



**Public Service
of New Hampshire**

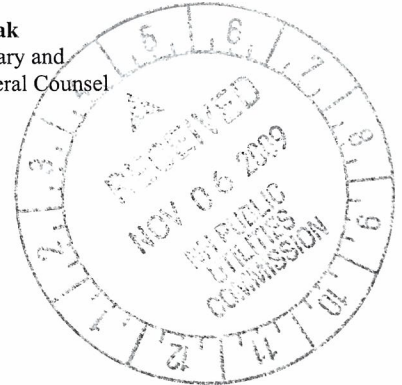
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The Northeast Utilities System

Robert A. Bersak
Assistant Secretary and
Assistant General Counsel



November 6, 2009

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 Public Service of New Hampshire***

Dear Secretary Howland:

On Tuesday, November 3, 2009, the Commission held a prehearing conference in the above-captioned investigation docket. At the conclusion of that prehearing conference, the Commission determined that it intended to commence an adjudicative proceeding. However, the procedure going forward and the issues to be adjudicated were not determined. Instead, the Commission directed the parties to file, by the close of business today, memos recommending how to proceed and listing the legal issues that should be addressed.

It is PSNH's understanding that the intent of this proceeding is to determine PSNH's legal obligation to purchase power from the complainant, Clean Power Development, LLC ("CPD"). However, the breadth of issues raised by petitioners for intervention has created the potential for a much broader spectrum of issues. In addition, the participation of Concord Steam Corporation raises additional issues, including the legal obligations of host service territory utilities to purchase power from merchant renewable generators, as well as the nature and extent of purchase requirements under the Public Utility Regulatory Policies Act ("PURPA") subsequent to the enactment of the Energy Policy Act of 2005.

PSNH feels that the vast majority of issues presented by the petitioners for intervention are not matters that are jurisdictional to the Commission. Instead, those issues such as siting, environmental, economic development, fuel availability, forestry practices, public health and welfare are matters which fall under the purview of the state Site Evaluation Committee established by RSA Chapter 162-H. If this Commission deems it appropriate to review the issues of concern raised by the various petitioners for intervention, PSNH suggests that the proper method for doing so would be for the Commission's four members of the Site Evaluation Council to move that Council to *sua sponte* assert jurisdiction pursuant to RSA 162-H:5, III over facilities which may otherwise escape such review.

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As PSNH suggested during the prehearing conference, it appears that there is a legal requirement for a new Order of Notice to be issued and published, setting forth the issues which the Commission decides are to be dealt with in any forthcoming adjudicative proceeding. Without such a notice, PSNH and other parties cannot determine whether a particular petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or whether the petitioner qualifies as an intervenor under any provision of law. Of even more import, without such proper notice, other parties who had no interest in CPD's complaint against PSNH, might not be aware of greater policy issues that could impact all electric distribution entities and retail consumers of electricity statewide.

PSNH suggests that the issue to be addressed by any forthcoming adjudicative proceeding be limited to the legal obligation of utilities in New Hampshire to purchase the output from renewable energy sources, as that term is defined in RSA Chapter 362-F. This is strictly a legal matter which may be dealt with via the filing of legal memoranda, without the need for discovery or for a testimonial hearing.

An additional prehearing conference, perhaps presided over by a Hearing Examiner, would appear to be appropriate to deal with the question of petitions for intervention and to establish a procedural schedule once the Commission has delineated the issues to be addressed.

To provide the Commission with an administrative basis to properly act in this matter, pursuant to Rule Puc §203.07, PSNH is submitting a motion captioned "Motion For a More Detailed Statement of the Issues And For Other Relief."

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Bersak". The signature is fluid and cursive, with a prominent initial "R" and a long, sweeping underline.

Robert A. Bersak
Assistant Secretary and
Assistant General Counsel

cc: Service List, Docket No. DE 09-067