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June 28, 2010

Re: DE 09-067, Clean Power Development, LLC  
Complaint Against Public Service Company of New Hampshire

To the Parties:

On May 17, 2010, Public Service Company of New Hampshire (PSNH) sent a letter to Clean Power Development, LLC (Clean Power) responding to inquiries that Clean Power made "regarding certain real property rights" desired by Clean Power in Berlin. PSNH noted that Clean Power had "initiated litigation against PSNH alleging certain civil and criminal misconduct." PSNH indicated to Clean Power that it was "not in a position to consider your inquiries regarding the real estate issues in Berlin until the litigation initiated by [Clean Power] against PSNH has concluded."

On June 9, 2010, Clean Power filed a letter with the Commission raising concerns relating to Public Service Company of New Hampshire's (PSNH's) refusal to discuss granting an easement to the City of Berlin to allow the widening of Shelby Street. According to Clean Power, Shelby Street must be widened in order to serve the Clean Power biomass project proposed for construction in Berlin. Clean Power also states that the easement issue is separate from the complaint proceeding, Docket No. DE 09-067, and that the two matters should not be linked. Clean Power asserts that the refusal to consider its easement request "appears to be a case of retaliation."

On June 18, 2010, PSNH filed a response to Clean Power. PSNH stated, among other things, that it "merely responded to [Clean Power's] requests to obtain certain rights on real property" and that "[t]here has been no demand by PSNH for [Clean Power] to do, or not do, anything." PSNH further states that it is a private citizen and that "no provision of law requires a private citizen to sell property that it owns." It contends that "there is no basis for the Commission to become involved in what is purely a private real estate matter."

PSNH, insofar as it goes, correctly cites the New Hampshire Supreme Court that: "A utility such as PSNH does not surrender its right to manage its own affairs merely by devoting its private business to a public use." (citations omitted) Such a broad statement, however, requires greater context because the right PSNH asserts is not absolute. As a public utility PSNH is subject to the general supervisory power of the Commission pursuant to RSA 374:3. Moreover,

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pursuant to RSA 365:5, the Commission has the authority to investigate or make inquiry "as to any act or thing having been done, or having been omitted or proposed by any public utility."

In its June 18, 2010 response, PSNH does not really explain why it is "not in a position" to consider Clean Power's request regarding an easement. The essence of PSNH's response is that it does not have an obligation to deal with Clean Power regarding such a request. Nevertheless, PSNH states that: "[w]hen the litigation initiated by [Clean Power] against PSNH has concluded, PSNH would then be in a position to consider [Clean Power's] real property inquiries. Only at that time will PSNH know whether it desires to grant the property rights requested, and, if so, at what price."

PSNH's characterization of its refusal to consider Clean Power's easement request as something it is not in a position to do is fairly interpreted as an assertion that considering the request is something it cannot do. Considering the request may be something it prefers not to do but there is no apparent reason that it is something it cannot do. From the Commission's perspective, however, it is important to determine whether consideration of the request is something PSNH should reasonably do.

PSNH has made a link between Clean Power's request to consider an easement and the litigation in Docket No, DE 09-067 that is difficult to reconcile on its face. Furthermore, the circumstances of the easement that Clean Power seeks, how the City of Berlin is affected, whether the situation implicates energy policy matters that are properly considered, and the property rights that PSNH holds are not clear from the letters. Accordingly, to develop a sufficient basis on which it may take action the Commission has instructed Staff to inquire further into the facts and circumstances surrounding the easement issues raised by Clean Power and to file a report and recommendation as to how to proceed on or before July 13, 2010.

Sincerely,



Debra A. Howland  
Executive Director