

**THE STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 07-045**

**ORDER OF NOTICE**

On March 28, 2007, Briar Hydro Associates (Briar) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking a declaratory order with respect to a 1982 Power Sale Contract with Public Service Company of New Hampshire (PSNH).

Briar stated that it is a successor in interest to New Hampshire Hydro Associates (NHHA), and owns and operates the Penacook Lower Falls Project, a 4.1 MW hydroelectric generating facility on the Contoocook River in Penacook and Boscawen, New Hampshire. Briar claims that as a result of its purchase of the Penacook Lower Falls Project on June 28, 2002, it has succeeded to NHHA's rights in a Contract for the Purchase and Sale of Electric Energy dated April 28, 1982, (1982 Power Purchase Contract). The 1982 Power Purchase Contract has a term of 30 years and requires PSNH to purchase the project's entire generation output. The current price for that output is 3.53¢/kWh. PSNH is obliged to purchase power from NHHA and now Briar pursuant to the federal Public Utility Regulatory Policies Act (PURPA), 16 U.S.C. 824a-3 et seq., and its state analog, the Limited Electrical Energy Producers Act (LEEPA), RSA Chapter 362-A.

Briar requests that the Commission determine which party, PSNH or Briar, is entitled to receive payments for capacity arising under an order of the Federal Energy Regulatory Commission (FERC), *Devon Power LLC*, 115 FERC ¶ 61,340 (June 16, 2006) (FCM Order). The FCM Order established a forward capacity market for existing and new generators of

electric power in New England and also provided for transition payments to existing generators beginning in December 2006.

The filing raises, inter alia, issues related to the scope of the 1982 Power Purchase Contract and whether it includes or excludes the purchase of the capacity of the Penacook Lower Falls Project under applicable state and federal law.

Each party has the right to have an attorney represent them at their own expense.

**Based upon the foregoing, it is hereby**

**ORDERED**, that a Prehearing Conference, pursuant to N.H. Admin. Rules Puc 203.15, be held before the Commission located at 21 S. Fruit St., Suite 10, Concord, New Hampshire on May 23, 2007 at 10:00 a.m., at which each party will provide a preliminary statement of its position with regard to the petition and any of the issues set forth in N.H. Admin. Rule Puc 203.15 shall be considered; and it is

**FURTHER ORDERED**, that, immediately following the Prehearing Conference, Briar, PSNH, the Staff of the Commission and any Intervenors hold a Technical Session to review the petition and allow Briar to provide any amendments or updates to its filing; and it is

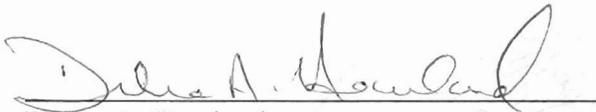
**FURTHER ORDERED**, that pursuant to N.H. Admin. Rules Puc 203.12, Briar shall notify all persons desiring to be heard at this hearing by publishing a copy of this Order of Notice no later than April 26, 2007, in a newspaper with general circulation in those portions of the state in which operations are conducted, publication to be documented by affidavit filed with the Commission on or before May 23, 2007; and it is

**FURTHER ORDERED**, that pursuant to N.H. Admin. Rules Puc 203.17, any party seeking to intervene in the proceeding shall submit to the Commission seven copies of a Petition to Intervene with copies sent to Briar, PSNH and the Office of the Consumer Advocate

on or before May 18, 2007, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interest may be affected by the proceeding, as required by N.H. Admin. Rule Puc 203.17 and RSA 541-A:32,I(b); and it is

**FURTHER ORDERED**, that any party objecting to a Petition to Intervene make said Objection on or before May 23, 2007; and it is

By order of the Public Utilities Commission of New Hampshire this seventeenth day of April, 2007



Debra A. Howland  
Executive Director & Secretary

Individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability, should contact the Americans with Disabilities Act Coordinator, NHPUC, 21 S. Fruit St., Suite 10, Concord, New Hampshire 03301-2429; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Notification of the need for assistance should be made one week prior to the scheduled event.