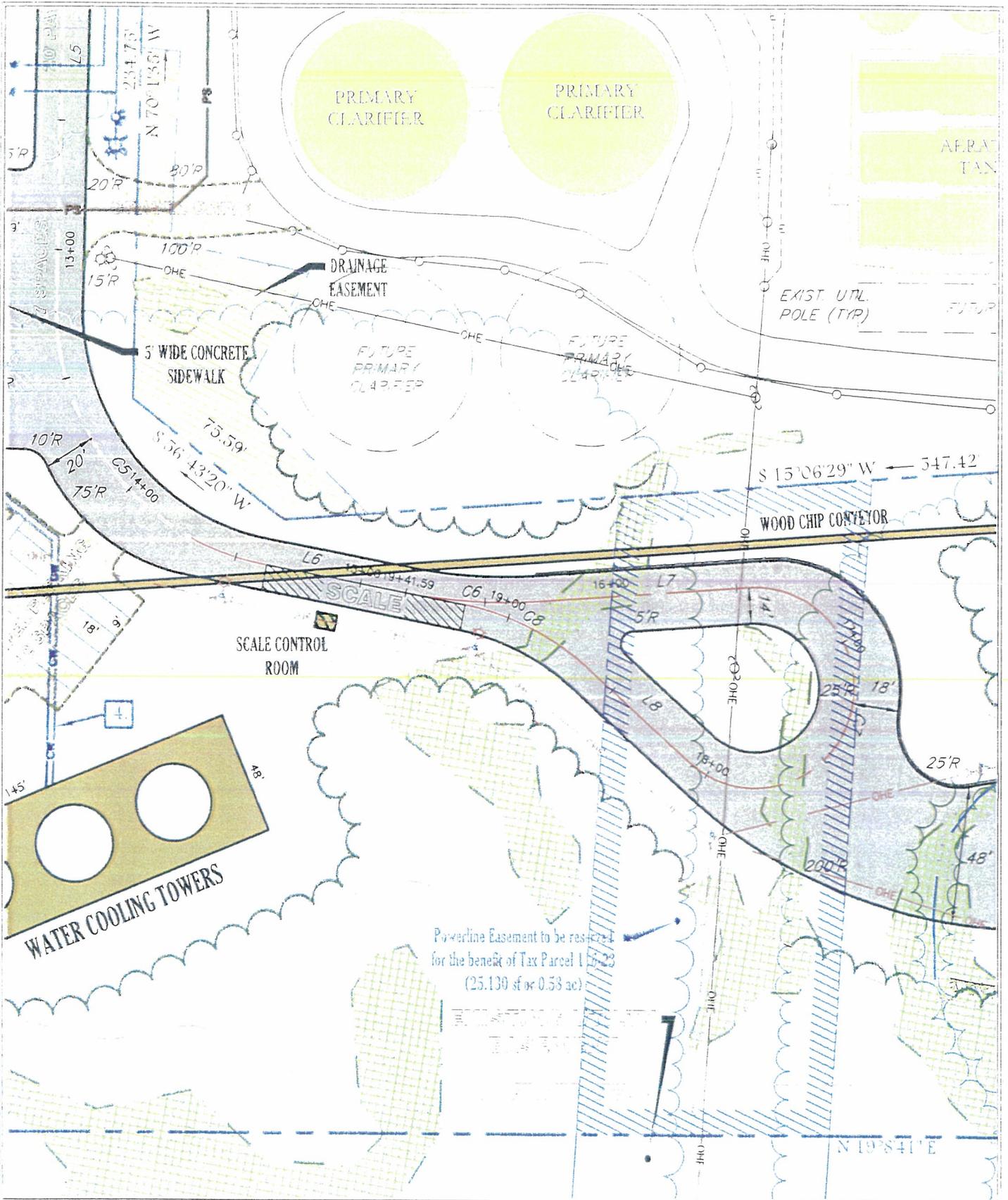
AGENT:
Clean Power Development, LLC
Renewable, Responsible & Sustainable Energy
130 Pamphlete Road, Suite 101
Concord, NH 03301
Tel: 603.224.3377

GOLDÉ PLANNING & DESIGN, INC.
Engineers * Designers * Planners

A.C. Engineering & Consulting

DATE:
3/10/09

DWG:
RDW-1



Easement Location
SHELBY ROAD
BERLIN, N.C.



Client:
Clean Power Development, LLC
Renewable, Responsible & Sustainable Energy

GOLDÉ PLANNING & DESIGN, INC.
Engineers * Designers * Planners
A.C. Engineering & Consulting

DATE: 8.10.10
DWG: E1

EAA-11000

Easement: Brown Co. to Public Serv. Co.

(N.H. Stamp \$10.00)

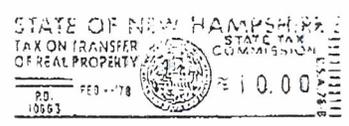
Brown Company a Delaware corporation with offices in Berlin, in the County of Coos, in the State of New Hampshire

Grantor(s) for consideration paid, grant(s) to Public Service Company of New Hampshire, a corporation having its principal place of business at 1000 Elm Street, in Manchester, in the County of Hillsborough, and The State of New Hampshire (hereinafter called the Grantee), with covenants, the RIGHT and EASEMENT to construct, repair, rebuild, operate, patrol and remove overhead and underground lines consisting of wires, cables, ducts, manholes, poles and towers together with foundations, crossarms, braces, anchors, guys, grounds and other equipment, for transmitting electric current and/or intelligence over, under and across a Strip of land one hundred (100') feet in width in the town/city of Berlin county of Coos in The State of New Hampshire

Said 100' foot Strip shall extend 50' feet northerly and 50' feet southerly of a line or extension of a line, described as follows:

Beginning at a point on the westerly boundry of Grantor's land at land of City of Berlin et al, said point of beginning being approximately 457.88' measured along said boundry line from southeast corner of City of Berlin's land; thence on a course S 65° - 37' - 55" E, one hundred ninety and 34/100 (190.34') feet to the westerly edge of Public Service Company of New Hampshire's transmission right-of-way.

"TO HAVE AND TO HOLD, the same and all the privileges and appurtenances thereunto belonging to the Grantee and his successors and assigns for their use and benefit forever"



Said Strip of land being a part of the premises of the Grantor(s) described in deed of Fred N. Wheeler in Berlin Millig Company dated September 11, 1901 and recorded in the Coos County Registry of Deeds, Book 108 Page 217

This conveyance shall, subject to the right hereinafter reserved for a specified period, include the right to clear and keep clear the Strip of all trees and underbrush by such means as the Grantee may select, to remove all structures or obstructions which are now found within the limits of the Strip, and the right to cut or trim such trees on the above-mentioned premises of the Grantor(s) as in the judgment of the Grantee may interfere with or endanger said lines or their maintenance or operation

The Grantor(s) for themselves and their heirs, executors, administrators, successors and assigns, covenant(s) and agree(s) to and with the Grantee, its successors and assigns, that they will not erect or maintain any building or other structure, or permit the erection or maintenance of any building or other structure of any kind or nature upon the Strip, or change the existing grade or ground level of the Strip by excavation or filling

There is reserved to the Grantor(s) for a period of _____ from the date hereof the right to cut and remove all standing wood and timber located upon the Strip, but at the termination of said period, the Grantee's right to cut and remove shall terminate and all wood and timber shall become the property of the Grantee

Notary Public

release to said Grantee all rights of dower, curtesy and homestead and other interest therein.

WITNESS... corporate hand and seal this 16th day of January, 1978.

In the presence of
John A. Barb

Edgar T. Dean
BROWN COMPANY (Co. Seal)
Edgar T. Dean
Vice President and General Manager

The State of New Hampshire
County of Coos SS
January 16 1978

Edgar T. Dean, Vice President and General Manager
Personally appeared and acknowledged the foregoing instrument to be
Brown Company's voluntary act and deed.
Before me

Consideration is
Less Than \$100.00

Mark A. ...
Notary Public Justice of the Peace
My Commission Expires May 31, 1978 (N.P. Seal)

Received Feb. 13, 8-30 AM 1978
Examined, ATTEST:-

John A. Barb Register.