

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

**COMPLAINT OF CLEAN POWER DEVELOPMENT, LLC  
AGAINST PUBLIC SERVICE OF NEW HAMPSHIRE**

Now Comes Clean Power Development, LLC (“CPD”) and, pursuant to RSA 365:1 and Rule Puc 204, hereby complains against Public Service of New Hampshire (“PSNH”), and in support hereof states as follows:

**THE PARTIES**

1. CPD is a New Hampshire limited liability company that focuses on the development of renewable and sustainable wood-fueled biomass-energy facilities. CPD hopes to begin construction on its Berlin Clean Power Facility (“CPD Facility”) during 2009.

2. PSNH is a New Hampshire electric utility subject to the jurisdiction of the New Hampshire Public Utilities Commission.

3. The CPD Facility will generate electricity through the combustion of whole tree chips supplied through local markets. The CPD Facility will be capable of generating at least 22Mw, but not more than 29Mw gross output of electricity. CPD has entered into an option agreement for the purchase of land in Berlin for the location of the CPD Facility. The CPD Facility will be connected to the so-called “Coos County Loop” owned by PSNH for the transmission of its electrical output.

4. The CPD Facility is supported by the City of Berlin. The CPD Facility occupies position 229 in the ISO-NE Interconnection Study Queue, ahead of the Laidlaw Berlin project which occupies position 251 in the Queue

5. Mel Liston is President of CPD. Mr. Liston has over 36 years of experience working in the steam and power industry. For the last 25, he has been a developer and consultant working on numerous biomass and alternative energy projects throughout New Hampshire. While serving as president of Pinetree Power Development Corporation, Mr. Liston advanced biomass power in New Hampshire, constructing Bethlehem's 15MW biomass plant and Tamworth's 22MW biomass plant. His project portfolio also includes the Timco and BioEnergy cogeneration facilities, where he served as construction manager.

## ALLEGATIONS

6. CPD has approached PSNH on numerous occasions since 2006 seeking to negotiate a power purchase agreement (“PPA”) with PSNH whereby PSNH would purchase the energy, capacity and renewable energy certificates associated with output of this and other Facilities. A PPA is a prerequisite to moving forward with the financing, construction and eventual operation of the Facility.

7. Notwithstanding that the CPD Facility is supported by the City of Berlin, Laidlaw Berlin BioPower, LLC announced in September, 2008 that they had reached an agreement with PSNH on the material terms of a contemplated 20-year power purchase agreement for its proposed Berlin project.

8. At a hearing held at the Public Utilities Commission on February 5, 2009 in Docket No. DE -08-077, a PSNH witness testified under oath during cross-examination that PSNH has an open door policy for all renewable resource developers and that all proposals of any kind would be considered in good faith and treated strictly on their merits:

Q. All right. So, the door is always open to talk, and it could be indexed, it could be a fixed rate, and each project is evaluated on its own?

A. Yes.

Q. But nobody is in or out just because of who they are?

A. No.

MR. RODIER: Okay. I want to -- I just want to make sure that last answer was recorded?

Transcript, DE 08-07, February 5, 2009

9. PSNH counsel further represented in a memorandum to the Commission on February 19, 2009 in Docket No. DE -08-077 that PSNH does not establish any pre-conditions for negotiations with third party developers of renewable energy resources and all are treated “evenly and fairly.”

10. CPD’s repeated and diligent efforts to negotiate a PPA with PSNH have been rebuffed by PSNH. In fact, at a meeting with a PSNH senior executive held on December 6, 2006, CPD proposed to supply power to PSNH in such a manner as to reduce PSNH’s average cost of energy. CPD was told by PSNH that PSNH is only interested in renewable projects it can own and place in its rate base. PSNH has frequently proclaimed that it supports legislative efforts to modify current state law in order to allow PSNH to propose additional new renewable energy power generation.

11. On March 14, 2009, a senior PSNH governmental affairs representative told CPD that “the reason PSNH would never buy power from Clean Power is because of Mel Liston and how he had testified against them in other venues. He’s just a bad person and we don’t do business with people like him.”

12. In letter dated March 16 to Mr. Liston, that “[g]iven, amongst other things, the current economic situation and the status of both PSNH’s and New England’s power supply options, PSNH has chosen not to enter into discussions with your company concerning the output of your proposed CPD Berlin Project.” (Emphasis supplied). Accordingly, PSNH appears to have adopted the position that PSNH has no need for the output of the CPD Facility.

14. In a letter to PSNH from CPD’s counsel dated March 23, 2009, CPD proposed to sell the output of the CPD Facility at “an amount equivalent to the prices PSNH has agreed to pay Laidlaw for the output of Laidlaw’s Berlin project.” PSNH responded that it would be precluded from doing so because the prices paid to Laidlaw are protected by a confidentiality Agreement.

#### **COMPLAINT I**

15. PSNH has a duty of candor toward the Commission. PSNH’s testimony in Docket No. DE -08-077 that PSNH has an open door policy for all renewable resource developers and that all proposals of any kind would be considered in good faith and treated strictly on their merit; and that nobody would be in or out because of who they are, is apparently not true. PSNH counsel’s letter to the Commission stating that PSNH does not establish any pre-conditions for negotiations with third party developers of renewable energy resources and all are treated “evenly and fairly” is apparently not true.

#### **COMPLAINT II**

16. PSNH has violated the terms of its Least Cost Plan approved by the Commission by Order No. 24,945 (February 27, 2009). In its letter dated March 16 to Mr. Liston, PSNH appears to have adopted the position that PSNH has no need for the output of the CPD Facility. In the Least Cost Plan recently approved by the Commission at PSNH’s request, PSNH proclaimed as follows:

There has been a movement toward a “greener” environment, while the cost of energy and generating capacity has continued to increase. PSNH has successfully completed and placed in service Northern Wood Power, but is unable to materially add to its renewable generating capacity due to State policy.

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To meet the projected energy requirements, PSNH will need to purchase 4 to 5 million MWh annually in the open market over the planning period...

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To meet PSNH's projected ISO-New England capacity requirement, between 900 and 1,000 MW of capacity will need to be procured annually over the planning period...

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To meet the New Hampshire RPS requirements, PSNH will need to procure 261,000 MWh from Class I renewable resources, 13,000 MWh from Class II renewable resources, 601,000 MWh from Class III renewable resources, and 58,000 MWh from Class IV renewable resources to meet its RPS deficiency by 2012...

PSNH Least Cost Integrated Resource Plan at 5,6 .

17. PSNH apparently has a "business model" that apparently excludes renewable projects such as the Berlin Clean Power Facility from consideration. PSNH did not disclose this business model to the Commission during the lengthy proceedings in DE 07-108, 2007 PSNH Least Cost Integrated Resource Plan.

### COMPLAINT III

18. PSNH has the obligation under RSA 378:37 and 38 "to develop and implement an integrated resource plan that satisfies customer energy service needs at the lowest overall cost consistent with maintaining supply reliability." Order No. 24,945, DE 07-108 (February 27, 2009) at 12. Pursuant to RSA 378:39, renewable energy sources have priority over of all other energy sources.

17. According to New Hampshire law "[i]t is... in the public interest to stimulate investment in low emission renewable energy generation technologies in New England and, in particular, New Hampshire, whether at new or existing facilities." RSA 362 F-1.

19. PSNH has clearly violated New Hampshire state energy policy as established by RSA 362-F, and RSA 378:37, 38 and 39. PSNH has an obligation under RSA 362 F-1 to at least objectively consider a PPA with a proposed renewable facility. PSNH may not reject out-of-hand proposals from a renewable facility such as CPD, particularly where, as here, it has represented to the Commission that every developer would be treated "evenly and fairly." PSNH's assertion that they won't do business with Mel Liston because he has testified against them in other venues is unlawful and a violation of both RSA 362-F, and RSA 378:37.

WHEREFORE, for all of the foregoing reasons, Comes Clean Power Development, LLC respectfully requests the Commission to:

- A. Convene an adjudicative proceeding as provided in N.H. Admin. Rule PUC 2505.13 to allow Clean Power Development, LLC an opportunity to prove, after discovery and deposition, the foregoing alleged violations
- B. Order PSNH to make reparation to Clean Power Development, LLC; and
- C. Grant such other and further relief as may be just and equitable.

Respectfully submitted,  
CLEAN POWER DEVELOPMENT, LLC  
By its Attorney,

Dated: April 7, 2009

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