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The Northeast Utilities System

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September 24, 2009

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

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



Dear Secretary Howland:

I am responding to the Commission's inquiry regarding the status of PSNH's review of offers submitted to PSNH by Clean Power Development (CPD) and Concord Steam (CS). These proposals seek long-term power purchase agreements from PSNH for the purchase of energy/capacity output and environmental attributes projected to be created by CPD's proposed biomass project in Berlin and CS's proposed biomass project in Concord.

As the Commission is aware, both CPD and CS have complained to the Commission, alleging that PSNH has treated them unfairly because PSNH is negotiating such a PPA with a potential competitor of CPD and CS.

CPD filed a formal complaint with the Commission in early April of this year. In that complaint, CPD made unsupported allegations of wrongdoing by PSNH. Pursuant to the Commission's direction, PSNH filed a detailed response to that complaint which included copies of relevant correspondence between PSNH and CPD. In May, CPD made additional filings with the Commission, further complaining that it was not satisfied with PSNH's response, adding libelous allegations of criminal misconduct by PSNH, and again demanding a formal investigation.

PSNH responded to CPD's additional filings on June 1st. CPD responded to PSNH's response on June 4th. PSNH has made no additional filings in this proceeding, as further filings were deemed unnecessary and a waste of both the Company's and Commission's time and resources.

In mid-July, CS made its filings with the Commission also complaining that PSNH had treated them unfairly. All correspondence by CS has come from Peter Bloomfield, its President, who is also an officer of CPD.

Thereafter, on Friday, July 31st both CPD and CS submitted proposals for long-term PPAs to PSNH. On Tuesday, August 4th (less than two business days later), PSNH agreed it would review those proposals, and noted that such review would take 30 to 60 days. However, PSNH also noted that due to pending litigation – the appeal of the Commission’s Order in Docket No. DE 08-077 regarding the Lempster wind PPA brought by Freedom Partners LLC – the value and utility of RECs obtained under PPAs was put into question. (As you are aware, CPD is represented by Attorney Jim Rodier, who was also counsel for and a principal of Freedom Partners.)

As promised, PSNH promptly began its review of the offers made by CPD and CS. In the midst of those reviews, on September 14th CPD made yet another formal filing with the Commission, reiterating its complaints regarding PSNH and again demanding a formal investigation by the Commission. This filing was made before the review period PSNH said was necessary had ended.

PSNH’s prior filings in this matter have noted that the only obligation PSNH has to purchase the output from any merchant power plant is that established for QFs under the Public Utility Regulatory Policies Act (PURPA). As long as the PURPA purchase obligation remains in place, PSNH stands ready and willing to comply, pursuant to the avoided cost rate determination approved by the Commission in Docket No. DE 99-099.

Other than that PURPA obligation, there is no legal requirement for PSNH to buy the output from any particular generating plant. The New Hampshire Legislature made this abundantly clear when it amended the RSA Chapter 362-A LEEPA law in 1998. In that amendment, the Legislature decided that upon the advent of retail electric competition, there was no longer a need to mandate purchases by this state’s utilities from any particular generator. The Legislature clearly prohibited further mandated purchases from such generators in its amendment to RSA 362-A:3, II –

“No purchases and related transactions involving qualifying facilities shall take place under RSA 362-A:3 or RSA 362-A:4 in any location where retail electric competition is certified to exist pursuant to RSA 38:36, unless such purchase or related transaction is pursuant to:

- (a) Commission orders or agreements providing for qualifying facility power sales existing prior to such certification;***
- (b) Negotiated qualifying facility power purchase contracts existing prior to such certification; or***
- (c) Commission orders or agreements resulting from the renegotiation of orders, agreements, or contracts referenced in subparagraphs (a) and (b).”***

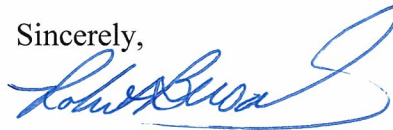
The law is clear, unambiguous and compelling. There is no longer any obligation (other than PURPA) requiring PSNH (or any other utility) to purchase the output from any particular generating project.

Since the start of retail electric competition, PSNH's discussions concerning merchant generating projects have been based upon voluntary, arm's-length, good-faith discussions. The Company is, and has been, open to consider such good-faith proposals of any developer – just as it was doing in this matter. However, the continuation of litigation in this matter (in the middle of PSNH's review process), added to the prior complaints, libelous allegations of criminal wrongdoing, and interlocking counsel and officers has eliminated the prospect of good-faith negotiations.

PSNH does not desire to enter into a long-term relationship with any party that continually uses threats of litigation and libelous accusations of criminal wrongdoing as coercion. In light of the latest filing made with the Commission reiterating complaints against PSNH and again demanding a formal investigation – in the midst of PSNH's review of the previously-submitted offers – PSNH has ceased its review of those proposals. PSNH does not desire to pursue any further discussions with CPD or CS at this time.

In April, PSNH noted that these generators have the legal right and ability to interconnect to the transmission grid and arrange for the sale of its plant's output to utilities, competitive suppliers, or end-users inside, or even outside, New England. This is exactly what the Legislature has advocated in its "Declaration of Purpose" set forth in RSA 362-A:1 – "It is found to be in the public interest to provide for small scale and diversified sources of supplemental electrical power to lessen the state's dependence upon other sources which may, from time to time, be uncertain. It is also found to be in the public interest to encourage and support diversified electrical production that uses indigenous and renewable fuels and has beneficial impacts on the environment and public health. ***It is also found that these goals should be pursued in a competitive environment pursuant to the restructuring policy principles set forth in RSA 374-F:3....***" The Berlin Reporter just recently reported that "CPD is looking toward establishing a purchase power agreement in another market, such as Vermont or Massachusetts." That is precisely the course of action desired by the law.

Sincerely,



Robert A. Bersak
Assistant Secretary and
Assistant General Counsel

cc: Atty. J. Rodier
Mr. P. Bloomfield
OCA