

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Public Service Company of New Hampshire)
Docket No. QM10-4-000)

**MOTION TO INTERVENE AND PROTEST OF
CLEAN POWER DEVELOPMENT, LLC**

Pursuant to Rules 211, 212 and 214 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 C.F.R. §§ 385.211, 385.212 and 385.214 (2009), Clean Power Development, LLC (CPD) files this Motion to Intervene and Protest in connection with the Application of Public Service Company of New Hampshire (PSNH) filed on January 10, 2010 for Authorization to Terminate the Mandatory Power Purchase Obligation from Qualifying Facilities with Net Generating Capacity of Five Megawatts or Greater.

I. Summary

On numerous occasions, PSNH has represented to CPD and the New Hampshire Public Utilities Commission that there is no requirement for it to enter into a long-term power purchase agreement with CPD. In contrast, PSNH's filing with the Commission on January 10, 2010 seeks authorization to terminate the mandatory power purchase obligation pursuant to a "legally enforceable obligation," specifically, a long-term contract or an order issued by the applicable state regulatory authority imposing a purchase obligation over a specified term.

For the foregoing reasons, in any order that may eventually issue in this proceeding, at a minimum, the Commission should not terminate PSNH's mandatory power purchase obligation with respect to CPD.

II. Background

Clean Power Development, LLC (CPD) is a New Hampshire limited liability company that focuses on the development of renewable and sustainable wood-fueled biomass-energy facilities. CPD's offices are located at 130 Pembroke Road, Suite 100, Concord, New Hampshire.

CPD plans to own and operate a biomass facility located in Berlin, New Hampshire which will generate electricity and steam through the combustion of whole tree chips supplied through local markets. The CPD Facility will be capable of generating not more than 29Mw

gross output of electricity. Normal net generation will usually be in the 15 to 22mw gross output range based upon thermal load during combined heat and power operation. The CPD Facility will operate with an efficiency of 60% or higher through a combined heat and power design.

On April 7, 2009, CPD filed a complaint against PSNH with the New Hampshire Public Utilities Commission claiming that PSNH refused to enter into negotiations to purchase the energy, capacity and renewable energy certificates (RECs) associated with the output a 29-megawatt biomass-fueled combined heat and power energy facility CPD plans to build in Berlin, New Hampshire.

On October 9, 2009, the NHPUC issued an Order of Notice which, inter alia, stated the following:

CPD claimed that a purchase power agreement is a prerequisite to moving forward with the financing, construction and eventual operation of the Berlin CPD facility and that PSNH's refusal to negotiate with CPD constituted, among other things, a violation of PSNH's least cost plan approved by the Commission in Order No. 24,945 (February 27, 2009) in Docket No. DE 07-108 and RSA 362-F:1, the purpose section of the Electric Renewable Portfolio Standards law, RSA 378:37, the New Hampshire Energy Policy, and RSA 378:38 and 39, New Hampshire's law requiring electric utilities to file least cost integrated resource plans for approval by the Commission.

On April 14, 2009, pursuant to RSA 365:2, the Commission issued a secretarial letter directing PSNH to answer the charges in CPD's complaint. PSNH filed its answer to the complaint on April 28, 2009 denying any wrongdoing and stating that it had not violated RSA 362-F:1 or RSA 378:37 through 39. PSNH said that CPD had not made a *bona fide* offer of contract terms when it approached PSNH regarding the CPD facility. In addition, PSNH pointed out that there is no requirement in New Hampshire for any market participant, including a utility, to enter into a long-term power purchase agreement with any merchant generator. PSNH said that if a generator is a "qualifying facility" within the meaning of the Public Utility Regulatory Policies Act of 1978 (PURPA) (16 U.S.C. §2601-2645) and the federal rules implementing PURPA (18 CFR 292), PSNH would be required to purchase the output at the short-term avoided cost rate approved by the Commission in PSNH's restructuring docket. See Docket No. 99-099, PSNH Proposed Restructuring Settlement, 85 NH PUC 567, Order No. 23,549 (September 8, 2000). On May 29, 2009, CPD filed a request for a formal investigation by the Commission.

Order of Notice, NHPUC Docket No. DE 09-067 (October 9, 2009) (Emphasis added).

PSNH's representations to the NHPUC that there is no requirement for it to enter into a long-term power purchase agreement with CPD are patently inconsistent with the filing before the Commission in this proceeding.

III. Communications

All correspondence, communications, pleadings, and other documents regarding these proceedings should be directed to the following persons:

James T. Rodier, Esq.
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IV. Motion to Intervene and Interest of CPD

CPD has unsuccessfully sought to negotiate a long-term fixed rate power purchase agreement with PSNH for many years. PSNH has rebuffed all of CPD's attempts.

CPD moves to intervene in this proceeding and to be granted full status as a party. CPD has a direct and substantial interest in any in PSNH's request for authorization to terminate the Mandatory Power Purchase Obligation from Qualifying Facilities.

V. Protest

Section 292.303(a) of the Commission's regulations implementing Section 210 of PURP A requires an electric utility to purchase energy and capacity made available by a QF directly or indirectly interconnected with the electric utility (the "Mandatory Purchase Requirement). Section 292.304(d) of the Commission's regulations allows QFs to: (1) provide energy on an "as available" basis; or (2) provide energy or capacity pursuant to a "legally enforceable obligation," i.e., a long-term contract or an order issued by the applicable state regulatory authority imposing a purchase obligation over a specified term. The rates for "as available" purchases are based on the "purchasing utility's avoided costs calculated at the time of delivery. For purchases governed by contract or other legally enforceable obligations, QFs have the option to sell energy and capacity at the utility's avoided costs calculated at either: (1) the time of delivery; or (2) the time the obligation is incurred.

On numerous occasions, PSNH has represented to the New Hampshire Public Utilities Commission that there is no requirement for it to enter into a long-term power purchase agreement with CPD. PSNH has also mounted a public relations campaign in support of its position.

In direct contrast with its position in New Hampshire, PSNH's filing with the Commission on January 10, 2010 seeks authorization to terminate the mandatory power purchase obligation pursuant to a "legally enforceable obligation," specifically, a long-term contract or an order issued by the applicable state regulatory authority imposing a purchase obligation over a specified term.

For the foregoing reasons, in any order that may eventually issue in this proceeding, the Commission, at a minimum, should not terminate PSNH's mandatory power purchase obligation with respect to any CPD facility..

VI. Conclusion

The Commission should grant CPD's intervention. For the reasons given above, the Commission should decline to consider PSNH's request for authorization to terminate the Mandatory Power Purchase Obligation from Qualifying Facilities with respect to CPD.

February 3, 2010

Respectfully submitted,
CLEAN POWER DEVELOPMENT, LLC
by

/s/ James T. Rodier
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Certificate of Service

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Portsmouth. this 3rd day of February, 2010.

/s/ James T. Rodier