

QUESTIONS AND ANSWERS

RFP #2016-006

NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

REQUEST FOR PROPOSALS

Auction Advisor

	Questions	Answers
1.	<p>With regard to Paragraph A.18 (page 15 of the RFP) regarding Potential Conflicts of Interest; as recognized by the Commission. If a firm has performed services related to the divestiture process for Eversource and that engagement is now complete, does that constitute a conflict of interest?</p>	<p>Pursuant to Paragraph A.18, an applicant should disclose past or current engagements which are related in any way to the portfolio. To the extent that the applicant does not believe that that the engagement constitutes a conflict of interest, the applicant may provide an explanation of that position. Similarly, to the extent that the applicant believes that a conflict of interest exists which can be effectively managed, the applicant should provide an explanation of the conflict and the proposal to manage the conflict. The Commission will ultimately determine based on the information submitted and other sources whether a conflict of interest exists which will have a potential adverse effect on the services to be performed by the applicant. The mere existence of a prior engagement related to this portfolio will not necessarily create a disqualifying conflict of interest.</p>
2.	<p>Regarding the two advisors in this divestiture:</p> <ul style="list-style-type: none">a. What specific tasks have / will PSNH's advisor undertake?b. What contact will there be between the NHPUC's advisor and PNSH's advisor?c. What plans are there to coordinate the work of the two advisors?	<p>There will only be one auction advisor for this sale process.</p>

3.	Have any commercial milestones been set for the auction?	No.
4.	Will the PSA be in close to final form for review (Scope of Services II.10) or will it require significant drafting / editing?	PSNH has a prepared a draft PSA. However, the PSA will have to be modified to reflect the final auction design and actual terms of the sale.
5.	<p>The RFP states the advisor will be paid from the sale proceeds, but there is a material chance of a “failed auction” due to lack of buyer interest, the PUC deciding the price is too low, etc. The RFP states “Fee proposals must also discuss payment in the event of a ‘failed auction’ regarding some or all of PSNH’s generating assets.”</p> <p>a. Does the NHPUC have the financial ability to pay its advisor in the event of a failed auction?</p> <p>b. On what basis would the PUC determine the highest bid price is too low, resulting in a failed auction? Would such a determination affect the NHPUC’s obligation to pay its advisor?</p>	<p>a. No, the Commission itself does not. The Commission considers it a fundamental responsibility of the auction advisor to design a successful auction process and will consider the auction advisor’s willingness to accept downside risk in the selection process.</p> <p>b. The Commission will determine whether an auction has failed only after the auction has occurred and after taking into account the advice of the auction advisor. See response to 5.a.</p>
6.	Will the NHPUC consider modifying section 13 Indemnification of Form P-37 to exclude consequential damages?	The State will consider modifications to the Indemnification provision in negotiations with the selected applicant. Further, the State is willing to consider negotiating a mutual limit on consequential damages with the selected applicant, however, that limitation would not apply to obligations under the Indemnification Agreement.
7.	Has it been determined if the seller or buyer will be responsible for any environmental contamination or similar liability at the plant sites?	No.

8.	The RFP document suggests that the New Hampshire Public Utilities Commission envisions a traditional negotiated bidding process. Would the New Hampshire Public Utilities Commission be open to alternative process designs?	Yes.
9.	Can the New Hampshire Public Utilities Commission make available the supporting work papers and analysis associated with the April 1, 2014 La Capra Associates report that set a range of market values for the portfolio?	No. These work papers are confidential and cannot be disclosed.
10.	Can the New Hampshire Public Utilities Commission provide details on when the successful bidder would be expected to provide testimony and regulatory support in association with the sales process? Would such testimony be required in advance of the actual auction or would it follow the process?	Details are not known at this time.
11.	The RFP document refers to “failed auctions” with respect to the fee proposal section. “Fee proposals must also discuss payment in the event of a <i>failed auction</i> ’ regarding some or all of PSNH’s generating assets”. a. How does the Commission define a failed auction? b. Is it anticipated that testimony would be required in the event of a failed auction?	a. See response to 5.b. b. Yes.
12.	Does the Commission anticipate setting a reserve price for each asset in the portfolio and does the Commission define a “failed auction” as a process that does not meet the reserve?	The auction design has not been determined. The auction advisor is expected to recommend appropriate auction designs. See answer to 5.b.
13.	Can the New Hampshire Public Utilities Commission provide guidance on the scope and timing of testimony and the broader stakeholder process?	Not at this time.
14.	The RFP document suggests a fee structure based solely on the sales proceeds. Is this fee intended to cover all testimony and regulatory support associated with the process or is it intended to cover only the auction component of the process?	The fee is intended to cover all services.

15.	<p>Section A.4 under Section III Proposal Format, Content and Submission Requirements requests a “Market Update”. Is The New Hampshire Public Utilities Commission looking for each RFP respondent’s overall energy market outlook and analysis of market dynamics or is the Commission looking more narrowly at the outlook for energy M&A activity?</p>	<p>It is up to the applicant to decide what to submit, as the submission will provide the Commission with indication of the applicant’s understanding of the markets; however, energy M&A activity should be a major component.</p>
16.	<p>Can the Terms and Conditions in Form P-37 be modified?</p> <ul style="list-style-type: none"> a. Can language be added aimed at protecting pre-existing intellectual property? b. Can the Commission replace the existing indemnity for anything related to acts or omissions with a more narrowly tailored clause? c. Can the Commission add the inclusion of a liability cap, with exceptions? 	<ul style="list-style-type: none"> a. The State will consider modifications to the P-37 form to address concerns about Intellectual Property. b. The State will consider modifications to the Indemnification provision in negotiations with the selected applicant. c. The State will consider mutual caps on liability, except with respect to liability arising out of the indemnification clause. Applicants are advised, however, that tort claims against the State which may be subject to the indemnity clause are subject to statutory caps pursuant to RSA 541-B:14.
17.	<p>Financing</p> <ul style="list-style-type: none"> a. Has the Commission or Eversource done any work or contemplated offering financing in relation to the divestiture? b. Has the Commission or Eversource engaged in any discussions and/or perceives any issues related to receiving consent from current lenders to the projects? 	<ul style="list-style-type: none"> a. No. The buyer will be responsible for obtaining any necessary financing. b. The Commission has not engaged in such discussions. PSNH represents that it has adequate “bondable” property to satisfy its mortgage requirements post-divestiture; hence, receipt of necessary consents from lenders is not deemed by PSNH to be a material issue.

18.	<p>Marketing Materials / Consultants</p> <p>a. The RFP notes that a substantial draft of the CIM has been completed with the assistance of a consultant. Please clarify whether you have engaged a market consultant and/or an independent engineer and whether the current draft of the CIM incorporates their projections and findings</p> <p>b. Do the documents compiled thus far with PSNH include market consultant reports with power price forecasts and operating projections?</p> <p>c. The RFP mentions that Phase I environmental assessments have been completed. Please provide the date(s) as of which the assessments were conducted</p>	<p>a. No market consultant or independent engineer has been engaged; hence the draft CIM does not incorporate any such projections or findings.</p> <p>b. No.</p> <p>c. Please see the environmental assessments on-line at:</p> <ul style="list-style-type: none"> • http://www4.des.state.nh.us/DESOnestop/PRSDetail.aspx?ID=0035940&Type=PRS • http://www4.des.state.nh.us/DESOnestop/PRSDetail.aspx?ID=0035944&Type=PRS • http://www4.des.state.nh.us/DESOnestop/PRSDetail.aspx?ID=0035945&Type=PRS • http://www4.des.state.nh.us/DESOnestop/PRSDetail.aspx?ID=0035946&Type=PRS • http://www4.des.state.nh.us/DESOnestop/PRSDetail.aspx?ID=0035948&Type=PRS • http://www4.des.state.nh.us/DESOnestop/PRSDetail.aspx?ID=0035949&Type=PRS • http://www4.des.state.nh.us/DESOnestop/PRSDetail.aspx?ID=0035950&Type=PRS • http://www4.des.state.nh.us/DESOnestop/PRSDetail.aspx?ID=0035951&Type=PRS • http://www4.des.state.nh.us/DESOnestop/PRSDetail.aspx?ID=0035953&Type=PRS • http://www4.des.state.nh.us/DESOnestop/PRSDetail.aspx?ID=0035955&Type=PRS • http://www4.des.state.nh.us/DESOnestop/PRSDetail.aspx?ID=0035965&Type=PRS • http://www4.des.state.nh.us/DESOnestop/PRSDetail.aspx?ID=0035966&Type=PRS • http://www4.des.state.nh.us/DESOnestop/PRSDetail.aspx?ID=0035967&Type=PRS • http://www4.des.state.nh.us/DESOnestop/PRSDetail.aspx?ID=0035968&Type=PRS • http://www4.des.state.nh.us/DESOnestop/PRSDetail.aspx?ID=0035969&Type=PRS • http://www4.des.state.nh.us/DESOnestop/PRSDetail.aspx?ID=0035970&Type=PRS • http://www4.des.state.nh.us/DESOnestop/PRSDetail.aspx?ID=0035972&Type=PRS • http://www4.des.state.nh.us/DESOnestop/PRSDetail.aspx?ID=0035974&Type=PRS
19.	<p>Portfolio</p> <p>a. Please provide any available updates on the remediation of environmental issues at Schiller</p>	<p>a. Per NH PUC Order No. 25,920 at 69, issues regarding potential remediation activities at Schiller Station have been deferred to the considered judgment of the auction advisor. See: http://puc.nh.gov/Regulatory/Docketbk/2014/14-238/ORDERS/14-238_2016-07-01_ORDER_25920.PDF</p>

20.	<p>Tax and Regulatory Status</p> <p>a. With regards to the statement to be provided pursuant to Section III.D.14 of the RFP, when will Appendix C (Tax and Regulatory Status and Clearance Statement) be made available? Currently the RFP document does not include an Appendix C</p>	<p>a. There is no section III.D.14 in the RFP, however, there is a section III.A.14. It is not necessary for any applicant to respond to Section III.A.14.</p>
21.	<p>Section II.A.19: The commission is requiring that the selected proponent refrain from entering into any engagement that could present a conflict of interest for a period that could extend to 4 years (given Section IV.D). In that context, could the commission please clarify what it would consider a conflict of interest?</p>	<p>For the purposes of this RFP, “Conflict of Interest” shall be defined as a situation, circumstance, or financial interest which has the potential to cause a private interest to interfere with the proper performance of services under an agreement to be awarded pursuant to this RFP.</p>
22.	<p>Section III.A.6 (b): This section asks for, “A detailed example of advisory experience for similar engagement on the buy and sell side”. Is this request for a single example of either buy or sell side advisory experience, or two examples, meaning one example of an advisory role on the buy side and one example of an advisory role on the sell side?</p>	<p>In addition to a description of general experience, the Commission is seeking a single detailed example of either a buy- or sell-side experience, with a preference for an example of a sell-side experience.</p>
23.	<p>Section III.A.10: For processes such as these an applicant might hire a Market Consultant and Independent Engineer. Would the NHPUC typically elect to contract these parties themselves or would the Auction Advisor be expected to do this?</p>	<p>The Commission would expect the auction advisor to have such experts on staff or to hire such experts at the auction advisor’s expense.</p>
24.	<p>Section III.A.11: Are there any deadlines or required milestones of which the applicant should be aware when preparing a schedule for the auction?</p>	<p>No.</p>
25.	<p>Section III.A.12: This section suggests receptivity to payment for expenses outside of the fee. However, the form of contract stipulates in section 5.2 that the fee is the sole payment for any and all expenses. Should bidders assume that the PUC is open to an amendment to the standard contract form that includes cost reimbursement in addition to the success fee?</p>	<p>No. The auction advisor’s success fee should include all expenses.</p>

26.	<p>Section III.A.14: There are references here to an Appendix C and to section III.D, but there is no corresponding Appendix or section. Please clarify the intended reference and materials required pursuant thereto.</p>	<p>It is unnecessary for any applicant to respond to Section III.A.14.</p>
27.	<p>Form of Contract: For an advisory mandate of this nature, the engaging party would typically indemnify the advisor from losses, claims, etc. asserted by third parties as a result of, or associated with, the engagement. The logic here is that the advisor should not be liable for third party claims when it is performing services in accordance with the request of the contracting party. The indemnification of the contracting party by the service provider is highly unusual where it is acting in accordance with its obligations under the contract. Is the PUC able to provide such an indemnity as part of the contract? Please consider limiting the requested indemnity from the service provider to acts of gross negligence of willful misconduct and/or capping the liability thereunder to the amount of the fees.</p>	<p>The State is not legally allowed to indemnify the contractor in this matter and will not consider such a provision.</p> <p>The State will consider modifications to the Indemnification provision in negotiations with the selected applicant.</p>
28.	<p>Engagement</p> <p>It is our understanding that the selected Auction Advisor would not only work with the New Hampshire Public Utilities Commission (“NHPUC” or the “Commission”) to manage the transaction, but also with the Public Service Company of New Hampshire (“PSNH”) and its advisors. As such, will PSNH and Eversource be co-signatories to any engagement letter? If not, what would be the nature of the relationship between the Auction Advisor, the Commission, and Eversource / PSNH?</p> <ol style="list-style-type: none"> a. In the event that PSNH / Eversource, along with the Commission, would be parties to an engagement letter, would PSNH / Eversource provide customary indemnification provisions for the Auction Advisor? b. Will PSNH engage a separate Auction Advisor of its own in addition to its current auction (Concentric Energy Advisors) and legal (Balch & Bingham) consultants? 	<p>Please see the response to question 2, above. The contract for the Auction Advisor will be with the State of New Hampshire. PSNH will not be a contracting party.</p> <ol style="list-style-type: none"> a. See the response above. b. Please see the response to question 2, above.

29.	<p>Technical</p> <p>We understand the requirement that a future buyer agree to keep each asset in-service for a minimum of 18 months from transaction as well as the potential for negative values associated with Merrimack and Schiller (per La Capra Associate’s April 2014 Valuation Report). In order for us to assess the marketability of the entire Portfolio, can you provide the following information for the next two years (2017 / 2018):</p> <ul style="list-style-type: none"> a. Fixed O&M Costs: all fixed costs a buyer would need to assume to run the plants (including corporate overhead allocations) b. Variable O&M Costs: including dispatch services for the plants and any pre-established contractually committed fuel costs c. Minimum Maintenance Capital Expenditures d. Environmental Capital Expenditures (minimum of two years) 	<p>PSNH provides estimates of future O&M and other expenses in its annual requests to the Commission for an energy service rate. Please see the link below for the most recent filing.</p> <p>http://www.puc.nh.gov/Regulatory/Docketbk/2015/15-415/INITIAL%20FILING%20-%20PETITION/15-415%202015-09-28%20%20PSNH%20DBA%20EVERSOURCE%20ATT-PTESTIMONY%20C%20GOULDING.PDF</p> <p>In addition in DE 14-238 PSNH witness Eric Chung provided estimates of some of these expenses. Please see pre-filed testimony on July 6, 2015, Attachment EHC-1, page 3 of 11</p>
30.	<p>Post Financial Close</p> <ul style="list-style-type: none"> a. Will PSNH provide transition services for a potential buyer? b. Are there any unfunded liabilities (i.e. asset retirement obligations, pensions, OPEB, litigation, environmental) that will be transferred to a new owner and thus affect view on value? If so, what are they and how much? c. Given the impact on saleability and valuation, will PSNH provide customary market-based Reps and Warranties, and indemnification provisions to a buyer? If yes, are there any restricts on the nature / extent of Reps and Warranties and indemnifications that PSNH will provide? 	<ul style="list-style-type: none"> a. This issue is one that will be discussed as part of the overall auction process after the auction advisor has been retained. b. Yes. All such issues will be documented in the due diligence materials that will be available to bidders on the assets. c. PSNH cannot speculate what representations, warranties or indemnifications may be requested. This issue is one that should be discussed as part of the overall auction process after the Auction Advisor has been retained.

31.	<p>Can the P-37 be modified as follows?</p> <p>13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from or arising out of the acts or omissions of the Contractor to the extent of the Contractor's gross negligence or willful misconduct; provided that in no event shall Contractor's liability hereunder exceed the amount of fees received under this Agreement. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.</p>	<p>The State will consider modifications to the Indemnification provision in negotiations with the selected applicant; however, the State will not accept all of the language as submitted.</p> <p>The State will consider mutual caps on liability, except with respect to liability arising out of the indemnification clause. Applicants are advised, however, that tort claims against the State which may be subject to the indemnity clause are subject to statutory caps pursuant to RSA 541-B:14.</p>
32.	<p>Questions Regarding the Process</p> <ol style="list-style-type: none"> a. Do you have any specific goals in terms of timing? b. Is the NHPUC willing to consider any forms of consideration other than cash (i.e. public stock)? c. Is there any flexibility around the requirement to operate the facilities for a minimum of 18 months post-closing if it becomes clearly destructive to value during the process? 	<ol style="list-style-type: none"> a. No, but as soon as commercially reasonable is preferable. b. No. c. Please see the 2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement. Any modification of the settlement agreement would have to be agreed to by the parties and approved by the Commission.

<p>33.</p>	<p>Questions Regarding the Portfolio Positioning</p> <ol style="list-style-type: none"> a. How did PSNH bid the existing portfolio into the most recent Annual Forward Capacity Auction? More specifically, did PSNH bid all available capacity or a more conservative amount of capacity as a result of the Pay for Performance Initiative? b. What REC states / tiers are the hydro plants certified for? c. Is there any additional environmental capex required for the Thermal Facilities? Would there be any additional capex required under the current iteration of the Clean Power Plan? d. Is there any existing debt on the assets that could potentially be transferred to a new buyer? If so, what are the change-of-control provisions on said debt? 	<ol style="list-style-type: none"> a. PSNH represents that it bid all its generating capacity into the most recent FCA. PSNH also represents that it intends to bid all its generating capacity into the next FCA in compliance with the Settlement Agreement's provision that "PSNH shall continue to bid its generating assets into the ISO-NE forward capacity markets in order to preserve the value of those assets," b. PSNH represents that Smith Hydro completed a major capital investment project in 2006 to replace the original hydroelectric turbine with a higher-efficiency design. The resulting improvement in generation (over a historical baseline production) qualifies as NH Class I resource. PSNH believes this same incremental production could qualify as Maine Class I, MA Class I and RI "New". In order to qualify in MA, the unit would also need to earn Low Impact Hydro Institute (LIHI) certification or equivalent. According to PSNH it has not yet elected to apply for eligibility in any of these state programs because, to date, the Smith RECs have been used to satisfy PSNH's Default Energy Service RPS obligation. PSNH believes that all of their hydro-electric assets could potentially qualify for Maine Class II and RI "Existing". All of the assets with a nameplate rating under 5 MWs could also potentially qualify as CT Class II and those under 7.5 MW could potentially qualify as MA Class II (provided LIHI certification could also be earned). The assets under 7.5 MWs
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	(33 Continued)	<p>are: Gorham (which is already qualified as CT Class II), Jackman, Canaan, Eastman Falls and Hooksett. PSNH has not yet elected to apply for eligibility in the Maine, Rhode Island or Connecticut state programs due to the low market value of the RECs (near zero). Regarding MA Class II, an investigation to determine the potential to earn LIHI certification has not yet been performed.</p> <p>c. The Commission will not speculate on what environmental requirements may occur in the future. The Commission has not done any analysis whether individual assets require additional capital investment.</p> <p>d. No debt will be transferred to the buyer.</p>
34.	<p>On Page 14 of the RFP, Item #14 - "Tax and Regulatory Status Clearance Statement," references Section III.D, which is not in the document. Section III.D. should have included additional information in regards to the applicant's tax and regulatory compliance with the commission. Could you please provide clarification?</p>	<p>See answer to 20.</p>

35.	On Page 14 of the RFP, Item #14 - “Tax and Regulatory Status Clearance Statement,” references Appendix C, which is not in the document. Appendix C should have included a form statement that the applicant should use to provide its tax and regulatory compliance status. Could you please provide clarification?	See answer to 20.
36.	On Page 13 of the RFP, Item #9.b.i asks for a detailed description of how each objective will be addressed. Can you please clarify which objectives in Section IV are being referenced or confirm that the correct reference is either the various responsibilities described in Section II.A. – “Scope of Services” or the “primary objective” referenced on Page 4?	The reference to Section IV is in error. The correct reference Section II.A.
37.	Have an independent engineer and/or independent market consultant been retained? If not, will the Auction Advisor be expected to conduct hiring processes for these, and are there any limitations as to the potential candidates for those roles?	See answer 23.
38.	The RFP states that the Auction Advisor will be expected to “Fairly allocate the purchase price of the transaction among individual assets of the PSNH Portfolio when more than one asset is included in a single bid from a potential buyer.” As a matter of clarification, will the Auction Advisor be required to allocate value between various agreed-upon portfolios, or specifically between all of the relevant assets (listed on pp. 6-7) of the RFP?	The auction advisor will be required to allocate value among all relevant assets when more than one asset is included in a single bid.
39.	Based on the RFP request, it does not appear that participants are expected to provide an indication of value. Please confirm whether or not a proposal should include any preliminary indications of portfolio/asset value.	Responses to this RFP are not expected to include an indication of the value of the portfolio or individual assets.
40.	Have any plans been developed to convert any of the coal-fired units to natural gas-fired technologies?	No.
41.	Do any of the natural gas-fired power plants have firm gas transmission rights?	No, Newington Station does not have any firm gas transportation contracts.

42.	Part I.C of this RFP states “Any response, including written documents and verbal New Hampshire Public Utilities Commission communication, by any Applicant to this RFP, shall become the property of the Commission and may be subject to public disclosure by the Commission, or any authorized agent of the Commission.” How can confidential information, e.g. the financials required in section 16 of the Required Proposal Format, be kept confidential and not subject to public disclosure?	Per Section IV, Paragraph E, any applicant providing information which is exempt from disclosure pursuant to RSA 91-A:5 shall submit a motion for confidential treatment with its proposal. The Commission shall review such motions and determine in writing whether the information shall be held confidential and exempt from disclosure pursuant to RSA 91-A:5. Material for which a motion for confidential treatment is filed shall be kept confidential by the Commission until a written determination is made. <i>See</i> N.H. Code of Admin. Rule Puc 201.04 and 203.08.
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