

THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 16-817

PUBLIC SERVICE OF NEW HAMPSHIRE d/b/a EVERSOURCE ENERGY

Auction of Electric Generation Facilities

**COMMENTS OF INTERVENERS CITY OF BERLIN AND TOWN OF GORHAM
TO JP MORGAN'S AMENDMENT TO AUCTION DESIGN & PROCESS MEMO
DATED OCTOBER 18, 2016**

NOW COME Interveners the City of Berlin and the Town of Gorham (referenced as “**the City**” or “**the Town**”, respectively) in the above-captioned Docket and file this their Comments on the Amendment to the Auction Design and Process Memo tendered by JP Morgan as the Auction Advisor (“**JPM**”) and certain PUC Staff (primarily Attorney Anne Ross and Thomas Frantz, referenced herein as “**Staff**”) on October 18, 2016 (“**the Amendment**”).

I. Background

1. The City and the Town were granted full Intervener status in this Docket at the Commission’s Pre-Hearing Conference held on September 19, 2016.
2. This Docket springs from the Commission’s prior Docket DE 14-238, which concerned whether Public Service Company of New Hampshire d/b/a Eversource (“**PSNH**”) should divest its Generation Assets (“**the Divestiture Docket**”). The City was granted full Intervener status at the beginning of the Divestiture Docket pursuant to the Commission’s Order No. 25,733, dated November 6, 2014, following the October 2, 2014 Pre-Hearing Conference. The Town became a full Intervener in the Divestiture Docket pursuant to the Commission’s Order issued during the July 9, 2015 Pre-Hearing Conference, as reflected in the Commission’s Secretarial Letter dated July 17, 2015.

3. The City is the host community for the PSNH Smith Hydro facility, which has a nameplate capacity of 15.2 MW and is currently assessed by the City at approximately \$56.5 Million. The Town is the host community for the PSNH Gorham Station Hydro facility, which has a nameplate capacity of 2.1 MW and is currently assessed by the Town at approximately \$3.9 Million. As such, these facilities are major portions of the tax bases in the respective municipalities.

4. The City actively participated in the negotiations resulting in the 2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement dated June 10, 2015 (“**the 2015 Agreement**”), which was filed with the Commission in the Divestiture Docket on that same date. The City also actively participated in the negotiations resulting in the Amendment to the 2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement dated January 26, 2016 (“**the 2016 Amendment**”) and the Partial Litigation Settlement (“**the Litigation Agreement**”) also dated January 26, 2016, which were both filed with the Commission in the Divestiture Docket on that same date. The Town was not a signatory to the 2015 Agreement and was thus not considered a “Settling Party” under the 2016 Amendment or Partial Litigation Settlement.

5. The Commission issued its Order No. 25920 approving the Settlement Agreements in the Divestiture Docket on July 1, 2016.

6. Pursuant to Article X of the 2015 Agreement, the Settling Parties requested that “following closure of Docket DE 14-238, the Commission open a docket with appropriate ongoing proceedings to address the administration of the divestiture auction, issuance of a finance order implementing [Rate Recovery Bonds], and calculation and reconciliation of the

stranded cost recovery charge.” Additionally, Section IV (b) of the 2016 Amendment resulted in the following language:

The structure and details of the Auction Process(es) shall be established by the auction advisor under the oversight and administration of the Commission and subject to the additional expedited adjudicatory proceedings requested in Section X below, with the Commission retaining such direction and control as it deems necessary. This expedited adjudicative proceeding shall include the design and approval of the auction process, the selection of any asset groupings, the approval of any final bids for the generation assets, and any other issues deemed appropriate by the Commission. Any municipalities providing notice to the Commission of their desire to bid on generating assets shall automatically be qualified to bid on any individual asset or asset package. Prior to any binding bidding phases, the auction advisor shall disclose any agreed-upon asset groupings for bidding, and qualified bidders will be given the opportunity to conduct detailed due diligence, ask detailed questions, visit the sites and submit bids in accordance with the process established for the auction as determined by the auction advisor and approved by the Commission.

See 2016 Amendment at page 3. Furthermore, pursuant to Paragraph 25 of the Litigation Agreement, “the Settling Parties and Staff agree that the issue of specific auction design(s) shall be presented in a separate adjudicatory docket to be opened by the Commission rather than in the February hearings in [the Divestiture Docket].”

7. The Commission issued its Order of Notice in this Docket on September 7, 2016 setting September 12th as the deadline for JPM to file its recommendations on Auction Design and Process, September 15th as the deadline for Petitions to Intervene, September 19th for a Pre-Hearing Conference and a Technical Session, and September 30th as the deadline for Written Comments on Auction Design and Process.

8. This current Docket is the “separate adjudicatory docket” referenced in Paragraph 25 of the Litigation Agreement, Article X of the 2015 Agreement, and Section IV(b) of the 2016 Amendment. However, for the reasons stated below, the Schedule currently being proposed by JPM and Staff does not meet the letter or the spirit of the provisions set forth above.

9. On September 30, 2016, the City and the Town timely filed their Comments to the original Auction Design and Process memo tendered by JPM and Staff in this current docket (“**the Original Design**”). Also at that time, the Towns of New Hampton and Bristol separately filed their comments to the Original Design on a timely basis. (The City, the Town, and the Towns of New Hampton and Bristol are collectively referred to herein as “**the Municipalities**”.)

10. As stated in the Amendment, the attorneys of record for the Municipalities participated in two conference calls with JPM representatives, Staff, and representatives of PSNH on October 6th and October 13th in an effort to help all parties understand the concerns of the Municipalities. However, contrary to representation in the Amendment, not all questions were answered, let alone answered to the satisfaction of the Municipalities (and maybe not to the satisfaction of the other participants).

11. On the morning of Friday, October 14th, Staff Attorney Ross circulated a draft of the Amendment dated October 12th, asking for the parties’ comments by 3 p.m. that afternoon. A true and correct copy of Attorney Ross’ email and the draft JPM Amendment is attached hereto as “**Exhibit A**”.

12. By 9:15 a.m. on Friday, October 14th, the undersigned informed Attorney Ross that he could not make the 3 p.m. deadline but would strive to give his comments for the City and the Town by 3 p.m. on Monday, October 17th. A true and correct copy of the undersigned’s email of 2:16 p.m. of Monday, October 17th with comments on the draft JPM Amendment is attached hereto as “**Exhibit B**”.

13. Similarly, the Towns of New Hampton and Bristol tendered comments to Attorney Ross on Monday, October 17th; and true and correct copies of those emails are attached

hereto as “**Exhibit C**” and “**Exhibit D**”, respectively. Late on the afternoon of October 17th, Attorney Ross tendered the Amendment, which was deemed filed on October 18th.

II. The Amendment Does NOT Adequately Address the Concerns of the Municipalities.

14. In the interests of time, the City and the Town respectfully incorporate by reference their Concerns raised in their Comments filed on September 30th and in Exhibit A as if fully set forth herein. The City and Town again voice their concerns regarding the proposed timing of the Auction Schedule and the potential that, notwithstanding the tender of a highest bid, the Municipalities’ offers may be rejected based on nebulous and unascertainable standards that are contrary to New Hampshire law.

15. By way of emphasis, and without waiving any other issues raised in the above-referenced materials, the City and the Town stress that, while they appreciate the modification of Auction Schedule by “approximately two months”, the City and the Town remain concerned that such timing will not adequately allow the Municipalities sufficient time to coordinate necessary educational sessions with their respective voters, hold required votes to allow for the submission of an actual bid, or consider appropriate options concerning the subject Hydro facilities (including potential inter-local agreements for operation, maintenance, marketing, etc.), amongst other prudent steps necessary to bid on these multi-million dollar facilities. As such the Municipalities are effectively being “frozen-out” of the bidding process by the Amended Schedule contrary to the clear spirit and intent of the 2015 Agreement, the 2016 Amendment, and the Litigation Agreement.

16. Additionally, the City and the Town are deeply concerned that the Amendment’s new emphasis on municipal bids having “as little conditionality as possible” and bid selections based on ability “to consummate” and/or make “fully financed offers” implicitly creates a

presumption against municipal bids since the Municipalities have to take the “winning bid” number back to the voters for a second vote pursuant to RSA 38:13 within 90 days of the “final price” being determined. This statutory process must be applied whether a municipality is buying a facility or taking a facility by eminent domain. This Commission has ruled that this RSA chapter 38’s statutory process creates a rebuttable presumption that the acquisition of utility assets by a municipality is within the public interest. See Appeal of City of Nashua (RSA 38 Proceeding re Pennichuck Water Works), 2008 N.H. PUC LEXIS 62, at *44-45 (ruling that presumption of public interest arises in municipalization of utility assets under RSA chapter 38 upon vote of 2/3 of voters). The City and the Town respectfully urge that Commission’s Order in this Docket expressly acknowledge that the fact a municipality with the higher bid must go through the RSA 38 process is not grounds for rejection of that municipal bid. Cf. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508, 514 (2011) (holding that fact that a person needs a zoning variance cannot constitute grounds for denying that variance).

17. Furthermore, in addition to such an express statement, the City and the Town respectfully require and reserve all rights to review the full bidding process results as part of final adjudicatory proceeding concerning the PUC’s approval of the final bids and allocations associated with the sale(s) of PSNH’s assets in this Docket.

18. By way of offering a solution to these important concerns, the City and the Town suggested in their comments of October 17th the use of a “Third Round Option” whereby the Second Round would occur in accordance with the schedule of the Amendment, but if the highest Second Round bid did not exceed the Host Municipality’s(ies’) assessed value (or other lower benchmark suggested by the Municipality(ies)), then the Municipality(ies) would be able

to force a Third Round wherein it and all other interested bidders could bid-up the price to potentially acquire the asset.

19. As was stressed in the conference call of October 13th, during this proposed procedure, the Municipalities would still have to conduct their due diligence and their educational sessions throughout time periods of the First and Second Rounds; but the Municipalities' "first public vote" pursuant to RSA 38 would be held after the results of the Second Round's binding highest bids were known and prior to the time that the Third Round bids were due. In this way, the Commission would be allowing the Municipalities sufficient time to undertake all necessary statutory and due diligence efforts without altering the bid procedure for non-municipal bidders during the First and Second Rounds. Under this "Third Round Option" procedure, there is the very real possibility that, should the Second Round bids be sufficiently high, the Municipalities would not need to trigger the Third Round of bidding to protect their interests. This alteration, therefore, provides a minimal impact to the Auction Schedule while greatly safeguarding the Municipalities' interests. The City and the Town strongly urge the Commission to incorporate this "Third Round Option" to protect the interests of the Municipalities and potentially enhance the purchase price of these assets and thereby reduce stranded costs to the ratepayers.

20. Additionally, JPM's responses to prior comments of the Municipalities as set forth in the Amendment raise various issues which should be subjected to discovery via appropriate Data Requests and Technical Sessions, particularly since JPM rejected suggested solutions offered by the Municipalities. These issues include but are not limited to: (i) how will "asset group" bids be evaluated when a particular "individual asset" bid is higher for that asset; (ii) why is the Ascending Clock Auction Process proffered by Non-Advocacy Staff not

appropriate given the unique mix and volume of assets involved in this auction and the need for transparency and accountability in this public (non-private) sale; (iii) how can JPM say that the Ascending Clock Auction Process will discourage participation if JPM has no experience with this Process; (iv) why is there no benefit in delaying the current Auction until the on-going TransCanada private auction is completed; (v) what are the particulars of that on-going TransCanada auction – when did it start, what particular assets were involved, what was its scheduled timing, how many bidders were solicited, how many responded, how many were selected, what were the range of non-binding bids and their relationship to the assessed values of those assets, what was the corresponding binding bid from each, what phase is the auction process currently in, when will it be completed, is any State regulatory agency involved in approving the auction process or the final bid, what is the stage of FERC approval for any final bid, when will FERC approval be obtained, etc.; (vi) why will bifurcation of the auction of the fossil assets from the hydro assets “unlikely enhance” the auction results; (vii) what “material risks” in particular would result from any of the Municipalities’ suggested modifications; (viii) what documentation exists to support any of JPM’s positions on these issues. These issues and more have not been adequately addressed in the brief conclusory statements contained in the Original Design or in the Amendment; and JPM’s “Disclaimer” raises concerns that all prior verbal answers and maybe even all written answers cannot be relied upon.

21. Accordingly, to provide the full and fair adjudicatory proceeding required by the Commission’s Order No. 25920 and the Settlement Agreements in the Divestiture Docket before the Commission approves any Auction Process in this Docket, the City and the Town respectfully request that an appropriate time period be given for Data Requests, Technical Sessions, and Pre-Filed Testimony (with such Testimony first being filed by JPM, Staff and

PSNH and then from the Municipalities and other parties in the ordinary course of adjudicatory proceedings before the Commission).

III. Conclusion.

22. The City and the Town respectfully urge the Commission to adopt the “Third Round Option” set forth above and to consider the other issues raised in all Comments tendered to date as a means of improving the proposed Auction Process to the protection of not only the Municipalities and their taxpayers but also the ratepayers of PSNH. To assure transparency and accountability, the City and the Town request that full and fair discovery on the appropriate Auction Process is conducted and a true adjudicatory hearing is held at the appropriate time. As noted above, the assets involved are substantial portions of the tax bases of the various Municipalities. The Municipalities must and will defend the value of these assets through an appropriate auction process to the fullest extent the law allows.

23. The City and the Town thank the Commission for the opportunity to submit these additional Comments; and we look forward to participating in the full and fair hearing of this matter at the appropriate time.

Respectfully submitted,
DONAHUE, TUCKER & CIANDELLA, PLLC

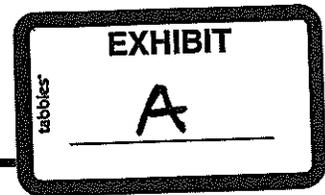


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Certificate of Service

I hereby certify that I served a copy of these Comments pursuant to Puc 203.11 to the current service list in this Docket this 2nd day of October, 2016.


Christopher L. Boldt, Esq.



Christopher Boldt

From: Ross, F. Anne <F.Ross@puc.nh.gov>
Sent: Friday, October 14, 2016 6:38 AM
To: PUC - Executive.Director; Speidel, Alexander; Merrill, Amanda; Noonan, Amanda; Christopher Boldt; christine.vaughan@eversource.com; Christopher.aslin@doj.nh.gov; christopher.goulding@eversource.com; Shulock, David; dhartford@clf.org; Kreis, Donald; elizabeth.tillotson@nu.com; eric.chung@eversource.com; Ross, F. Anne; jae@mitchellmunigroup.com; Brennan, James J; Dudley, Jay E; jkennedy@concordnh.gov; kristi.davie@eversource.com; laura.maynard@doj.nh.gov; Stachow, Leszek; linda.landis@psnh.com; lisa.cameron@brattle.com; neil.e.davids@jpmorgan.com; nhlocal@ibew1837.org; PUC - OCA Litigation; Chattopadhyay, Pradip K; Chagnon, Richard; rick.white@eversource.com; robert.bersak@eversource.com; stanguay@townandcitylaw.com; terrance.large@nu.com; tirwin@clf.org; Frantz, Tom; william.smagula@nu.com; zachary.fabish@sierraclub.org
Cc: Ross, F. Anne
Subject: JP Morgan Auction Process Modifications
Attachments: NHPUC_October 12 filing_v5.docx

After reviewing comments and having several follow-up conversations with four of the municipalities intervening in this docket, JP Morgan has made some adjustments to the proposed auction process in order to facilitate the municipalities participation in the auction. Please review the attached draft and let us know by 3:00 p.m. today whether you take any position on these changes.

Thanks, Anne

OCTOBER 12, 2016

NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

Amendment to the auction design & process filed September 12, 2016



J.P.Morgan

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1. Amendments to auction approach & design

A. Background

J.P. Morgan, along with Commission Staff, has reviewed in depth the comments filed on September 30 by the Town of Bristol, by the Town of New Hampton, and jointly by the City of Berlin and the Town of Gorham (collectively, the "Municipalities"). Additionally, J.P. Morgan and Commission Staff held a telephonic meeting with representatives of the Municipalities on Thursday, October 6, 2016 to discuss the Municipalities' comments and answer any further questions they may have.

Based on the comments received (and aided by the follow-up conversation with the Municipalities), J.P. Morgan and Commission Staff have been able to get a clear understanding of the specific concerns raised by the Municipalities with respect to the process, in particular, the Municipalities' ability to participate in the process as described in J.P. Morgan's filing dated September 12, 2016.

B. Modifications to the auction process

J.P. Morgan recommends that the following modifications be made to the auction process in an effort to accommodate the Municipalities' requests. To be clear, the overall structure and design of the process is not being modified, but certain accommodations will be made to permit the Municipalities to potentially participate more effectively in the auction. The next section of this document contains the modified timeline for the process.

(1) Timing of certain key process milestones

- J.P. Morgan plans to delay the start of the auction by approximately two months, which means the following changes to the auction design:
 - RFQ process will begin in mid-to-late November
 - Confidentiality agreements will be distributed (mid December) and negotiated (mid December through early January) to parties that meet our selection criteria
 - Confidential Information Memorandum ("CIM") will be distributed in early January
 - Preliminary, non-binding offers will be due in mid-to-late February
 - Final, binding bids will be due in early-to-mid May
- Other aspects of the process will be adjusted accordingly to comply with the timing of these key milestones

(2) Participation by the Municipalities

- J.P. Morgan will make changes to the auction process and timeline in order to facilitate participation by the Municipalities and accommodate needs that differ from the other potential buyers
 - Municipalities will be provided access to the portions of the virtual data room for their hosted generation assets in November 2016
 - This will provide them a substantial amount of time and information to evaluate the opportunity and obtain approvals as required
 - Municipalities will not be required to submit a preliminary, non-binding indication of interest to participate in the second phase of the process and will be provided access to detailed due diligence information
 - Municipalities may at their option submit a "Request for information" to J.P. Morgan outlining the expected value of their respective hydroelectric generation station(s) ("Hydro(s)")
 - J.P. Morgan can then provide feedback to the Municipalities as to whether such valuation is competitive with other bidders

This would occur at the time other parties are submitting their preliminary, non-binding bids

- Municipalities will be required to execute standard confidentiality agreements prior to receiving access to any confidential due diligence materials
- Municipalities that choose to participate will be required to submit a final proposal (with as little conditionality as practical) at the time other parties submit final, binding proposals

(3) Allocation of purchase price

- J.P. Morgan will require participants in the process that choose to submit proposals for the acquisition of the Hydro(s) to allocate value to each of the Hydro(s) in the Portfolio
 - J.P. Morgan will make this a condition to moving forward in the process

J.P. Morgan will require that parties do so as part of their preliminary non-binding proposals as well as part of their final, binding proposals

C. Other comments from the Municipalities

The Municipalities included several other questions and / or proposals in their comments submitted to the Commission. Below are J.P. Morgan's responses / answers to such questions / comments:

- J.P. Morgan has not provided an indication of how winning proposals are picked among competing groupings of assets (Berlin / Gorham p.5)
 - J.P. Morgan's goal is to maximize transaction value while also ensure that any party selected will be able to consummate a transaction. Parties will be selected on this basis.
- Bids on groups of assets must have allocation to specific assets (Berlin / Gorham / Bristol / New Hampton)
 - J.P. Morgan will require that parties allocate value to each Hydro to the extent they propose to acquire them
- Request for the Commission to adjudicate at end of phase 1 who goes into phase 2 and then determine rest of auction schedule (Bristol)
 - While J.P. Morgan will certainly discuss the preliminary, non-binding proposals with Commission Staff, the Commission and Staff will rely on J.P. Morgan's judgment and experience to select which parties continue in the process
- Allow Municipalities to give an indication of value in phase 1 and learn whether their value is in the range of indicative bids (New Hampton / Bristol)
 - As discussed above, J.P. Morgan is proposing to modify the auction design to allow for this
- Need Confidentiality Agreement (Berlin / Gorham / Bristol / New Hampton)
 - All parties will be required to execute standard confidentiality agreements with Eversource prior to receiving any non-public, confidential information
- Need access to fully populated virtual data room and CIM by Nov. 1st (Berlin / Gorham / Bristol / New Hampton)
 - As discussed above, J.P. Morgan is proposing to modify the auction design to allow for access to the virtual data room for the three hydros hosted in the four intervening towns during November 2016
 - J.P. Morgan views the CIM as a fleet-wide document, and therefore will make it available to all qualified bidders in early January, as described above
- Ascending clock auction is a fairer and more transparent process that will yield higher prices for assets (Berlin / Gorham)
 - In J.P. Morgan's opinion and experience, this is neither advisable nor standard as it will discourage participation by parties and is unlikely to maximize value

- J.P. Morgan has never conducted an auction for assets like the Portfolio in this manner
- J.P. Morgan is not aware of any auction process involving assets like the Portfolio where the process was conducted in this manner
- Delay auction until close of Trans Canada Sale because that sale will lower interest in this sale (Berlin/Gorham)
 - J.P. Morgan declines to accommodate this suggestion based on its experience and judgment that neither process will interfere with the other, in particular, given the difference in size and scale of the respective asset portfolios being offered for sale
- Wait to start phase 1 until May 1, 2017 (Berlin / Gorham)
 - J.P. Morgan declines to accommodate this suggestion based on its experience and judgment that this is unlikely to enhance the transaction value for the assets and inserts material risk around the potential market appetite for the assets
- Bifurcate sale so fossil assets sell on current schedule and Hydros are delayed (Berlin / Gorham)
 - J.P. Morgan declines to accommodate this suggestion based on its experience and judgment that this is unlikely to enhance the transaction value for the Portfolio
 - Moreover, the Commission has already approved pursuing the sale as a single package of assets along the same timeline
- Wait to start phase 2 until May 1, 2017 and allow the Municipalities to bid even without any action in phase 1(Berlin / Gorham)
 - J.P. Morgan declines to accommodate a delay in the process in this manner based on its experience and judgment that it is unlikely to enhance the transaction value for the assets and inserts material risk around the potential market appetite for the assets
 - As discussed above, J.P. Morgan is proposing to modify the auction design to accommodate participation by Municipalities without providing a preliminary, non-binding indication of interest
- Set a reserve price for Hydros at 2016 Municipalities' tax assessments (Berlin / Gorham)
 - The Order does not require the setting of a minimum price
 - J.P. Morgan would not recommend setting a reserve price as in its experience and judgment it could have a negative impact on maximizing value for the assets
- Allow Municipalities to participate in final negotiations (phase 3) (Berlin / Gorham)
 - J.P. Morgan will allow only those parties that have submitted the most compelling final, binding offers (judged based on value, certainty and contract terms)
 - Doing otherwise would have a negative impact on the process by creating uncertainty and confusion for the bidders, which is not conducive to maximizing transaction value
- If the Municipalities elect not to bid on their respective Hydro(s), allow the Municipalities to see the winning and losing bids so that they can participate in negotiation of allocation with winning bidders (New Hampton)
 - The Commission, Commission Staff and J.P. Morgan are aware of and take seriously the Municipalities concerns regarding their tax bases, and will make every effort to ensure these concerns are addressed appropriately as part of the process
 - Confidentiality is of utmost importance in a process such as the one being conducted by J.P. Morgan and it is equally important to both the seller (Eversource) and potential buyers. It would therefore be neither standard nor appropriate to allow the Municipalities access to the proposals nor to participate in negotiations with winning bidders
- [Placeholder for potential 3rd round concept]

J.P. MORGAN SECURITIES LLC

Date: October [12], 2016

By: _____

Name: Paul Dabbar

Title: Managing Director

Christopher Boldt

From: Christopher Boldt
Sent: Monday, October 17, 2016 2:16 PM
To: 'Ross, F. Anne'; PUC - Executive.Director; Speidel, Alexander; Merrill, Amanda; Noonan, Amanda; christine.vaughan@eversource.com; Christopher.aslin@doj.nh.gov; christopher.goulding@eversource.com; Shulock, David; dhartford@clf.org; Kreis, Donald; elizabeth.tillotson@nu.com; eric.chung@eversource.com; jae@mitchellmunigroup.com; Brennan, James J; Dudley, Jay E; jkennedy@concordnh.gov; kristi.davie@eversource.com; laura.maynard@doj.nh.gov; Stachow, Leszek; linda.landis@psnh.com; lisa.cameron@brattle.com; neil.e.davids@jpmorgan.com; nhlocal@ibew1837.org; PUC - OCA Litigation; Chattopadhyay, Pradip K; Chagnon, Richard; rick.white@eversource.com; robert.bersak@eversource.com; stanguay@townandcitylaw.com; terrance.large@nu.com; tirwin@clf.org; Frantz, Tom; william.smagula@nu.com; zachary.fabish@sierraclub.org
Subject: DE 16-817 JP Morgan Auction Process Modifications

Good Afternoon Anne:

Please consider this email to be my comments on behalf of my clients, the City of Berlin and the Town of Gorham, to the draft document you sent to the participants in this case on the morning of Friday, October 14th. Attorneys Whitelaw and Tanguay may well provide you with confirmation of their joinder in these comments and/or any other concerns on behalf of their municipal clients in this case.

1. The initial Disclaimer page is somewhat disconcerting since that appears to state that nothing JPM does or says can be relied upon despite their professed expertise and the large amount of money they are being paid in this process. That page should be stricken.
2. Page 1, Section 1.A: the final sentence, final clause should be stricken since it implies that the municipalities have no further questions and may not ask further questions in the future. I suggest that there be a reference to the second telephone conference on October 12th and that in both there was an "exchange of information between the parties in an effort to help clarify the respective positions and concerns."
3. Page 1, Section 1.B: the statement that the overall structure and design is not be altered is obviously JPM's and/or Staff's position. As of this time, I cannot say that I am agreeing to that statement. In particular, I have grave concerns about not bifurcating the Hydro sales from the Fossil plants. The Hydros have a very different market of owners/operators, have a different employee pool, and must go through a far more extensive FERC Licensing Transfer process (which the Municipalities can also participate in as intervenors if they desire to do so to protect their interests) than do the Fossils.
4. Page 1, Section 1.B (1): so that there is no conflict with the later paragraphs, I suggest adding a reference to "subject to the specifics below applicable to the Municipalities".
5. Page 1, Section 1.B(2), those specifics should include:
 - a. In the first indented bullet, add a provision that the CIM, Engineering Report and Marketing Report for the Hydro assets will be provided in early November rather than January. This is consistent with earlier representations.
 - b. In the final indented bullet concerning final binding bids, add a date specific of "by May 15th" and clause "subject to a potential third round if the binding second round bids do not exceed the municipalities' floor valuations for the subject Hydros as set forth below."
6. Page 1, last sentence: change "is competitive with other bidders" to "likely to be and/or actually exceeded by the binding bids of others".
7. Page 2, first sentence: add a clause at the end: "and at the end of the Second Round"
8. Page 2, first bullet: delete here and elsewhere the reference to "standard" with respect to the confidentiality agreement. The municipalities are still in the process of working with PSNH's and JPM's attorneys to revise the draft confidentiality agreement.
9. Page 2, second bullet: strike the parenthetical concerning conditionality. Without intending to be exclusive, my concerns include that the clause is vague, has no means of enforcement, and is contrary to the known procedures that the municipalities must comply with per the terms of RSA 38.

10. Page 2, before subsection 3: Add a provision for a Third Round. In short, if as a result of shared information from JPM on the binding bids in the Second Round, the allocated purchase prices for the individual Hydros in the Intervenor communities is not at or above the municipalities' floor valuations for the subject Hydros, then the municipalities can trigger a Third Round and submit for the first time a bid for one or more of the Hydros. Prior bidders will also have the right to increase their bids in this Third Round if they so choose. It is expected that the municipalities will have been doing their due diligence and holding their necessary initial votes pursuant to RSA 38 before May 15th to be able to make their binding bids in this Third Round. JPM recognizes that the second vote pursuant to RSA 38 can only occur within 90 days AFTER the actual purchase price to the municipality is determined.

11. Page 2, subsection 3: I appreciate these terms which make the allocation per Hydro a requirement of all bidding phases. I do ask that a confirmation clause be added that "JPM recognizes that this per-Hydro allocation will be the subject of the Commission's approval of the winning bids in the final adjudicative proceeding in this Docket."

12. Page 2, Section C – comments on the comments:

a. First indented bullet: I would object to any implication that the municipality would not be "able to consummate". NH statutes provide the municipalities the right to purchase and/or take the facilities in question so long as the necessary votes are made by the citizens. Additionally, I ask that a sentence be added to the effect that "The statutory requirement for a confirming vote cannot be a reason to reject a municipality's bid." Furthermore, to give both JPM and the Commission more comfort on this issue, please remember that the municipalities are expressly authorized to issue revenue bonds and notes for the specific purpose of purchasing hydroelectric facilities pursuant to an ordered restructuring. See, RSA 38:13-a.

b. Second to last set of bullets on page 2 concerning the CIM by November 1st: as noted above, a January date is contrary to prior representations. Why the delay? Nothing has been indicated previously to warrant such.

c. Final set of bullets on page 2 concerning "Ascending Clock", nothing has been provided to indicate why this is not advisable or would discourage participation other than JPM has never done one before. This many generation facilities of such different sizes and types may never have been done before and definitely has never been done before in NH (and never will be done here again). "We've never done it that way before" is the mantra of a dying organization.

d. Third set of bullets on page 3 concerning bifurcation, please provide an express reference to the Commission order that is the basis of the clause "already approved" no bifurcation. The Order No. 25,290 in the First Divestiture Docket (DE 14-238) did not address the auction process; and no order to date in the current docket has been entered defining that process.

e. Fourth set of bullets on page 3 concerning delaying the start of phase 2, the two indented bullets are conflicting and the first conflicts with the provisions outlined by JPM in the document provisions above. I believe that the first indented bullet should be deleted for consistency.

f. Fifth set of bullets on page 3 concerning a reserve price, as with the third set, there is no order to date. If JPM believes there is something, please provide. To the best of my knowledge, there is nothing prohibiting a floor price.

g. Sixth set of bullets on page 3 concerning municipal participation in final negotiations, the use of the word "certainty" raises the same concerns as "conditionality" above. If the Third Round is adopted as I have proposed, this original suggestion is then addressed.

h. Final set of bullets on page 3, first indented bullet: I am concerned of anything in this document appearing to represent the actions or thoughts of the Commission, even if potentially favorable to my clients. I suggest that the words "the Commission" be stricken. As for the substance of New Hampton's suggestion (which I believe these bullets mischaracterize) and in light of JPM's response, I request confirmation in this passage that JPM recognizes that the winning bids for each asset will need to be approved by the Commission in the final adjudicative proceeding in this Docket; and that as such, there may well need to be Data Requests and Technical Sessions concerning all of the bids. In short, I believe that if the municipalities are not satisfied with the allocations/amounts of the winning bids, we will likely need to see not only the winning bids, but also the losing bids to confirm the bids were properly considered by JPM and the Commission. As was noted earlier in this process, transparency is a key element to confirm that the highest values are received for these major assets.

On behalf of my clients, I greatly appreciate the collective time and attention to these details as we all strive to work through these very important issues in the best interests of the ratepayers and the taxpayers.

Please do not hesitate to let me know if you or the JPM personnel have any questions.

All the best.

Chris

Chris Boldt, Esq.
Donahue, Tucker & Ciandella, PLLC
Direct Dial: 603-766-4573 (Meredith, NH)

The Towle House, 164 NH Route 25, Unit 2

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-----Original Message-----

From: Ross, F. Anne [mailto:F.Ross@puc.nh.gov]

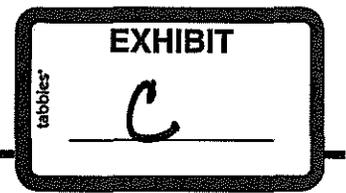
Sent: Friday, October 14, 2016 6:38 AM

To: PUC - Executive.Director; Speidel, Alexander; Merrill, Amanda; Noonan, Amanda; Christopher Boldt; christine.vaughan@eversource.com; Christopher.aslin@doj.nh.gov; christopher.goulding@eversource.com; Shulock, David; dhartford@clf.org; Kreis, Donald; elizabeth.tillotson@nu.com; eric.chung@eversource.com; Ross, F. Anne; jae@mitchellmunigroup.com; Brennan, James J; Dudley, Jay E; jkennedy@concordnh.gov; kristi.davie@eversource.com; laura.maynard@doj.nh.gov; Stachow, Leszek; linda.landis@psnh.com; lisa.cameron@brattle.com; neil.e.davids@jpmorgan.com; nhlocal@ibew1837.org; PUC - OCA Litigation; Chattopadhyay, Pradip K; Chagnon, Richard; rick.white@eversource.com; robert.bersak@eversource.com; stanguay@townandcitylaw.com; terrance.large@nu.com; tirwin@clf.org; Frantz, Tom; william.smagula@nu.com; zachary.fabish@sierraclub.org

Cc: Ross, F. Anne
Subject: JP Morgan Auction Process Modifications

After reviewing comments and having several follow-up conversations with four of the municipalities intervening in this docket, JP Morgan has made some adjustments to the proposed auction process in order to facilitate the municipalities participation in the auction. Please review the attached draft and let us know by 3:00 p.m. today whether you take any position on these changes.

Thanks, Anne



Christopher Boldt

From: Jae Whitelaw <jae@mitchellmunigroup.com>
Sent: Monday, October 17, 2016 3:41 PM
To: Christopher Boldt; 'Ross, F. Anne'; 'PUC - Executive.Director'; 'Speidel, Alexander'; 'Merrill, Amanda'; 'Noonan, Amanda'; christine.vaughan@eversource.com; Christopher.aslin@doj.nh.gov; christopher.goulding@eversource.com; 'Shulock, David'; dhartford@clf.org; 'Kreis, Donald'; elizabeth.tillotson@nu.com; eric.chung@eversource.com; 'Brennan, James J'; 'Dudley, Jay E'; jkennedy@concordnh.gov; kristi.davie@eversource.com; laura.maynard@doj.nh.gov; 'Stachow, Leszek'; linda.landis@psnh.com; lisa.cameron@brattle.com; neil.e.davids@jpmorgan.com; nhlocal@ibew1837.org; 'PUC - OCA Litigation'; 'Chattopadhyay, Pradip K'; 'Chagnon, Richard'; rick.white@eversource.com; robert.bersak@eversource.com; stanguay@townandcitylaw.com; terrance.large@nu.com; tirwin@clf.org; 'Frantz, Tom'; william.smagula@nu.com; zachary.fabish@sierraclub.org
Subject: RE: DE 16-817 JP Morgan Auction Process Modifications

Hello Anne -

I do join in Attorney Boldt's comments on behalf of my client, the Town of New Hampton. In addition, I would like to reiterate the concerns I expressed during our group telephone conferences and my telephone discussions with you. While I understand that JPMorgan and Eversource are committed to an expedited schedule, I do not believe this amended schedule allows sufficient time for New Hampton to prepare for and hold both sessions of a special town meeting after the March 14, 2017 annual town meeting. I will review this current proposed auction schedule with my clients as soon as possible and let you know whether the mid-May binding bid deadline is acceptable.

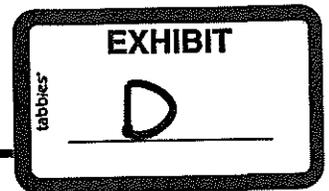
I also want to express the town's and my appreciation for the effort everyone is making to work together toward a successful auction procedure in order to meet the requirements of all involved.

Thank you.

Jae
Jae Whitelaw
Mitchell Municipal Group, P.A.
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Laconia, NH 03246
603-524-3885
jae@mitchellmunigroup.com

-----Original Message-----

From: Christopher Boldt [mailto:CBoldt@dtclawyers.com]
Sent: Monday, October 17, 2016 2:16 PM
To: 'Ross, F. Anne'; PUC - Executive.Director; Speidel, Alexander; Merrill, Amanda; Noonan, Amanda; christine.vaughan@eversource.com; Christopher.aslin@doj.nh.gov; christopher.goulding@eversource.com; Shulock, David; dhartford@clf.org; Kreis, Donald; elizabeth.tillotson@nu.com; eric.chung@eversource.com; jae@mitchellmunigroup.com; Brennan, James J; Dudley, Jay E; jkennedy@concordnh.gov; kristi.davie@eversource.com; laura.maynard@doj.nh.gov; Stachow, Leszek; linda.landis@psnh.com; lisa.cameron@brattle.com; neil.e.davids@jpmorgan.com; nhlocal@ibew1837.org; PUC - OCA Litigation; Chattopadhyay, Pradip K; Chagnon, Richard; rick.white@eversource.com; robert.bersak@eversource.com; stanguay@townandcitylaw.com; terrance.large@nu.com; tirwin@clf.org; Frantz, Tom; william.smagula@nu.com; zachary.fabish@sierraclub.org
Subject: DE 16-817 JP Morgan Auction Process Modifications



Christopher Boldt

From: Shawn Tanguay <STanguay@townandcitylaw.com>
Sent: Monday, October 17, 2016 3:16 PM
To: 'Ross, F. Anne'; PUC - Executive.Director; Speidel, Alexander; Merrill, Amanda; Noonan, Amanda; christine.vaughan@eversource.com; Christopher.aslin@doj.nh.gov; christopher.goulding@eversource.com; Shulock, David; dhartford@clf.org; Kreis, Donald; elizabeth.tillotson@nu.com; eric.chung@eversource.com; jae@mitchellmunigroup.com; Brennan, James J; Dudley, Jay E; jkennedy@concordnh.gov; kristi.davie@eversource.com; laura.maynard@doj.nh.gov; Stachow, Leszek; linda.landis@psnh.com; lisa.cameron@brattle.com; neil.e.davids@jpmorgan.com; nhlocal@ibew1837.org; PUC - OCA Litigation; Chattopadhyay, Pradip K; Chagnon, Richard; rick.white@eversource.com; robert.bersak@eversource.com; terrance.large@nu.com; tirwin@clf.org; Frantz, Tom; william.smagula@nu.com; zachary.fabish@sierraclub.org; jae@mitchellmunigroup.com; Christopher Boldt; Eric A. Maher
Subject: Auction of Electric Generation Facilities DE 16-187

Anne:

In accordance with your request for comments on the latest proposal from J.P. Morgan on the auction process for the sale of PSNH's generation assets, the Town of Bristol joins in the comments/positions provided by Attorney Boldt on behalf of the City of Berlin and Town of Gorham.

In addition, I wanted to point out one mischaracterization of Bristol's previous comments on the prior auction proposal which was referenced in the current draft of the recommended auction procedure by J.P. Morgan. In the middle of page 2, J.P. Morgan states, "Request for the Commission to adjudicate at end of phase 1 *who goes into phase 2* and then determine rest of auction schedule (Bristol)." (emphasis added). The formal comments of the Town of Bristol to the original proposal, by J.P. Morgan, provided a suggestion in which, "Upon the conclusion of Phase I, *J.P. Morgan shall analyze all of the bids and determine the number of bidders to enter into Phase II.*" (emphasis added) *Comments of the Town of Bristol as an Intervenor Regarding the Proposed Auction Procedure as set forth by J.P. Morgan, pg. 6, dated September 30th, 2016.* Bristol's proposal then provided that, "The Commission would then conduct another adjudicatory hearing to determine the remaining schedule of the auction." *Id. at pg. 6.* At no time, did Bristol suggest that the Commission would determine, through an adjudicatory process, which bidders would be allowed into phase II of the auction.

The comments and suggestions provided by the Town of Bristol were merely intended to address the concerns raised by J.P. Morgan at the last technical session on this matter in a manner that allowed the possibility of municipal participation. As I understood J.P. Morgan's position at the technical session, time was of the essence in that the auction needed to take advantage of historically low interest rates (which are subject to possibly rising in the near future). Given the need for expediency, it just seemed that the only way to keep the proposed schedule while allowing municipal participation was to bifurcate the auction schedule which would allow for phase I to happen in accordance with the proposal while determining the level of interest or needs of said municipalities in this process during this portion of the auction. If the bids submitted, during phase I, were to a level that maintained the current tax base then, the municipalities are likely not to participate any further from which the adjudicatory process could happen quickly to affirm the original proposal (thereby maintaining an expedient process). If that wasn't the case then, the parties would need to establish an alternative Phase II process. Again, the Town of Bristol was merely trying to assist the process by providing an alternative that hopefully would meet the needs and concerns of all parties.

If you have any questions or concerns about these latest comments, please contact me at your earliest convenience. Thank you for your attention to this matter.

Sincerely,

Shawn

Shawn M. Tanguay, Esq.
Gardner Fulton & Waugh P.L.L.C.
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