

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

**DE 09-067**

**CLEAN POWER DEVELOPMENT, LLC**

**Complaint Against Public Service Company of New Hampshire**

**Order Commencing Adjudicative Proceeding**

**O R D E R N O. 25,075**

**February 24, 2010**

On October 8, 2009, an Order of Notice was issued in the instant docket for purposes of conducting an investigation to determine whether an adjudicative proceeding should be commenced to resolve a complaint filed against Public Service Company of New Hampshire (PSNH) by Clean Power Development, LLC (CPD). CPD is a small power producer that proposes to develop a 29 MW biomass fueled facility in Berlin. In its complaint, CPD alleges that PSNH refused to enter into negotiations with CPD to purchase the energy, capacity and renewable energy certificates (RECs) to be generated from the Berlin facility and that such refusal to negotiate is unlawful.

A prehearing conference took place as scheduled on November 3, 2009. Petitions to intervene were filed by Concord Steam Corporation (Concord Steam), ECM-Eastern Construction Management, LLC, Jonathan Edwards, Town of Winchester, City of Berlin, Carbon Action Alliance, New Hampshire Sierra Club and, individually, New Hampshire State Representatives Robert J. Perry, Robin Read, Judith T. Spang, and James U. McClammer. On October 26, 2009, Mr. Perry withdrew his petition to intervene as a state representative and filed a revised petition to intervene as a citizen of Strafford.

Puc 204.05 sets forth a multi-step approach to complaints against utilities. When a complainant's issues are not resolved through the Commission's informal complaint process, it may notify the Commission of its dissatisfaction. If the Commission finds there is a basis for the dispute, it conducts an independent investigation of the matter pursuant to RSA 365:4. If after investigation the Commission finds the complaint warrants further action against a utility, the Commission shall address the matter in an adjudicative proceeding.

We have determined that further inquiry into the legal obligations of PSNH as they relate to CPD is warranted and therefore we are conducting an adjudicative proceeding. We now seek memoranda on the legal issues and provide an additional opportunity for intervention, inasmuch as the legal question in dispute has now become clearer as described below. Depending on the outcome of the legal determination, other steps may be warranted.

**Issues in Dispute.** The complaint involves, as a threshold matter, whether PSNH is obligated to negotiate and contract with CPD for some or all of the output of CPD's biomass facility, which is proposed to be constructed within PSNH's service territory. We are particularly interested in the parties' interpretation of Section 210 of the Public Utilities Regulatory Policies Act of 1978, 16 U.S.C.A. Section 824a-3, RSA Chapter 362-A, the Limited Electrical Energy Producers Act, and any other legal standard that might impose an obligation on PSNH under these circumstances. If we were to conclude that PSNH is obligated to negotiate and contract for some or all of the output of the CPD facility, the next inquiry would be a factual one examining the nature of negotiations that have taken place between CPD and PSNH.

**Petitions to Intervene.** We will address the requests for intervention that are now pending. Any additional petitions to intervene will be addressed in a subsequent order prior to the due date for filing legal memoranda.

Concord Steam is a regulated utility that alleges too that PSNH has failed to engage in negotiations for purchase of the power, capacity and RECs to be created from a biomass facility proposed for Concord. Concord Steam is located in the service territory of Unitil Energy Systems, Inc. Whether PSNH is obligated to negotiate with a power producer located in another utility's service territory is not an issue that needs to be resolved in this docket. We do not find, therefore, that Concord Steam has demonstrated rights, duties, privileges, immunities or other substantial interests that are affected by this proceeding, as required by RSA 541-A: 32 and will deny the petition to intervene. We welcome its input, however, through written statements submitted to the file. Further, if Concord Steam wishes to involve the Commission in its dispute with PSNH, it should file such a complaint; we will not expand this docket to include Concord Steam's issues.

The City of Berlin is the municipality in which CPD's biomass facility would be located and, as such, the financial viability of the plant, among other issues, is of high importance to the City and its residents. The City has demonstrated a cognizable interest affected by this complaint and its petition to intervene will be granted.

The Town of Winchester stated it has been approached by CPD concerning a possible biomass facility within Winchester and finds the "bad behavior on the part of PSNH" to be indicative of the need to move to the final stages of deregulation in the State. While the outcome of this docket will be of interest to the Town of Winchester, we find that it has not met the standards of RSA 541-A:32 and, therefore, we will deny its petition to intervene. We welcome the Town's input regarding the CPD plant, energy policy and deregulation, through written statements submitted to the file.

State Representatives David Borden, Robin Read, Judith Spang and James McClammer sought intervention as PSNH ratepayers and legislators interested in advancement of renewable power, while protecting environmental and rate impacts. We find their policy perspectives to be valuable but not sufficient to constitute the interest required by RSA 541-A:32 to intervene as parties with full rights of participation. We will, therefore, deny their requests to intervene. We welcome their input, however, through written submissions to the file.

Jonathan Edwards, a resident of Berlin, seeks intervention as one directly affected by the complaint. As a resident who may see significant impact to the community's economic and environmental circumstances as result of the proposed plant, we find he has demonstrated a cognizable interest affected by the complaint and will grant his request to intervene. So too has ECM-Eastern Construction Management, LLC, a construction management company that states it has business clients located in the City of Berlin who will benefit from the synergies offered by the CPD facility.

Robert Perry, a resident of Strafford, also states an interest in environmentally sound biomass facilities and his view that the CPD project would be of benefit to the City of Berlin and the state. He further argued that PSNH has not been acting in the public good in its dealings with CPD. We do not find a direct interest affected by the complaint and will deny the request to intervene, though we welcome his views through written statements submitted to the file.

Carbon Action Alliance and the Sierra Club are advocacy organizations that promote the sound development of renewable power, environmental protection and reduction of carbon dioxide emissions but are otherwise not directly affected by the complaint. We find they have not met the standards of RSA 541-A:32 and will deny their requests to intervene. We of course welcome their input on policy issues through written statements submitted to the file.

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

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

**ORDERED**, that, pursuant to N. H. Admin. Rules Puc 203.12, the Commission shall post a copy of this order on its website no later than February 25, 2010 ; and it is

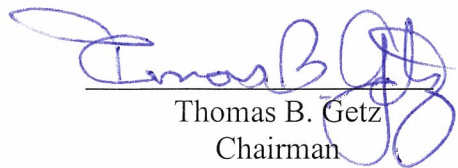
**FURTHER ORDERED**, that the petitions to intervene filed by the City of Berlin, Jonathan Edwards, and ECM-Eastern Construction Management, LLC are GRANTED and the petitions to intervene by Concord Steam, Town of Winchester, State Representatives Borden, Read, Spang and McClammer, Robert Perry, Carbon Action Alliance and Sierra Club are DENIED; and it is

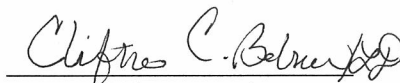
**FURTHER ORDERED**, that, pursuant to N.H. Admin. Rules Puc 203.17, any party seeking to intervene in the proceeding shall submit to the Commission seven copies of a Petition to Intervene with copies sent to CPD and the Office of the Consumer Advocate on or before March 5, 2010, such Petition stating 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 March 10, 2010; and it is

**FURTHER ORDERED**, that legal memoranda regarding the nature and extent of PSNH's duty to negotiate with and contract for power from CPD shall be due on or before March 26, 2010.

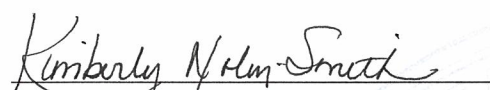
By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of  
February, 2010.

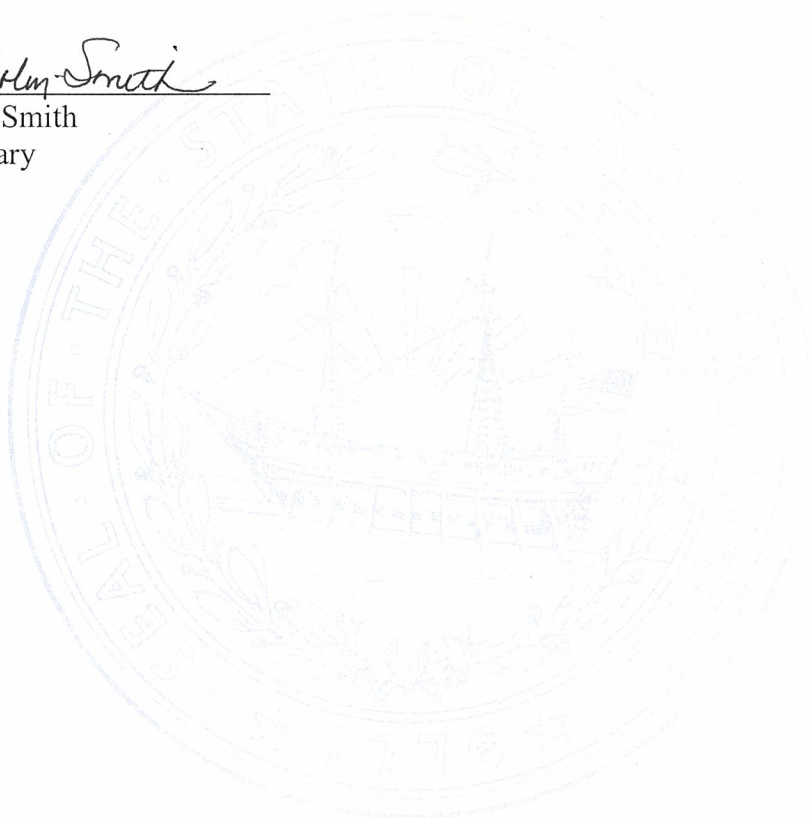
  
Thomas B. Getz  
Chairman

  
Clifton C. Below  
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Attested by:

  
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02/24/10 Order No. 25,075 issued and forwarded to all parties. Copies given to PUC Staff.

Docket #: 09-067

Printed: February 24, 2010

**FILING INSTRUCTIONS: PURSUANT TO N.H. ADMIN RULE PUC 203.02(a),**

**WITH THE EXCEPTION OF DISCOVERY, FILE 7 COPIES (INCLUDING COVER LETTER) TO:**

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Docket #: 09-067      Printed: February 24, 2010

**INTERESTED PARTIES**

**RECEIVE ORDERS, NOTICES OF HEARINGS ONLY**