

## **ATTACHMENT 4**

### **Application for Authorization for Disposition of Jurisdictional Facilities Under Section 203 of the Federal Power Act**

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

<b>Public Service Company of New Hampshire</b>	)	<b>Docket No. EC17-__000</b>
<b>FPL Energy Wyman IV LLC</b>	)	

**APPLICATION FOR AUTHORIZATION FOR DISPOSITION OF  
JURISDICTIONAL FACILITIES UNDER SECTION 203 OF THE FEDERAL  
POWER ACT AND REQUEST FOR EXPEDITED ACTION**

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June 21, 2017

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**Public Service Company of New Hampshire        )**                   **Docket No. EC17-\_\_\_\_000**  
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POWER ACT AND REQUEST FOR EXPEDITED ACTION**

Pursuant to section 203(a)(1)(B) of the Federal Power Act, as amended (“FPA”),<sup>1</sup> and Part 33 of the regulations of the Federal Energy Regulatory Commission (“FERC” or “Commission”),<sup>2</sup> Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH” or “Seller”) and FPL Energy Wyman IV LLC (“Wyman IV” or “Buyer” and together with PSNH, the “Applicants”) submit this application (“Application”) requesting all necessary authorizations for a transaction in which Seller will sell its 3.1433% undivided ownership interest as a tenant in common in W.F. Wyman Station – Unit 4 (“Wyman 4 Station” or the “Facility”) and associated jurisdictional facilities to Buyer (the “Transaction”).

As demonstrated herein, the Transaction will not have an adverse effect on competition, rates, or regulation, and will not result in any cross-subsidization concerns.<sup>3</sup> Accordingly, the Transaction is consistent with the public interest and should be authorized by the Commission pursuant to FPA section 203.

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<sup>1</sup> 16 U.S.C. §§ 824b(a)(1)(B) (2012).

<sup>2</sup> 18 C.F.R. Part 33 (2016).

<sup>3</sup> See 18 C.F.R. § 2.26.

## ***I. REQUEST FOR EXPEDITED CONSIDERATION***

Applicants request that the Commission provide for a 21-day comment period<sup>4</sup> and further request the issuance of an order approving the Transaction no later than August 21, 2017. Expedited consideration of this Application is warranted under 18 C.F.R. § 33.11(b) and (c) of the Commission's regulations because the Transaction: (1) does not involve a merger; (2) is consistent with Commission precedent; and (3) does not require an Appendix A analysis. In addition, as explained below and in Exhibit M, the Transaction does not raise any cross-subsidization or encumbrance concerns. Accordingly, Applicants respectfully request Commission action on this Application on or before August 21, 2017, to the extent possible.

## ***II. DESCRIPTION OF WYMAN 4 STATION, APPLICANTS AND RELATED PARTIES***

### ***A. Wyman 4 Station***

Wyman 4 Station is an approximate 620 MW oil-burning generation plant located in Yarmouth, Maine, and has been in operation since 1978. The Facility is interconnected to the ISO New England Inc. ("ISO-NE") grid through the Central Maine Power Company ("CMP") owned portion of the Administered Transmission System pursuant to the Continuing Site/Interconnection Agreements among CMP and Wyman IV, effective as of April 14, 2015,<sup>5</sup> and is operated by a subsidiary of NextEra Energy Resources, LLC. Wyman IV controls the output of Wyman 4 Station. Each owner in the

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<sup>4</sup> See *Transactions Subject to FPA Sec. 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214 at P 155 (2006) (establishing a 21-day comment period for section 203 applications that do not require a detailed Appendix A analysis and that do not raise cross-subsidization concerns), *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006) (collectively, "Order No. 669").

<sup>5</sup> See *Central Maine Power Co.*, Docket Nos. ER15-1551-000, *et al.* (June 5, 2015) (delegated letter order) (approving three executed Continuing Service/Interconnection Agreements, including one between CMP and Wyman IV).



Wyman 4 Station has an undivided ownership interest as a tenant in common in certain real and personal property located at or near the Wyman 4 Station. The joint owners and their respective interests in the Facility are set forth in the following chart:

Joint Owner Name	Ownership Percentage
FPL Energy Wyman IV LLC	84.3461%
Exelon Wyman, LLC	5.8881%
Massachusetts Municipal Wholesale Electric Company	3.6688%
Public Service Company of New Hampshire	3.1433%
Green Mountain Power Corporation	2.9207%
Village of Lyndonville Electric Department	0.0330%

Given that the Transaction does not involve or otherwise affect the undivided ownership interests as tenants in common of Exelon Wyman, LLC, Green Mountain Power Corporation, Massachusetts Municipal Wholesale Electric Company, or the Village of Lyndonville Electric Department, Applicants request waiver from any requirement to provide further details with respect to these owners and their affiliates.

***B. Public Service Company of New Hampshire***

PSNH is a New Hampshire corporation that is a wholly-owned direct subsidiary of Eversource Energy, a voluntary association and Massachusetts business trust that is a public utility holding company under the Public Utility Holding Company Act of 2005. Eversource Energy's shares are publicly traded on the New York Stock Exchange. PSNH is a state regulated electric utility that serves residential, commercial

and industrial customers in parts of New Hampshire through its distribution, transmission and generation facilities.

PSNH's distribution and generation is regulated by the New Hampshire Public Utilities Commission ("NHPUC"). Under New Hampshire law, all of PSNH's retail customers are entitled to choose competitive energy suppliers, with PSNH providing default energy service for those customers who do not choose a competitive energy supplier. In 2016, approximately 48 percent of PSNH's retail load was met through its own generation, long-term power supply provided pursuant to orders of the NHPUC, and contracts with competitive energy suppliers. The remaining 52 percent of PSNH's retail load was met by short-term purchases and spot purchases in the New England wholesale power market run by ISO-NE.

PSNH's transmission, along with the transmission owned by its affiliated Eversource Energy operating utilities,<sup>6</sup> is part of the interstate transmission grid operated by ISO-NE.<sup>7</sup> PSNH was granted market-based rate authority by the Commission, but does not have captive wholesale power customers.<sup>8</sup>

PSNH currently owns approximately 1,200 MW of coal, natural gas, oil-fired and hydro-generation in the ISO-NE balancing authority area ("BAA"). At the direction of legislation enacted by the New Hampshire legislature in 2014 and 2015, the NHPUC initiated

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<sup>6</sup> PSNH's affiliated Eversource Energy transmission owning utilities are: The Connecticut Light and Power Company, NSTAR Electric Company and Western Massachusetts Electric Company.

<sup>7</sup> PSNH is a Participating Transmission Owner in the New England Regional Transmission Organization under the terms of a Transmission Operating Agreement ("TOA"), and ISO-NE provides regional and local services over PSNH's facilities as set forth in the ISO-NE Transmission, Markets and Services Tariff and the TOA.

<sup>8</sup> See, *The Connecticut Light and Power Co., et al.*, delegated letter order dated August 13, 2014 in Docket No. ER10-1801 *et seq.* granting continued market-based rate authorization for PSNH and its affiliates. An application for PSNH's continued authorization is pending at the Commission in Docket No. ER10-1805-004.

a proceeding to determine whether allowing PSNH to divest its remaining generation was in the public interest.<sup>9</sup> Subsequently, the NHPUC issued an order approving a comprehensive settlement that resolved many issues related to PSNH's generation fleet and directed PSNH to commence the process of divesting its remaining generation to comply with the state law restructuring requirements.<sup>10</sup> The NHPUC has since approved a process for conducting a competitive solicitation and auction, including the sale of PSNH's 3.1433% ownership interest in the Facility.<sup>11</sup> The Transaction remains subject to NHPUC approval.

### ***C. FPL Energy Wyman IV LLC***

Wyman IV holds an 84.3461% undivided ownership interest as a tenant in common in the Wyman 4 Station, and also is the sole owner of a 16.2 MW (nameplate) battery storage unit that is co-located at the Wyman 4 Station. Wyman IV is a Delaware limited liability company that is a direct, wholly-owned subsidiary of Wyman Cape Holdings, LLC, a Delaware limited liability company, which in turn is a direct, wholly owned subsidiary of NextEra Maine Fossil, LLC. NextEra Maine Fossil, LLC is a direct, wholly-owned subsidiary of NextEra Energy Resources, LLC ("NextEra Resources"). NextEra Resources is a direct, wholly-owned subsidiary of NextEra Energy Capital

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<sup>9</sup> Docket No. DE14-238, *Public Serv. Co. of NH, Determination Regarding Eversource's Generation Assets*.

<sup>10</sup> Docket Nos. DE11-250 and DE14-238, *Public Serv. Co. of NH, Investigation of Scrubber Costs and Cost Recovery And Determination Regarding Eversource's Generation Assets*, Order No. 25,920 (July 1, 2016), available at <http://www.puc.state.nh.us/Regulatory/Orders/2016orders/25920e.pdf>; see also NH RSA 369-B:1, II ("The general court finds that: II. The divestiture of electric generation by New Hampshire electric utilities will facilitate the competitive market in generation service. Further, the proceeds of generation divestiture may decrease rates for the customers of transmission and distribution utilities").

<sup>11</sup> Docket No. DE16-817, *Public Serv. Co. of NH, Auction of Electric Generation Facilities*, Order of Notice (Sept. 7, 2016); Order Approving Auction Design (Nov. 10, 2016); Order Denying Request for Reconsideration of Auction Design and Request for Stay (Dec. 23, 2016) (these orders are attached in Exhibit L).

Holdings, Inc., a Florida corporation, which in turn, is a direct, wholly-owned subsidiary of NextEra Energy, Inc. (“NextEra”). NextEra, a Florida corporation, is publicly traded company on the New York Stock Exchange.

NextEra Resources is the competitive power subsidiary of NextEra. NextEra Resources’ subsidiaries currently own or operate merchant generating facilities in 25 States and Canada with a combined gross generating capacity of approximately 20,000 MW.<sup>12</sup> In the ISO-NE BAA, NextEra Resources owns or controls a number of other generating resources, which capacity together with Wyman IV totals approximately 2,127 MW.<sup>13</sup> These subsidiaries own various interconnection facilities used solely for connecting generating facilities to the transmission grid. NextEra Resources has one subsidiary with a filed Open Access Transmission Tariff (“OATT”),<sup>14</sup> and other subsidiaries whose interconnection facilities are subject to the blanket waiver from having to file an OATT granted by the Commission in Order No. 807.<sup>15</sup>

NextEra also owns Florida Power & Light Company (“FPL”), a franchised public utility that provides wholesale and retail electric service to customers in the State of Florida. To serve this load, FPL owns approximately 25,100 MW of generation in peninsular Florida. FPL’s transmission facilities are located within the State of Florida

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<sup>12</sup> Substantial ownership interests in some of these facilities are held by NextEra Energy Partners, LP (“NEP”), a publicly traded “yieldco” whose shares are traded on the New York Stock Exchange. NextEra Resources controls NEP, and all public share ownership in NEP consists of passive, limited partnership interests. The total megawatts reflect interests in NextEra Resources’ generating facilities held by NEP.

<sup>13</sup> These affiliates are NextEra Energy Seabrook, LLC, Northeast Energy Associates, LP, FPL Energy Wyman, LLC and FPL Energy Cape, LLC.

<sup>14</sup> See *Sky River LLC*, 136 FERC ¶ 61,162 (2011) (“Sky River”).

<sup>15</sup> *Open Access and Priority Rights on Interconnection Customer’s Interconnection Facilities*, Order No. 807, FERC Stats. & Regs. ¶ 31,367 at P 89, *order denying reh’g and granting clarification*, Order No. 807-A, 153 FERC ¶ 61,047 (2015) (codified at 18 C.F.R. § 35.28(d)).

and are administered pursuant to the FPL OATT, which is on file with the Commission.<sup>16</sup>

Additionally, NextEra owns NextEra Energy Transmission, LLC, which in turn owns New Hampshire Transmission, LLC (“NHT”), an electric utility that owns a single transmission asset, the Seabrook Substation, located in Seabrook, New Hampshire. NHT provides wholesale transmission service to its affiliate, NextEra Energy Seabrook, LLC, through a Local Network Service Tariff on file with the Commission.<sup>17</sup> ISO-NE has operational control of the regional transmission facilities associated with the Seabrook Substation.<sup>18</sup> In addition, a number of other subsidiaries have submitted formula rate templates and tariffs with the Commission.<sup>19</sup> None of these subsidiaries currently own or operate transmission facilities, although each is an active participant in competitive transmission development processes underway in their respective regions.

Finally, Wyman IV is affiliated with two FERC regulated interstate natural gas pipelines.<sup>20</sup> NextEra through its subsidiaries indirectly owns 42.5% of Sabal Trail Transmission, LLC (“STT”). STT is an approximately 515-mile long interstate natural gas pipeline that begins in Alabama and terminates in central Florida. STT also includes leased capacity on Transcontinental Gas Pipe Line Company, LLC. STT entered service in June 2017, and Phase 1 of STT is expected to commence operation on July 1, 2017. NextEra through its subsidiaries also indirectly owns 100% of Florida Southeast

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<sup>16</sup> FPL FERC Electric Tariff, 2nd Revised Volume No. 6.

<sup>17</sup> See *New Hampshire Transmission, LLC*, Notice of Succession and Revised Rate Schedule, Docket No. ER10-1523, Letter Order (issued Jul. 27, 2010).

<sup>18</sup> See ISO New England, Inc., Schedule 21-NHT, Version 2.0.0.

<sup>19</sup> These subsidiaries are NextEra Energy Transmission West, LLC; NextEra Energy Transmission New York, Inc.; NextEra Energy Transmission MidAtlantic, LLC; NextEra Energy Transmission Midwest, LLC; and, NextEra Energy Transmission Southwest, LLC.

<sup>20</sup> See *Florida Southeast Connection, LLC et al.*, 154 FERC ¶ 61,080, *order on reh’g* 156 FERC ¶ 61,160 (2016).

Connection, LLC (“FSC”). FSC is an approximately 126-mile long interstate natural gas pipeline that interconnects with STT in central Florida and terminates near Indiantown, Florida. FSC entered commercial operation in June 2017.

Wyman IV also is affiliated with a number of Hinshaw Pipelines that are exempt from Commission jurisdiction pursuant to section 1(c) of the Natural Gas Act. NET Midstream, LLC owns or controls seven intrastate pipelines in Texas and one pipeline in Louisiana. NET Mexico Pipeline Partners, LLC (“NET Mexico”) owns an approximately 120-mile long pipeline from Agua Dulce, Texas to the U.S.-Mexico border near Rio Grande City, Texas. In addition to providing intrastate service, NET Mexico also has authority to transport gas in interstate commerce under section 311 of the Natural Gas Policy Act of 1978 subject to Commission jurisdiction (“311 Service”). Eagle Ford Midstream, LP (“EFM”) owns an approximately 166-mile long pipeline in LaSalle, McMullen, Duval, Jim Wells and Nueces Counties, Texas. EFM provides both intrastate and 311 Service. Monument Pipeline, LP owns an approximately 78-mile pipeline that serves the south Houston, Texas area. LaSalle Pipeline, LP owns a 52-mile long pipeline from Tilden, Texas to Pearsall, Texas that serves South Texas Electric Cooperative’s (“STEC”) Pearsall electric plant. South Shore Pipeline, LP owns an approximately 26-mile long pipeline that serves the City of Corpus Christi, Texas. Mission Valley Pipeline Company, LP owns a 0.5 long pipeline in Nursery, Texas that serves STEC’s Sam Rayburn Power Plant. Red Gate Pipeline, LP owns an approximately 26-mile long pipeline that interconnects to NET Mexico in Hidalgo County, Texas and will serve STEC’s Red Gate Power Plant that is currently under construction. Finally, Mission Natural Gas Company, LLC (“Mission”) owns an approximately 1.3-mile long pipeline in West Feliciana Parish, Louisiana that runs from

an interconnection with Texas Eastern Gas Transmission, LLC to an ultimate industrial user where it delivers all of its gas.

### ***III. DESCRIPTION OF THE TRANSACTION***

#### ***A. The Transaction***

Attachment I sets forth the Purchase and Sale Agreement pursuant to which the proposed Transaction will be consummated. Pursuant to the proposed Transaction, PSNH will sell its 3.1433% undivided ownership interest as a tenant in common in Wyman 4 Station and associated jurisdictional facilities to Wyman IV. The sale will be subject to closing conditions, including, without limitation, authorization by the NHPUC. *See* Exhibit L. After consummation of the proposed Transaction, Wyman IV's ownership interest in Wyman 4 Station will increase to 87.4894%. Organizational charts depicting the upstream ownership of Wyman 4 Station before and after the Transaction are included in Exhibit C.

#### ***B. Jurisdictional Facilities Affected by the Transaction***

The jurisdictional facilities that will be affected by the Transaction consist of various books and records, and the interconnection facilities associated with the Facility.

### ***IV. REQUEST FOR FPA SECTION 203 APPROVAL***

Commission approval under section 203 of the FPA requires a finding that the Transaction will be consistent with the public interest.<sup>21</sup> In determining whether a proposed disposition of jurisdictional facilities is consistent with the public interest, the Commission considers four factors: (1) the effect on competition; (2) the effect on rates; (3) the effect on regulation; and (4) whether the proposed transaction will result in cross-subsidization of non-utility associate companies or pledge or encumbrance of utilities for

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<sup>21</sup> *See* 16 U.S.C. § 824b(a)(4).

the benefit of associate companies.<sup>22</sup> The proposed Transaction is consistent with the public interest under these criteria as outlined by the Commission in its regulations, in the *Merger Policy Statement*,<sup>23</sup> the *Supplemental Section 203 Policy Statement*,<sup>24</sup> and Order No. 669, and warrants approval as explained below. Moreover, the New Hampshire Legislature has found that divestiture of PSNH's generating assets, including Wyman 4 Station, is consistent with the public interest.<sup>25</sup>

**A. *The Transaction Will Not Have an Adverse Effect on Competition***

The Commission should find that the proposed Transaction will not have an adverse effect on competition in the relevant market because it does not raise any horizontal or vertical market power concerns.

**1. *The Transaction raises no horizontal market power concerns***

The relevant geographic market for purposes of analyzing the Transaction is the ISO-NE BAA. Section 33.3(a)(2)(i) of the Commission's regulations states that a horizontal competitive screen analysis is not required if the applicant "[a]ffirmatively demonstrates that the merging entities do not currently conduct business in the same geographic markets or that the extent of the business transactions in the same geographic

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<sup>22</sup> See 18 C.F.R. § 2.26.

<sup>23</sup> *Inquiry Concerning the Comm'n's Merger Policy Under the Fed. Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *recons. denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (codified at 18 C.F.R. pt. 2.26).

<sup>24</sup> *FPA Sec. 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007), *order on clarif.*, 122 FERC ¶ 61,157 (2008).

<sup>25</sup> See NH RSA 369-B:3-a ("The general court finds that divestiture of PSNH's generation plants and securitization of any resulting stranded costs pursuant to RSA 369-B:3, IV(c) is in the public interest...").



markets is *de minimis*.<sup>26</sup> Under this standard, no horizontal competitive screen analysis is required with respect to the Transaction because the increase in post-transaction installed capacity in the relevant geographic market (ISO-NE) of Wyman IV and its affiliates is clearly small. As seen in the following “2ab” analysis, which is based on ISO-NE’s 2017-2026 Forecast Report of Capacity, Energy, Loads and Transmission,<sup>27</sup> the change in the HHI based on the overlap is *de minimis* and accordingly a delivered price test is not needed.

EIA PLANT NUMBER	NAMEPLATE (MW)	As of Jan. 2017 SCC Report		
		WINTER SCC (MW)	SUMMER SCC (MW)	
TOTAL	37,372.911	33,129.551	30,523.286	
			MW	Share
NextEra (with only 84% of Wyman 4)			2,127.400	6.97%
PSNH			19.000	0.06%
2ab				0.868

Thus, there is less than a one point change in the HHI.<sup>28</sup>

<sup>26</sup> 18 C.F.R. § 33.3(a)(2)(i). See also *Liberty Elec. Power*, 110 FERC ¶ 62,152 (2005) (approving transfer of jurisdictional facilities without requiring horizontal competitive screen analysis where parties held only *de minimis* interests in relevant markets).

<sup>27</sup> See [https://www.iso-ne.com/static-assets/documents/2017/05/2017\\_celt\\_report.xls](https://www.iso-ne.com/static-assets/documents/2017/05/2017_celt_report.xls) (May 1, 2017).

<sup>28</sup> Wyman IV notes that in prior market-based rate filings, including the triennial market power update for the Northeast region being submitted by June 30, 2017, NextEra Resources has attributed 100% of the Wyman 4 Station to Wyman IV based on control. Thus, the Transaction will not result in a change in control, just in ownership. The Commission previously has considered HHI changes based on a “2ab” method to be relevant. See, e.g., *NRG Yield, Inc.*, 148 FERC ¶ 61,109 at PP 13-14 (2014); *The AES Corporation*, 137 FERC ¶ 61,122 at P 24 (2011); *SUEZ Energy North America, Inc.*, 125 FERC ¶ 61,188 (2008); *MidAmerican Energy Holdings Co.*, 113 FERC ¶ 61,298 (2005); *Union Electric Co.*, 114 FERC ¶ 61,255 (2006). See also *Northern States Power Company – Minnesota*, 147 FERC ¶ 62,003 at page 4 and n.3 (2014). The “2ab” method refers to a simplified form of the HHI calculation. The market share of company “a” and the market share of company “b” contribute  $a^2 + b^2$  to the HHI calculation pre-transaction and  $(a+b)^2$  post-transaction. Because  $(a+b)^2 = a^2 + b^2 + 2ab$ , subtracting the pre-transaction  $a^2 + b^2$  yields 2ab as the calculation of the HHI change.

## ***2. The Transaction raises no vertical market power concerns***

Section 33.4(a)(2) of the Commission's regulations states that a vertical competitive analysis is not required if the applicants affirmatively demonstrate that "the merging entities currently do not provide inputs to electricity products . . . in the same geographic markets."<sup>29</sup> Under this standard, no vertical competitive screen analysis is required because the Transaction does not involve the combination of control over generation with control over transmission or other vertical inputs to generation.

Following the Transaction, Wyman 4 Station's affiliation with FPL, NHT, and Sky River, each of which owns or controls electric transmission facilities in the United States, will remain unchanged.<sup>30</sup> Such affiliations do not raise any competitive concerns because service on the transmission facilities owned or controlled by FPL and Sky River is provided pursuant to Commission-accepted OATTs; service over the transmission facilities owned by NHT is provided pursuant to a Commission-accepted Local Network Service Tariff, and ISO New England, Inc. has operational control of the regional transmission facilities associated with the Seabrook Substation. Neither Buyer nor its affiliates own or control any other transmission facilities in the United States, except for limited equipment necessary to interconnect individual generating facilities to the transmission grid. Moreover, while Wyman IV is affiliated with two interstate natural gas pipelines as discussed above in Section II.C, they are not located in the same

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<sup>29</sup> 18 C.F.R. § 33.4(a)(1).

<sup>30</sup> As discussed above, a number of NextEra Energy Transmission subsidiaries have rate schedules or tariffs on file with the Commission, but do not presently own or control any transmission facilities. *See supra* note 19 and accompanying text.

geographic market, and thus in accordance with section 33.4(2)(i)<sup>31</sup> of the Commission's regulations a vertical market power analysis need not be filed.

In addition, the Transaction does not involve any essential inputs to electricity products or electric power production as defined in sections 33.4 and 35.36 of the Commission's regulations,<sup>32</sup> including intrastate natural gas storage or distribution facilities, physical coal supply sources, or ownership of or control over who may access transportation of coal supplies. With regard to intrastate natural gas transportation facilities, these facilities are in no way involved in the Transaction, and therefore will not be affected by the Transaction. Therefore, the Transaction will have no adverse effect on vertical market power.

***B. The Transaction Will Have No Effect on Rates***

The proposed Transaction will not have an adverse effect on the rates charged to either wholesale sales or transmission service customers. Following the proposed Transaction, all of the sales of electric energy owned by Wyman IV will be made at market-based rates authorized by the Commission. The Commission has previously ruled that market-based wholesale power sales do not raise concerns about a transaction's possible adverse effect on rates.<sup>33</sup> In addition, while certain affiliates of Wyman IV currently provide unbundled transmission services as described above, such affiliates are not involved in the Transaction, and therefore their rates will not be affected by the Transaction.

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<sup>31</sup> 18 C.F.R. § 33.4(2)(i).

<sup>32</sup> 18 C.F.R. §§ 33.4 and 35.36.

<sup>33</sup> See, e.g., *Ameren Energy Generating Co.*, 145 FERC ¶ 61,034 at PP 83-88 (2013).

As previously stated, PSNH has no captive wholesale power customers and its transmission rates and services (administered through the ISO-NE Tariff) will be unaffected by the Transaction. Furthermore, PSNH's divestiture of its Wyman IV entitlement is part of the overall generation divestiture process ordered by the NHPUC. PSNH's retail customers will receive a one-time credit of the net proceeds of the sale in PSNH's retail delivery rate, which will be ordered as part of the NHPUC's approval of this transaction.<sup>34</sup>

***C. The Transaction Will Have No Effect on Regulation***

After the Transaction is consummated, the Commission will continue to have the same jurisdiction over wholesale sales of electric energy by Wyman IV as it had before. A condition precedent to the closing of the Transaction is NHPUC approval. Therefore, the proposed Transaction will have no effect on regulation for purposes of the public interest determination by the Commission under FPA section 203.<sup>35</sup>

***D. No Potential for Cross-Subsidization***

Under section 203(a)(4) of the FPA and 18 C.F.R. § 2.26(f) of its regulations, the Commission considers whether a proposed transaction will result in cross-subsidization of a non-utility associate company by a utility company, or in a pledge or encumbrance of utility assets for the benefit of an associate company. As explained in Exhibit M, because the proposed Transaction does not involve a franchised public utility associate company that has captive ratepayers, it falls within one of the "safe harbors" identified by the

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<sup>34</sup> Consistent with the Commission's Policy Statement in Docket No. PL15-3-000 at P. 96, a hold harmless commitment is unnecessary where the applicant can demonstrate that customers are fully protected. *See*, 155 FERC ¶ 61,189 (2016) ("we reaffirm that a hold harmless commitment is not a requirement for an FPA section 203 application; in cases in which some form of ratepayer protection may be appropriate, applicants may offer other forms of ratepayer protection to demonstrate that the transaction has no adverse effect on rates.").

<sup>35</sup> *See* 18 C.F.R. § 2.26(e).

Commission. In addition, based on facts and circumstances known to Applicants or that are reasonably foreseeable, the Transaction will not result in, at the time of the Transaction or in the future, cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company.

**V. INFORMATION AND EXHIBITS REQUIRED BY PART 33 OF THE COMMISSION'S REGULATIONS**

In compliance with 18 C.F.R. § 33.2 of the Commission's regulations,<sup>36</sup>

Applicants submit the following information:

**A. Section 33.2(a): Name and Principal Business Office of Applicants**

For the Seller:

Public Service Company of New Hampshire  
780 N. Commercial Street  
Manchester, NH 03105-0330  
Tel: (603) 634-3355  
Fax: (603) 634-2438

For the Buyer:

FPL Energy Wyman IV LLC  
700 Universe Blvd.  
Juno Beach, FL 33408-0428  
Tel: (561) 304-6078  
Fax: (561) 304-5840

**B. Section 33.2(b): Names and Addresses of the Persons Authorized to Receive Notices and Communications**

The names and addresses of persons authorized to receive notices and communications with respect to this Application are as follows:

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<sup>36</sup> 18 C.F.R. § 33.2.

Phyllis E. Lemell  
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**C. Section 33.2(c): Description of Applicants, including:**

**1. Business Activities of Applicants**

Applicants' business activities are described in Section II above. Accordingly, Applicants request waiver of any requirement to file a separate Exhibit A.

**2. Energy Subsidiaries and Energy Affiliates**

Exhibit B sets forth the U.S. energy subsidiaries and affiliates of the Buyer. PSNH will no longer hold an ownership in Wyman 4 Station following the Transaction. Therefore, Applicants request a waiver of the requirement to include any additional information regarding the energy subsidiaries and affiliates of PSNH in Exhibit B.

**3. Organizational Charts**

Applicants provide as Exhibit C simplified organizational charts depicting Applicants' pre-Transaction and post-Transaction upstream ownership.

**4. Description of Joint Ventures, Strategic Alliances, Tolling Agreements, or Other Business Agreements**

The Transaction involves no jurisdictional arrangements between the parties apart from those described in Section II and III.A, above. In addition, the Transaction involves no transmission facilities (except for the limited equipment necessary to interconnect the Facility with the transmission grid). There are no strategic alliances, joint ventures, tolling arrangements, or other proposed business arrangements that are affected by the

Transaction other than as described herein. Therefore, Applicants respectfully request waiver of the requirement to submit Exhibit D.

**5. Common Officers or Directors**

There are no officers or directors of the Wyman 4 Station pursuant to the joint ownership agreement. There are currently no common officers or directors shared between PSNH and its affiliates, on the one hand, and Wyman IV and its affiliates, on the other hand. Following consummation of the Transaction, PSNH and its affiliates, on the one hand, and Wyman IV and its affiliates, on the other hand, will not have any common officers or directors. To the extent that the Transaction may result in any person holding interlocking positions subject to the Commission's regulations, the appropriate filings under 18 C.F.R. Parts 45 and 46 will be timely made. Accordingly, Applicants request waiver of any requirement to file an Exhibit E listing common officers and directors.

**6. Description of Wholesale Customers**

Presently, Eversource Energy Service Company (on behalf of PSNH) utilizes PSNH's ownership interest in Wyman 4 Station to serve New Hampshire retail customers or to dispose of the power in the wholesale market pursuant to its market-based rate authorization from the Commission. Following the disposition of its ownership interest in the Wyman 4 Station, in accordance with the settlement agreement approved by the NHPUC, "[n]o later than six months after the final financial closing resulting from divestiture of [PSNH's] generating assets, [PSNH] will transition to a competitive procurement process for default service."<sup>37</sup> As a result, following the Transaction, PSNH's 3.1433% interest in Wyman 4 Station will no longer be utilized by PSNH for the

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<sup>37</sup> *Re: Public Service Co. of New Hampshire*, NHPUC Order No. 25,920 (July 1, 2016), *slip op.* at 38.

benefit of its retail customers, and Wyman IV through its increased interest in the Wyman 4 Station will continue to make wholesale sales at market-based rates authorized by the Commission.

Neither Buyer nor any of its parent companies, subsidiaries, affiliates, and associate companies own or control any transmission facilities in the United States, other than facilities subject to a Commission-accepted OATT or Local Network Service Tariff or the limited equipment necessary to connect individual generating facilities to the transmission grid. In any event, the Transaction does not involve any transmission rates or transmission customers. Therefore, the Transaction will not affect any unbundled transmission service customers. Accordingly, Applicants request a waiver of the requirement to file Exhibit F.

***D. Section 33.2(d): Description of Jurisdictional Facilities***

The jurisdictional facilities involved in the Transaction are described in Section III.B. of this Application. Accordingly, Applicants requests waiver of the requirement to file a separate Exhibit G.

***E. Section 33.2(e): Narrative Description of the Transaction***

The description of the Transaction is set forth in Sections II and III above, which includes identification of the parties, description of the jurisdictional facilities associated with or affected by the Transaction, and the effect of the Transaction on such jurisdictional facilities. Moreover, the consideration for the Transaction is the result of arm's-length negotiations among the parties to the Transaction, and is subject to the generation divestiture process authorized by and under the control of the NHPUC, with



the NHPUC retaining such direction and control as it deems necessary.<sup>38</sup> Accordingly, Applicants request a waiver of the requirement to file Exhibit H.

***F. Section 33.2(f): Contracts with Respect to the Transaction***

Exhibit I contains the Purchase and Sale Agreement pursuant to which the proposed Transaction will be consummated. To the extent necessary, Applicants request a waiver of the requirements of 18 C.F.R. § 33.2(f) as to any other incidental contracts and written instruments that may be entered into by the parties, none of which will be inconsistent with the Purchase and Sale Agreement and the description of the Transaction set forth in this Application.

***G. Section 33.2(g): Facts Relied Upon to Show That the Transaction Is in the Public Interest***

The facts relied upon to demonstrate that the Transaction is consistent with the public interest are included in Section IV of this Application. Therefore, Applicants requests waiver of the requirement to file a separate Exhibit J.

***H. Section 33.2(h): Maps of Physical Property***

The only physical jurisdictional facilities involved in the Transaction are interconnection facilities associated with Wyman 4 Station. Thus, a map would not provide the Commission with information relevant to whether the proposed Transaction is consistent with the public interest, and therefore Applicants request waiver of the requirement to file Exhibit K.

***I. Section 33.2(i): Status of Approvals from Before Other Regulatory Bodies***

The Transaction remains subject to the approval of the NHPUC. Exhibit L contains the NHPUC orders authorizing the auction process. Applicants will supplement

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<sup>38</sup> NHPUC Order 25,920 at 40.

this Application should the NHPUC issue an order on the proposed Transaction prior to disposition by the Commission.

***J. Section 33.2(j): Cross-Subsidization and Encumbrances***

Wyman IV's representations with respect to cross-subsidization and encumbrance of utility assets are included in Section IV.D. and in Exhibit M.

***K. Section 33.5: Accounting Entries***

Wyman IV is not required to maintain their books of account in accordance with the Commission's Uniform System of Accounts. Therefore, Wyman IV is not required to file proposed accounting entries. PSNH is providing its proposed accounting entries for this Transaction in Attachment 1.

***L. Section 33.7: Verifications***

Verification signed by a representative having authority for PSNH and Wyman IV with respect to this Application and having knowledge of matters related to the Buyer set forth herein is included in Attachment 2.

## ***VI. CONCLUSION***

For the reasons set forth above, Applicants request that the Commission: (i) issue an order approving the Transaction, and (ii) grant the waivers requested herein. Applicants also respectfully request that the Commission issue its order on or before August 21, 2017, to permit the parties to consummate the Transaction as soon as possible.

Respectfully submitted,

\_\_\_\_\_/s/  
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June 21, 2017

**Exhibits A, D, E, F, G, H, J, K, and L**

**Applicants have requested a waiver of the requirement to file**

**Exhibits A, D, E, F, G, H, J, K**

**U.S. Energy Affiliates of Buyer**

Exhibit B - NextEra Energy Affiliates			Location			
[A]	[B]	[C]	[G]	[H]	[J]	[L]
Filing Entity and its Energy Affiliates	Docket # where MBR authority was granted	Generation Name (Plant or Unit Name)	Market / Balancing Authority Area	Geographic Region	Capacity Rating: Nameplate (MW)	Capacity Rating: Methodology Used in [K]: (N)ameplate, (S)easonal, 5- yr (U)nit, 5-yr (E)IA, (A)lternative
Oliver Wind III, LLC	ER16-2506	Oliver Wind III	MISO	Central	99.3	N
Marshall Solar, LLC	ER16-1872	Marshall Solar	MISO	Central	62.25	N
Pheasant Run Wind, LLC	ER13-2641	Pheasant Run	MISO	Central	74.8	N
Tuscola Wind II, LLC	ER13-2458	Tuscola II	MISO	Central	100.3	N
Tuscola Bay Wind, LLC	ER12-1660	Tuscola Bay	MISO	Central	120	N
White Oak Energy LLC	ER10-2078	White Oak Energy	MISO	Central	150	N
Ashtabula Wind III, LLC	ER11-26	Ashtabula Wind III	MISO	Central	62.4	N
Baldwin Wind, LLC	ER10-2551	Baldwin Wind	WAUE	Central	102.4	N
Day County Wind, LLC	ER10-825	Day County Wind	WAUE	Central	99	N
Garden Wind, LLC	ER10-296	Garden Wind	MISO	Central	150	N
Crystal Lake Wind III, LLC	ER10-297	Crystal Lake III	MISO	Central	66	N
Butler Ridge Wind Energy Center, LLC	ER10-2	Butler Ridge	MISO	Central	54	N
Wessington Wind Energy Center, LLC	ER10-3	Wessington	WAUE	Central	51	N
Wilton Wind II, LLC	ER09-1760	Wilton Wind II	WAUE	Central	49.5	N
Ashtabula Wind II, LLC	ER09-1656	Ashtabula Wind II	MISO	Central	120	N
Crystal Lake Wind, LLC	ER08-1293	Crystal Lake I	Alliant (MISO)	Central	150	N
Crystal Lake Wind II, LLC	ER08-1294	Crystal Lake II	Alliant (MISO)	Central	200	N

Exhibit B - NextEra Energy Affiliates						
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Osceola Windpower II, LLC	ER08-1296	Osceola II (Endeavor II)	Alliant (MISO)	Central	50	N
Ashtabula Wind, LLC	ER08-1297	Ashtabula	OTP (MISO)	Central	148.5	N
Story Wind, LLC	ER08-1300	Story County	Alliant (MISO)	Central	150	N
Langdon Wind, LLC	ER08-250	Langdon	OTP (MISO)	Central	159	N
FPL Energy Oliver Wind I, LLC	ER09-138	Oliver County I	MP (MISO)	Central	50.6	N
FPL Energy Oliver Wind II, LLC	ER08-197	Oliver County II	MP (MISO)	Central	48	N
FPL Energy South Dakota Wind, LLC	ER03-1103	South Dakota Wind	WAUE	Central	40.5	N
Hawkeye Power Partners, LLC	ER98-2076	Cerro Gordo Wind Project	ALTW (MISO)	Central	40.5	N
FPL Energy Hancock County Wind, LLC	ER03-34	Hancock County (Iowa)	ALTW (MISO)	Central	97.6	N
Lake Benton Power Partners II, LLC	ER98-4222	Lake Benton II	NSP (MISO)	Central	102.75	N
FPL Energy North Dakota Wind, LLC	ER03-1104	North Dakota	WAUE	Central	40.5	N
NextEra Energy Duane Arnold, LLC f/k/a FPL Energy Duane Arnold, LLC	ER09-988 (former docket no. ER05-1281)	Duane Arnold	ALTW (MISO)	Central	615	S
FPL Energy Burleigh County Wind, LLC	ER06-9	Wilton Wind	WAUE	Central	49.5	N
FPL Energy Mower County, LLC	ER06-1261	Mower County	ALTW (MISO)	Central	98.9	N

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NextEra Energy Point Beach, LLC f/k/a FPL Energy Point Beach, LLC	ER09-989 (former docket no. ER07-904)	Point Beach	WEP (MISO)	Central	1,189.80	S
FPL Energy North Dakota Wind II, LLC	ER03-1105	North Dakota II	OTP(MISO)	Central	21	N
Osceola Windpower, LLC	ER07-174	Osceola (Endeavor)	MISO	Central	100	N
Windpower Partners 1993, LLC	QF94-82	Windpower Ptrs '93 (Buffalo Ridge)	NSP (MISO)	Central	25.92	N
River Bend Solar, LLC	ER16-1913	River Bend	TVA	Southeast	75	N
Live Oak Solar, LLC	ER16-1354	Live Oak Solar	SOCO	Southeast	51	N
White Oak Solar, LLC	ER16-1293	White Oak Solar	SOCO	Southeast	76.5	N
White Pine Solar, LLC	ER16-1277	White Pine Solar	SOCO	Southeast	101.3	N
Florida Power & Light Company	ER15-2485	Cedar Bay	FPL	Southeast	250 summer/ 250 winter	S
Florida Power & Light Company	ER03-1292	Riviera Beach	FPL	Southeast	1,250	S
Florida Power & Light Company	ER03-1292	Lauderdale	FPL	Southeast	840	S
Florida Power & Light Company	ER03-1292	Fort Myers	FPL	Southeast	1,432	S
Florida Power & Light Company	ER03-1292	St Lucie 1 & 2	FPL	Southeast	981	S
Florida Power & Light Company	ER03-1292	Cape Canaveral	FPL	Southeast	853	S



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Florida Power & Light Company	ER03-1292	Sanford	FPL	Southeast	1,210	S
Florida Power & Light Company	ER03-1292	St Johns River Power Park	FPL	Southeast	1,980	S
Florida Power & Light Company	ER03-1292	Scherer 4	SOCO	Southeast	254	S
Florida Power & Light Company	ER97-3359	West County Energy Center Unit 1, 2, and 3	FPL	Southeast	643	S
Florida Power & Light Company	ER97-3359	Space Coast Solar Energy Center	FPL	Southeast	3,657	N
Florida Power & Light Company	ER97-3359	DeSoto Next Generation Solar Energy Center	FPL	Southeast	10	N
Florida Power & Light Company	ER97-3359	Manatee	FPL	Southeast	25	S
Florida Power & Light Company	ER97-3359	Martin	FPL	Southeast	2,729	S
Florida Power & Light Company	ER97-3359	Turkey Point	FPL	Southeast	3,731	S
Blue Summit Wind, LLC	N/A	Blue Summit	ERCOT	N/A	135.4	N
FPL Energy Callahan Wind, LLC	N/A	Callahan Divide	ERCOT	NA	114	N
Capricorn Ridge Wind, LLC	N/A	Capricorn Ridge	ERCOT	NA	364	N
Capricorn Ridge Wind II, LLC	N/A	Capricorn Ridge II	ERCOT	NA	298.5	N

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Indian Mesa Wind Farm, LLC	N/A	Indian Mesa	ERCOT	NA	82.5	N
FPL Energy Upton Wind, LLC	N/A	King Mountain	ERCOT	NA	278.2	N
West Texas Wind Energy Partners, LLC	N/A	Southwest Mesa	ERCOT	NA	77.3	N
Wolf Ridge Wind, LLC	N/A	Wolf Ridge Wind, LLC	ERCOT	NA	112.5	N
FPL Energy Pecos Wind I - II, LLC	N/A	Woodward Mountain (Pecos Wind)	ERCOT	NA	158.4	N
FPL Energy Horse Hollow Wind, LLC	N/A	Horse Hollow 1-4	ERCOT	NA	735.5	N
Post Wind Farm, LLC	N/A	Red Canyon	ERCOT	NA	84	N
Green Mountain Storage, LLC	ER15-2601	Green Mountain Storage	PJM	Northeast	10.4	N
Meyersdale Storage, LLC	ER15-2602	Meyersdale Storage	PJM	Northeast	18	N
Mantua Creek Solar, LLC	ER14-1630	N/A	PJM	Northeast	N/A	N/A
NEPM II, LLC	ER11-4462	N/A	N/A	N/A	N/A	N/A
NextEra Energy Power Marketing, LLC	ER09-832	N/A	N/A	N/A	N/A	N/A
Energy Storage Holdings, LLC	ER13-752	Energy Storage Holdings	PJM	Northeast	2	N
Paradise Solar Urban Renewal, L.L.C.	N/A	Paradise Solar	PJM	Northeast	5.1	N
NextEra Energy Services Massachusetts, LLC (f/k/a Gexa Energy, LLC)	ER10-1951 (former docket no. ER05-714)	N/A	N/A	N/A	N/A	N/A
FPL Energy Illinois Wind, LLC	ER10-402	Illinois Wind	PJM	Northeast	240	N
Northeast Energy Associates, L.P.	ER05-236	Bellingham	ISO-NE	Northeast	305	S

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FPL Energy Cape, LLC	ER00-3068	Cape	ISO-NE	Northeast	35	S
FPL Energy Wyman LLC	ER98-3566	Wyman	ISO-NE	Northeast	214	S
FPL Energy Wyman IV LLC	ER98-3564	Wyman 4	ISO-NE	Northeast	632	S
NextEra Energy Seabrook, LLC f/k/a FPL Energy Seabrook, LLC	ER09-990 (former docket no. ER02- 1838)	Seabrook	ISO-NE	Northeast	1,246.70	S
Bayswater Peaking Facility, LLC	ER02-669	Bayswater	NYISO	Northeast	55	S
Jamaica Bay Peaking Facility, LLC	ER03-623	Jamaica Bay	NYISO	Northeast	55	S
North Jersey Energy Associates	ER04-187	Sayreville	PJM	Northeast	315	S
Pennsylvania Windfarms, LLC	ER02-2166	Green Mountain	PJM	Northeast	0	N
Backbone Mountain Windpower LLC	ER02-2559	Mountaineer Wind	PJM	Northeast	66	N
Meyersdale Windpower LLC	ER04-290	Meyersdale Wind	PJM	Northeast	30	N
Mill Run Windpower LLC	ER01-1710	Mill Run Wind	PJM	Northeast	15	N
Somerset Windpower LLC	ER01-2139	Somerset Wind	PJM	Northeast	9	N
Waymart Wind Farm L.P.	ER03-1375	Waymart Wind	PJM	Northeast	64.5	N
Whitney Point Solar, LLC	ER17-583	Whitney Point Solar	CAISO	Southwest	20	N
Westside Solar, LLC	ER17-582	Westside Solar	CAISO	Southwest	20	N
Pima Energy Storage System, LLC	ER17-196	Pima	TEP	Southwest	10	N

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High Lonesome Mesa, LLC	ER09-712	High Lonesome Mesa	PNM	Southwest	100	S
NextEra Blythe Solar Energy Center, LLC	ER16-2443	Blythe Energy Center	CAISO	Southwest	0	N
Blythe Solar II, LLC	ER16-632	Blythe Solar II	CAISO	Southwest	131.2	N
Blythe Solar 110, LLC	ER16-91	Blythe Solar 110	CAISO	Southwest	116.5	N
Golden Hills Interconnection, LLC	ER16-90	Golden Hills Interconnection	CAISO	Southwest	0	N/A
Golden Hills Wind, LLC	ER15-2477	Golden Hills Wind	CAISO	Southwest	85.92	N
Silver State Solar Power South, LLC	ER15-2243	Silver State Solar Power South	NV Energy	Southwest	250	N
Adelanto Solar, LLC	ER15-1883	Adelanto Solar	CAISO	Southwest	20	N
Adelanto Solar II, LLC	ER15-1418	Adelanto Solar II	CAISO	Southwest	7	N
McCoy Solar, LLC	ER15-1375	McCoy Solar	CAISO	Southwest	250	N
Shafter Solar, LLC	ER15-1016	Shafter Solar	CAISO	Southwest	20	N
Mountain View Solar, LLC	ER14-21	Mountain View	NV Energy	Southwest	20	N
Genesis Solar, LLC	ER13-2112	Genesis Solar	CAISO	Southwest	250	N
Desert Sunlight 250, LLC	ER13-1991	Desert Sunlight 250	CAISO	Southwest	250	N
Desert Sunlight 300, LLC	ER13-1992	Desert Sunlight 300	CAISO	Southwest	300	N
Perrin Ranch Wind, LLC	ER12-676	Perrin Ranch	AZPS	Southwest	99.2	N
North Sky River Energy, LLC	ER12-2444	North Sky River	CAISO	Southwest	162	N
Windpower Partners 1993, LLC	ER12-631	San Gorgonio Wind	CAISO	Southwest	49.5	N
NextEra Energy Montezuma II Wind, LLC	ER11-4677	Montezuma II Wind	CAISO	Southwest	78.2	N
Vasco Winds, LLC	ER11-4678	Vasco	CAISO	Southwest	78.2	N

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Hatch Solar Energy Center I, LLC	ER11-3635	Hatch Solar	EPE	Southwest	5	N
Red Mesa Wind, LLC	ER11-2192	Red Mesa	PNM	Southwest	102.4	N
FPL Energy Montezuma Wind, LLC	ER11-2160	Montezuma Wind	CAISO	Southwest	36.8	N
Sky River LLC	ER09-901	Sky River	CAISO	Southwest	72.5	N
FPL Energy Cabazon Wind, LLC	ER09-902	Cabazon Wind	CAISO	Southwest	39	N
Diablo Winds, LLC	ER05-222	Diablo Wind	CAISO	Southwest	20.64	N
FPL Energy Green Power Wind, LLC	ER04-127	Green Power	CAISO	Southwest	16.2	N
High Winds, LLC	ER03-155	High Winds	CAISO	Southwest	162	N
FPL Energy New Mexico Wind, LLC	ER03-179	New Mexico Wind	PNM	Southwest	204	N
Luz Solar Partners Ltd., III	ER17-822	SEGS III	CAISO	Southwest	30	N
Luz Solar Partners Ltd., IV	ER17-823	SEGS IV	CAISO	Southwest	30	N
Luz Solar Partners Ltd., V	QF87-402	SEGS V	CAISO	Southwest	30	N
Luz Solar Partners Ltd., VI	QF88-33	SEGS VI	CAISO	Southwest	30	N
Luz Solar Partners Ltd., VII	QF88-34	SEGS VII	CAISO	Southwest	30	N
Luz Solar Partners Ltd., VIII	QF88-470	SEGS VIII	CAISO	Southwest	80	N
Luz Solar Partners Ltd., IX	QF88-472	SEGS IX	CAISO	Southwest	80	N
Carousel Wind Farm, LLC	ER15-2582	Carousel Wind	WACM	Northwest	149.7	N
Golden West Power Partners, LLC	ER15-2101	Golden West	WACM	Northwest	249.4	N
Limon Wind III, LLC	ER14-2138	Limon III	PSCO	Northwest	200.6	N
Limon Wind II, LLC	ER12-2225	Limon Wind II	PSCO	Northwest	200	N

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Limon Wind, LLC	ER12-2226	Limon Wind, LLC	PSCO	Northwest	200	N
FPL Energy Stateline II, Inc.	ER10-256	Stateline II	PACW	Northwest	98.9	N
Northern Colorado Wind Energy, LLC	ER09-1297	Northern Colorado Wind	PSCO	Northwest	174.3	N
Peetz Table Wind Energy, LLC	ER07-875	Peetz Table	PSCO	Northwest	199.5	N
Logan Wind Energy LLC	ER07-1157	Logan Wind	PSCO	Northwest	201	N
FPL Energy Vansycle L.L.C.	ER01-838	Stateline	PACW	Northwest	299.64	N
ESI Vansycle Partners, L.P.	ER98-2494	Vansycle	PACW	Northwest	24.9	N
Brady Interconnection, LLC	ER16-2453	Brady Interconnection	SPP	SPP	0	N
Osborn Wind Energy, LLC	ER16-2297	Osborn Wind	SPP	SPP	200.9	N
Kingman Wind Energy II, LLC	ER16-2276	Kingman I	SPP	SPP	103.3	N
Kingman Wind Energy I, LLC	ER16-2275	Kingman II	SPP	SPP	103.3	N
Rush Springs Wind Energy, LLC	ER16-2240	Rush Springs	SPP	SPP	249.9	N
Ninnescah Wind Energy, LLC	ER16-2241	Ninnescah Wind	SPP	SPP	208.3	N
Brady Wind II, LLC	ER16-2191	Brady Wind I	SPP	SPP	149	N
Brady Wind, LLC	ER16-2190	Brady Wind II	SPP	SPP	149.7	N
Chaves County Solar, LLC	ER16-1672	Chaves Solar	SPP	SPP	70	N
Roswell Solar, LLC	ER16-1440	Roswell Solar	SPP	SPP	70	N
Cedar Bluff Wind, LLC	ER15-2676	Cedar Bluff	SPP	SPP	198.7	N
Breckinridge Wind Project, LLC	ER15-1925	Breckinridge Wind	SPP	SPP	98.1	N
Palo Duro Wind Interconnection Services, LLC	ER15-58	Palo Duro Interconnection	SPP	SPP	0	N/A

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Seiling Wind Interconnection Services, LLC	ER15-30	Seiling Interconnection	SPP	SPP	0	N/A
Seiling Wind, LLC	ER14-2708	Seiling Wind	SPP	SPP	198.9	N
Seiling Wind II, LLC	ER14-2709	Seiling Wind II	SPP	SPP	100.3	N
Palo Duro Wind Energy, LLC	ER14-2710	Palo Duro	SPP	SPP	249.9	N
Mammoth Plains Wind Project, LLC	ER14-2707	Mammoth Plains	SPP	SPP	198.9	N
Steele Flats Wind Project, LLC	ER13-2474	Steele Flats	SPP	SPP	74.8	N
Cimarron Wind Energy, LLC	ER13-712	Cimarron Wind	SPP	SPP	165.6	N
Ensign Wind, LLC	ER12-2227	Ensign Wind	MKEC/SPP	SPP	98.9	N
Minco Wind III, LLC	ER12-1880	Minco Wind III	SPP	SPP	100.8	N
High Majestic Wind II, LLC	ER12-1228	High Majestic II	SPP	SPP	79.6	N
Minco Wind Interconnection Services, LLC	ER12-895	Minco Interconnection	SPP	SPP	0	N/A
Blackwell Wind, LLC	ER12-569	Blackwell Wind	SPP	SPP	59.8	N
Minco Wind II, LLC	ER11-4428	Minco Wind II	SPP	SPP	100.8	N
Minco Wind, LLC	ER10-2720	Minco Wind	SPP	SPP	99.2	N
Elk City II Wind, LLC	ER11-2037	Elk City II	SPP	SPP	100.8	N
Elk City Wind, LLC	ER10-149	Elk City	SPP	SPP	98.9	N
High Majestic Wind Energy Center, LLC	ER10-1	Majestic	SPP	SPP	79.5	N
Gray County Wind Energy, LLC	ER01-1972	Gray County	SPP	SPP	112.2	N
FPL Energy Sooner Wind, LLC	ER03-1333	Sooner Wind	SPP	SPP	51	N
FPL Energy Oklahoma Wind, LLC	ER03-1332	Oklahoma Wind	SPP	SPP	51	N

Exhibit B - NextEra Energy Affiliates			Location			
[A]	[B]	[C]	[G]	[H]	[J]	[L]
Filing Entity and its Energy Affiliates	Docket # where MBR authority was granted	Generation Name (Plant or Unit Name)	Market / Balancing Authority Area	Geographic Region	Capacity Rating: Nameplate (MW)	Capacity Rating: Methodology Used in [K]: (N)ameplate, (S)easonal, 5- yr (U)nit, 5-yr (E)IA, (A)lternative
FPL Energy Cowboy Wind, LLC	ER05-487	Cowboy Wind (Weatherford)	SPP	SPP	147	N
Goshen Wind, LP	FC15-5	Goshen Wind	IESO	Canada	20	N
Kerwood Wind, LP	FC14-17	Kerwood Wind	IESO	Canada	59.9	N
Bornish Wind, LP	FC14-16	Bornish Wind	IESO	Canada	72.9	N
East Durham Wind LP	FC14-15	East Durham	IESO	Canada	22.2	N
Varna Wind, Inc.	FC14-13	Varna Wind	IESO	Canada	60	N
Summerhaven Wind, LP	FC13-13	Summerhaven	IESO	Canada	124.4	N
Conestogo Wind, LP	FC13-7	Conestogo Wind	IESO	Canada	22.9	N
Moore Solar, Inc.	FC12-6	Moore Solar	IESO	Canada	20	N
Sombra Solar, Inc.	FC12-7	Sombra Solar	IESO	Canada	20	N
Ghost Pine Windfarm, LP	FC11-5	Ghost Pine	AESO	Canada	81.6	N
Mount Miller Wind Energy Limited Partnership	FC11-3	Mount Miller	NPCC	Canada	52.2	N
Mount Copper, LP	FC08-11	Mount Copper	NPCC	Canada	52.2	N
Pubnico Point, LP	FC08-10	Pubnico Point	NPCC	Canada	30.6	N

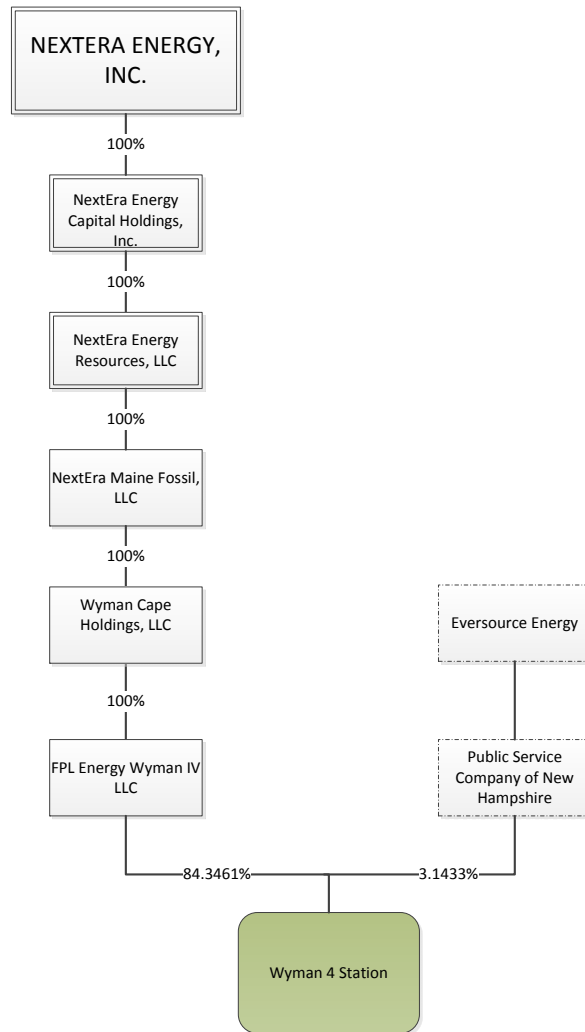


Natural Gas Pipeline Affiliates			
[A]	[B]	[C]	[D]
Asset Name and Use	Owned By	Controlled By	Geographic Region
Seabrook Substation (interconnects Seabrook and 3 345 kV transmission lines)	NEET	ISO-NE	Northeast
Sky River LLC (gen tie) (Wilderness Line)	NextEra Energy	NextEra Energy	Southwest
The NET Mexico Pipeline Partners, LLC	NextEra Energy & NextEra Energy Partners	NextEra Energy	ERCOT
Eagle Ford Midstream, LP	NextEra Energy & NextEra Energy Partners	NextEra Energy	ERCOT
Monument Pipeline, LP	NextEra Energy & NextEra Energy Partners	NextEra Energy	ERCOT
LaSalle Pipeline, LP	NextEra Energy & NextEra Energy Partners	NextEra Energy	ERCOT
South Shore Pipeline, LP	NextEra Energy & NextEra Energy Partners	NextEra Energy	ERCOT
Mission Valley Pipeline Company, LP	NextEra Energy & NextEra Energy Partners	NextEra Energy	ERCOT
Red Gate Pipeline, LP	NextEra Energy & NextEra Energy Partners	NextEra Energy	ERCOT
Mission Natural Gas Company, LLC	NextEra Energy & NextEra Energy Partners	NextEra Energy	Central
Sabal Trail Transmission, LLC	NextEra Energy (42.5%)	Spectra	SouthEast
Florida Southeast Connection, LLC	NextEra Energy	NextEra Energy	SouthEast

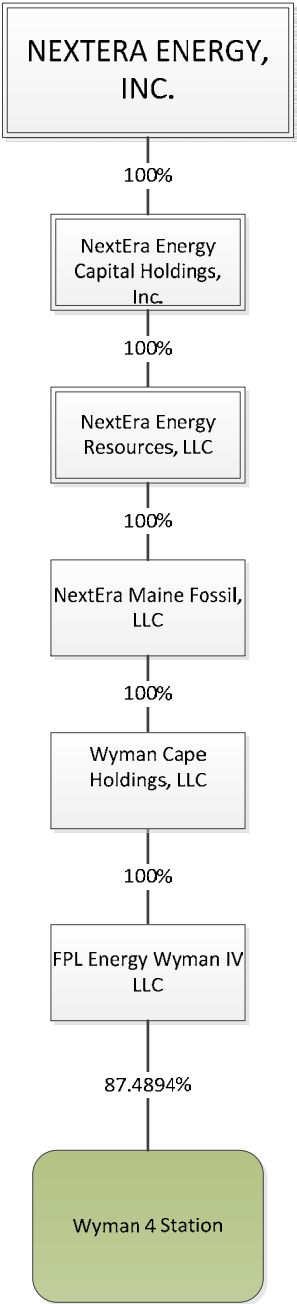
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**Organizational Charts**

**EXHIBIT C-1**  
**Pre-Transaction Organizational Chart**



**EXHIBIT C-2**  
**Post-Transaction Organizational Chart**



**Exhibit I**

**Contract Related to the Transaction**

## PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (the “**Agreement**”), dated as of June 15, 2017 (the “**Effective Date**”), is made and entered into by and between Public Service Company of New Hampshire, a New Hampshire corporation (the “**Seller**”), and FPL Energy Wyman IV LLC, a Delaware limited liability company (the “**Buyer**”). Buyer and Seller are referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

### RECITALS

**WHEREAS**, the Parties, together with the other Wyman 4 Owners, have executed a Joint Ownership Agreement pursuant to which each of the Wyman 4 Owners has an undivided ownership interest as tenants in common in the Wyman 4 Station;

**WHEREAS**, Seller has a 3.1433% undivided ownership interest as a tenant in common in certain real and personal property located at or near the Wyman 4 Station (such ownership interest, the “**Seller’s Wyman Interest**”), and Buyer has an 84.3461% undivided ownership interest as a tenant in common in the real and personal property located at the Wyman 4 Station and is the majority co-tenant owner thereof and operates the Wyman 4 Station on behalf of the Wyman 4 Owners; and

**WHEREAS**, Buyer desires to purchase, and Seller desires to sell, the Seller’s Wyman Interest upon the terms and conditions hereinafter set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants, representations, warranties and agreements hereinafter set forth, and intending to be legally bound hereby, the Parties hereto agree as follows:

**Section 1. Definitions.** As used in this Agreement, the following capitalized terms have the meanings set forth below:

“**Actual Proration Amount**” has the meaning set forth in Section 4(e).

“**Affiliate**” has the meaning set forth in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended.

“**Agreement**” has the meaning set forth in the Preamble to this Agreement.

“**Allocation**” has the meaning set forth in Section 4(c).

“**Assignment and Assumption Agreement**” has the meaning set forth in Section 3(d)(i).

“**Assumed Liabilities**” has the meaning set forth in Section 3(b).

“**Base Price**” has the meaning set forth in Section 3(c).

“**Bill of Sale**” has the meaning set forth in Section 3(d)(i).

**“Business Day”** means any day, other than Saturday, Sunday or any other day on which banks located in the State of New York are authorized or required to close.

**“Buyer”** has the meaning set forth in the Preamble to this Agreement.

**“Buyer Approvals”** has the meaning set forth in Section 5(b)(iv).

**“CAMS”** means ISO-NE’s Customer and Asset Management System.

**“Claims”** means any claims, demands, notice of penalties, assessments, and causes of action.

**“Closing”** has the meaning set forth in Section 3(d).

**“Closing Amount”** has the meaning set forth in Section 3(d)(ii)(A).

**“Closing Date”** has the meaning set forth in Section 3(d).

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Effective Date”** has the meaning set forth in the Preamble to this Agreement.

**“Environmental Law”** means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 through 2629; the Oil Pollution Act, 33 U.S.C. § 2701 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq.; the Bald and Golden Eagle Protection Act (16 U.S.C. §§ 668–668d); the Migratory Bird Treaty Act (16 U.S.C. §§ 703–712); the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; and all other Laws (including implementing regulations promulgated pursuant thereto) of any Governmental Authority having jurisdiction over the assets in question addressing pollution control or protection of protected species, the environment, wildlife, plants, natural resources, or human health, each as amended from time to time.

**“Environmental Liability”** means any and all costs, damages, expenses, liabilities, obligations or other responsibilities arising from or under any Environmental Law and consisting of or relating to (a) any environmental or non-occupational health matters or conditions (including on-site or off-site contamination and regulation of chemical substances or products or other Hazardous Materials); (b) fines, penalties, judgments, awards, settlements, legal or administrative proceedings, damages, losses, claims, demands and costs and expenses of response, investigative, remediation or inspection costs and expenses arising under any Environmental Law; and (c) any other compliance action, corrective action, investigative action or remediation required under any Environmental Law.

**“Estimated Proration Amount”** has the meaning set forth in Section 4(d).

**“Excluded Assets”** has the meaning set forth in Section 3(a).

**“Excluded Liabilities”** has the meaning set forth in Section 3(b).

**“Facilities”** means the Wyman 4 Station (including real property and other property related to and used in connection therewith) owned by the Wyman 4 Owners and operated by the Buyer on behalf of the Wyman 4 Owners in accordance with the Joint Ownership Agreement.

**“FERC”** means the Federal Energy Regulatory Commission.

**“FERC 203 Filing”** means the joint application under Section 203 of the Federal Power Act for the sale of FERC jurisdictional facilities applicable to the Transaction contemplated hereby.

**“FIRPTA Certificate”** means the Foreign Investment in Real Property Tax Act Certification and Affidavit in a form and substance reasonably satisfactory to Buyer.

**“Form REW-1-1120”** means the form of Maine Revenue Services Real Estate Withholding Return for Transfer of Real Property.

**“Form REW-4”** means the form of Maine Revenue Services Notification to Buyer(s) of Withholding Tax Requirement.

**“Fuel Inventory Value”** has the meaning set forth in Section 4(a).

**“Fuel Oil”** means No. 6 Oil, less than 0.7% sulfur.

**“Fuel Price”** means the midpoint price per barrel for NY Harbor Atlantic Coast Assessment No. 6 Oil, 0.7% sulfur, as published by Platts (a division of The McGraw-Hill Companies) on the Business Day prior to the Closing Date.

**“Fuel Tanks”** means all of the fuel oil storage tanks containing Fuel Oil located at the Wyman Site.

**“GAAP”** means generally accepted accounting principles in the United States of America, applied consistently with prior periods and with the historical practices and methods respecting the Wyman 4 Station.

**“Governmental Approval”** means licenses, Permits, certificates of authority, authorizations, approvals, registrations, franchises and similar consents and orders issued or granted by a Governmental Authority.

**“Governmental Authority”** means any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States or any state, county, city or other political subdivision or similar governing entity, and including any governmental, quasi-governmental or non-governmental body administering, regulating or having general oversight over natural gas, electricity, power or other markets.



**“Hazardous Material”** means any substance, pollutant, contaminant, chemical, material or waste that is regulated under any Environmental Law, or which is deemed or may be deemed hazardous, dangerous, damaging or toxic to living things or the environment, and shall include, without limitation, any flammable, explosive, or radioactive materials; hazardous materials; radioactive wastes; hazardous wastes; hazardous or toxic substances or related materials; polychlorinated biphenyls; petroleum products, fractions and by-products thereof; radon; asbestos and asbestos-containing materials; medical waste, solid waste, and any excavated soil, debris, or groundwater that is contaminated with such materials.

**“Indemnified Party”** means any Person claiming indemnification under any provision of Section 8.

**“Indemnifying Party”** means any Person against whom a claim for indemnification is being asserted under any provision of Section 8.

**“Indemnity Notice”** has the meaning set forth in Section 8(e)(i).

**“Independent Accountant”** has the meaning set forth in Section 4(e).

**“Information”** has the meaning set forth in Section 6(d).

**“Interim Period”** has the meaning set forth in Section 4(c).

**“ISO-NE”** means ISO New England Inc., an independent, not-for-profit corporation serving as the Regional Transmission Organization for six New England states, or its successor organization.

**“Joint Ownership Agreement”** means William F. Wyman Unit No. 4 Agreement for Joint Ownership, Construction and Operation dated as of November 1, 1974, by and among the Wyman 4 Owners, as amended by Amendment No. 1, dated as of June 30, 1975, Amendment No. 2, dated as of August 16, 1976, and Amendment No. 3, dated as of December 31, 1978, and reflecting addendums thereto or other instruments entered into solely for the purpose of admitting new owners or transferring the ownership interests of existing owners.

**“Knowledge”** means, the actual knowledge (as opposed to any constructive or imputed knowledge) of the members of management of the Seller or the Buyer, as applicable, in each case, after due inquiry of individuals employed by Seller or Buyer or their respective Affiliates, as applicable, who would reasonably be expected to have knowledge of the applicable information.

**“Law”** means all laws, statutes, rules, regulations, ordinances, orders, decrees, court decisions, and other pronouncements having the effect of law of any Governmental Authority.

**“Lien”** means any mortgage, pledge, assessment, security interest, lien to secure indebtedness or other similar encumbrance, right of first refusal, right of first offer, or other restriction of any kind, including any restrictions on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

**“Loss” or “Losses”** means any and all actual out-of-pocket damages (including incidental and consequential damages incurred with respect to any claim by a third party, but not by a Party or its Affiliates or Representatives, except as expressly provided herein), fines, penalties, deficiencies, losses, interest, awards, judgments, liabilities, costs, and expenses (including interest, court costs, reasonable fees of attorneys, accountants and other experts or other reasonable expenses of litigation, arbitration or other proceedings or of any claim, default or assessment), whether or not involving a Third Party Claim.

**“Maine Sales Tax Exemption Certificate”** means a certificate issued pursuant to 36 Me. Rev. Stat. Ann. Section 1760(9-D) that provides an exemption for ninety-five percent of the sales price on all fuel and electricity purchased for use at a manufacturing facility.

**“Maine Withholding Amount”** has the meaning set forth in Section 4(b).

**“Material Adverse Effect”** means (a) any event, circumstance or condition materially impairing a Party’s authority, right, or ability to consummate the Transaction as contemplated by this Agreement, or (b) any change in or effect on the Purchased Assets after the Effective Date that is materially adverse to the condition (financial or otherwise) of the Purchased Assets, and, if applicable, the operation or business of the Purchased Assets, other than any change or effect attributable to general economic, market or political conditions, conditions generally affecting the industry in which Wyman 4 Station operates, any action required or permitted by this Agreement, any changes in applicable Laws or accounting rules, or the public announcement, pendency or completion of the Transaction contemplated by this Agreement.

**“Mortgage Indenture”** means that certain First Mortgage Indenture, dated as of August 15, 1978, as amended and restated effective as of June 1, 2011, and supplemented, between Seller and U.S. Bank National Association, successor to Wachovia Bank, National Association, successor to First Union National Bank, formerly known as First Fidelity Bank, National Association, New Jersey, as trustee.

**“NEPOOL”** means the New England Power Pool, a voluntary contractual association of electric utilities and other entities in New England, or its successor organization.

**“Objection Notice”** has the meaning set forth in Section 4(e).

**“Order”** means any award, decision, injunction, judgment, order, writ, decree, ruling, subpoena, or verdict entered, issued, made, or rendered by any Governmental Authority that possesses competent jurisdiction.

**“Party” and “Parties”** each has the meaning set forth in the Preamble to this Agreement.

**“Permit”** means any permit, certificate, license, franchise, consent, approval, registration, franchise or similar authorization issued, made or rendered by any Governmental Authority that possesses competent jurisdiction.

**“Permitted Liens”** means (a) any Lien for Taxes not yet due or delinquent or being contested in good faith by appropriate Proceedings; (b) any statutory Lien arising in the ordinary course of business by operation of Law with respect to a liability that is not yet due or delinquent

or which is being contested in good faith by appropriate Proceedings; (c) any other Liens that in the aggregate are not material to the Purchased Assets or the Wyman 4 Station; and (d) any matter affecting title to the Purchased Assets to the extent that other interests currently owned by the Buyer or the other Wyman 4 Owners in the same real estate or personal property are subject to the same matter affecting title.

**“Person”** means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.

**“Prime Rate”** means, for any day, the per annum rate of interest divided by three hundred and sixty (360), as quoted as the “Bank Prime Loan” rate for the most recent weekday for which such rate is quoted in the statistical release designated as H.15(519), or any successor publication, published from time to time by the Board of Governors of the Federal Reserve System.

**“Proceeding”** means any action, proceeding, arbitration (or other alternative dispute resolution proceeding), audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

**“Project Documents”** means, collectively, the Joint Ownership Agreement and the Transmission Agreement.

**“Purchased Assets”** has the meaning set forth in Section 3(a).

**“Purchase Price”** has the meaning set forth in Section 3(c).

**“Quitclaim Deed”** means one or more quitclaim deeds for conveyance of any real property (in recordable form and substantially in the form as set forth in Exhibit A) constituting part of the Seller’s Wyman Interest in the Purchased Assets to the Buyer.

**“Release of Mortgage Indenture”** means a release of the Purchased Assets from the Liens and restrictions imposed by the Mortgage Indenture, substantially in the form set forth in Exhibit D.

**“Releasees”** has the meaning set forth in Section 6(h).

**“Releasing Party”** has the meaning set forth in Section 6(h).

**“RETTD”** means the form of Maine Revenue Services Real Estate Transfer Tax Declaration.

**“Representatives”** means, as to any Person, such Person’s or its Affiliates’ officers, directors, managers, employees, partners, members, stockholders, counsel, accountants, advisers (including financial advisors), engineers and consultants and agents.

**"Seller"** has the meaning set forth in the Preamble to this Agreement.

**"Seller's Affidavit"** means the title affidavit referred to in Section 3(d)(i)(G), including a GAP Insurance Indemnity Agreement, in form and substance reasonably satisfactory to Seller, Buyer and the title company retained by Buyer in connection with the Transaction.

**"Seller Approvals"** has the meaning set forth in Section 5(a)(iv).

**"Seller's Wyman Interest"** has the meaning set forth in the recitals.

**"Settlement Agreement"** means the 2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement, dated June 10, 2015, among Seller and the other parties thereto, as amended, respecting, among other things, the divestiture of Seller's generation assets.

**"Survival Period"** has the meaning set forth in Section 7.

**"Tax"** or **"Taxes"** means any federal, state, local or foreign income, gross receipts, ad valorem, sales and use, employment, social security, disability, occupation, property, severance, value added, transfer, capital stock, excise, withholding, premium, occupation or other taxes, levies or other like assessments, customs, duties, imposts, charges, surcharges or fees imposed by or on behalf of any Governmental Authority, including any interest, penalty thereon or addition thereto.

**"Termination Date"** has the meaning set forth in Section 9(a)(ii).

**"Third Party Claim"** has the meaning set forth in Section 8(e)(i).

**"Transaction"** means the sale and purchase of the Purchased Assets and the assignment and assumption of the Assumed Liabilities as contemplated by this Agreement.

**"Transaction Taxes"** has the meaning set forth in Section 6(f)(i).

**"Transmission Agreement"** means the William F. Wyman Transmission Agreement dated as of November 1, 1974.

**"Wyman 4 Owners"** means the Seller, the Buyer, and each other Person that is currently a party to the Joint Ownership Agreement.

**"Wyman 4 Station"** means the electric generating facilities known as the W.F. Wyman Station – Unit 4 and located in Yarmouth, Maine.

**"Wyman Site"** means the site in Yarmouth, Maine, on which the Wyman 4 Station and certain other electric generating facilities (Units 1, 2 and 3) are located.

## **Section 2. Rules of Construction.**

(a) All article, section, subsection, schedule and exhibit references used in this Agreement are to articles, sections, subsections, Schedules and exhibits to this Agreement unless

otherwise specified. The exhibits and Schedules attached to this Agreement constitute a part of this Agreement and are incorporated in this Agreement for all purposes. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

(b) If a term is defined as one part of speech (such as a noun), it will have a corresponding meaning when used as another part of speech (such as a verb). Unless the context of this Agreement clearly requires otherwise, words importing the masculine gender will include the feminine and neutral genders and vice versa. The words "includes" or "including" will mean "including without limitation," and the words "hereof," "hereby," "herein," "hereunder" and similar terms in this Agreement will refer to this Agreement as a whole and not any particular Section or article in which such words appear. The terms "will" and "shall" have the same meaning. Any reference to a Law includes any amendment thereof or any successor thereto and any rules and regulations promulgated thereunder. Any reference to a contract or agreement will be to that contract or agreement as it may have been amended, modified, supplemented or restated prior to the date hereof. Currency amounts referenced in this Agreement are in U.S. Dollars.

(c) Whenever this Agreement refers to a number of days, such number will refer to calendar days unless Business Days are specified. Whenever any action must be taken hereunder on or by a day that is not a Business Day, then such action may be validly taken on or by the next day that is a Business Day. For determining any period of time, "from" means "including and after," "to" means "to but excluding" and "through" means "through and including."

(d) Any representation or warranty contained herein as to the enforceability of a contract or agreement shall be subject to the effect of any bankruptcy, insolvency, reorganization, moratorium or other similar law affecting the enforcement of creditors' rights generally and to general equitable principles (regardless of whether such enforceability is considered in a Proceeding in equity or at law).

(e) Each Party acknowledges that it and its attorneys have been given an equal opportunity to negotiate the terms and conditions of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party or any similar rule operating against the drafter of an agreement will not be applicable to the construction or interpretation of this Agreement.

(f) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, where this Agreement requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

(g) All accounting terms used herein and not expressly defined herein will have the respective meanings given such terms under GAAP.



**Section 3. Sale and Purchase of the Purchased Assets and Assignment and Assumption of the Assumed Liabilities; Closing.**

(a) On the terms and subject to the conditions set forth in this Agreement, at the Closing, Seller shall sell, assign, transfer and deliver to Buyer, and Buyer shall purchase and accept from Seller, all rights, title and interests of Seller in and to the assets associated with the Seller's Wyman Interest, such assets as set forth on Schedule 3(a)(i) and limited to the extent of the Seller's Wyman Interest (the "**Purchased Assets**"), free and clear of any Liens, other than Permitted Liens; *provided*, that Seller is not selling or assigning, and Buyer is not purchasing, any other assets or properties of Seller (including those other assets or properties of Seller listed on Schedule 3(a)(ii)) (collectively, the "**Excluded Assets**"), and the Purchased Assets shall, for all purposes, exclude such Excluded Assets.

(b) At the Closing, Buyer shall accept from Seller and shall assume and agree to pay, perform and discharge the liabilities and obligations described or referred to in Schedule 3(b)(i) (such liabilities and obligations assumed by the Buyer, excluding the Excluded Liabilities, are referred to herein as the "**Assumed Liabilities**"). Buyer shall not assume or be obligated to pay, perform or otherwise discharge the liabilities or obligations set forth on Schedule 3(b)(ii) (such liabilities and obligations not being assumed are referred to herein as the "**Excluded Liabilities**").

(c) Subject to Section 4, the aggregate purchase price for all of the Purchased Assets shall be an amount equal to One Million Dollars (US \$1,000,000.00) (the "**Base Price**"), *plus* the Fuel Inventory Value (together, the "**Purchase Price**").

(d) Subject to the terms and conditions hereof, the consummation of the Transaction contemplated by this Agreement (the "**Closing**") shall take place at the offices of NextEra Energy Resources, LLC at 700 Universe Boulevard, Juno Beach, Florida 33408 at 10:00 A.M. local time, on the first day of the calendar month following the calendar month in which the conditions to Closing set forth in Section 3(e) (other than actions to be taken or items to be delivered at Closing, but subject to their completion or delivery at Closing) have been satisfied or waived, or on such other date and at such other time and place as Buyer and Seller mutually agree in writing (the "**Closing Date**"); *provided*, that the Parties intend (to the extent reasonably practicable) for the Closing Date to occur on the first day of a calendar month, and shall in good faith mutually agree upon an alternative Closing Date if the Closing Date provided for above is not a Business Day or such Closing conditions are so satisfied or waived less than 3 Business Days before the end of any calendar month. The Closing shall be deemed effective as of 12:01 A.M. (eastern prevailing time) on the Closing Date. Except in the case of documents that are specified as being recordable in form (for which originally signed copies must be delivered), the Closing may occur by facsimile or electronic transmission exchange of portable document format "pdf" executed documents or signature pages followed (if requested by any Party) by the exchange of originals as soon thereafter as practicable.

(i) At the Closing, Seller will deliver to Buyer the following items:

(A) the FIRPTA Certificate executed by Seller or its Affiliate;

(B) one or more Quitclaim Deeds, together with an executed counterpart of the RETTD;

(C) a bill of sale (substantially in the form set forth in **Exhibit B**) transferring the tangible personal property included in the Purchased Assets to Buyer (the "**Bill of Sale**"), executed by Seller;

(D) an assignment and assumption agreement (substantially in the form set forth in **Exhibit C**) effecting the assignment to and assumption by Buyer of certain Purchased Assets and the Assumed Liabilities (the "**Assignment and Assumption Agreement**"), executed by Seller;

(E) 1099-S Data Entry Form for Real Estate Transaction;

(F) W-9 Request for Taxpayer Identification Number and Certification;

(G) the Seller's Affidavit;

(H) evidence, reasonably satisfactory to Buyer, of the receipt of the Seller Approvals;

(I) a copy of the fully-executed Release of Mortgage Indenture; and

(J) a duly executed certificate of an officer of Seller, dated as of the Closing Date, certifying that each of the conditions set forth in Section 3(e)(ii)(B) and (C) have been satisfied.

(ii) At the Closing, Buyer will deliver to Seller the following items:

(A) an amount (the "**Closing Amount**") equal to the sum of (1) the Base Price, *plus* (2) the Fuel Inventory Value, *plus* or *minus* (3) the Estimated Proration Amount, *minus* (4) an amount equal to 2.5% of the Maine Withholding Amount (to be withheld and transferred by Buyer in accordance with Section 4(b)), and *minus* (5) 50% of the Transaction Taxes as set forth in Section 6(f)(i) (*provided* that the adjustments to the Base Price set forth in items (2) through (5) shall be calculated without duplication), with such payment being made by wire transfer of immediately available funds to the account specified by Seller to Buyer prior to the Effective Date or such other means as are agreed upon in writing by the Seller and the Buyer;

(B) an executed counterpart of each of the RETTD, the Form REW-1-1120, and the Form REW-4;

(C) the Bill of Sale, executed by Buyer;

(D) the Assignment and Assumption Agreement, executed by Buyer;

(E) evidence, reasonably satisfactory to Seller, of the receipt of the Buyer Approvals; and

(F) a duly executed certificate of an officer of Buyer, dated as of the Closing Date, certifying that each of the conditions set forth in Section 3(e)(iii)(B) and (C) have been satisfied.

(e) Conditions to Closing.

(i) The respective obligations of each Party to effect the Closing of the Transaction contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing Date of the following conditions:

(A) no preliminary or permanent injunction or other order or decree by any federal or state court which prevents the consummation of the Transaction contemplated hereby shall have been issued and remain in effect and no statute, rule or regulation shall have been enacted by any state or federal government or governmental agency in the United States which prohibits the consummation of the Transaction; and

(B) the Seller Approvals and the Buyer Approvals shall have been obtained and be final and non-appealable, and none of the Seller Approvals and the Buyer Approvals shall impose materially adverse terms and conditions.

(ii) The obligation of Buyer to effect the Closing of the Transaction contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing Date of the following additional conditions:

(A) since the Effective Date, there shall not have occurred and be continuing a Material Adverse Effect;

(B) each of the representations and warranties of Seller in this Agreement is true and correct in all material respects (except if such representation is already qualified by materiality, in which case such representation and warranty shall be true in all respects) as of the Effective Date and as of the Closing Date as if made on such date (or if such representation or warranty relates solely to an earlier date, as of such earlier date) and Buyer shall have received a certificate signed by an authorized officer of Seller, dated the Closing Date, to the foregoing effect;

(C) each of the covenants, agreements and obligations of Seller to be performed on or before the Closing Date pursuant to the terms of this Agreement shall have been duly performed in all material respects on or before the Closing Date (or, in the case of covenants, agreements or obligations that are qualified by materiality, in all respects) and Buyer shall have received a certificate signed by an authorized officer of Seller, dated the Closing Date, to the foregoing effect; and

(D) Seller shall have delivered to Buyer the documents and other deliveries set forth in Section 3(d)(i).

(iii) The obligation of Seller to effect the Closing of the Transaction contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing Date of the following additional conditions:



(A) since the Effective Date, there shall not have occurred and be continuing a Material Adverse Effect;

(B) each of the representations and warranties of Buyer in this Agreement is true and correct in all material respects (except if such representation is already qualified by materiality, in which case such representation and warranty shall be true in all respects) as of the Effective Date and as of the Closing Date as if made on such date (or if such representation or warranty relates solely to an earlier date, as of such earlier date) and Seller shall have received a certificate signed by an authorized officer of Buyer, dated the Closing Date, to the foregoing effect;

(C) each of the covenants, agreements and obligations of Buyer to be performed on or before the Closing Date pursuant to the terms of this Agreement shall have been duly performed in all material respects on or before the Closing Date (or, in the case of covenants, agreements or obligations that are qualified by materiality, in all respects) and Seller shall have received a certificate signed by an authorized officer of Buyer, dated the Closing Date, to the foregoing effect;

(D) Seller shall have received the fully-executed Release of Mortgage Indenture, in form and substance reasonably satisfactory to Seller; and

(E) Buyer shall have delivered to Seller the Closing Amount and the documents and other deliveries set forth in Section 3(d)(ii).

**Section 4. Fuel Inventory Value; Tax Withholding; Allocation and Proration.**

(a) Fuel Inventory Value. The Parties acknowledge and agree that the “**Fuel Inventory Value**” will be an amount equal to (i) 0.031433 *multiplied by* (ii) the Fuel Price *multiplied by* (iii) the number of barrels of Fuel Oil located in the Fuel Tanks (whether such Fuel Oil is intended for use or is used by the Wyman 4 Station or by any other generation unit on the Wyman Site) on the Business Day prior to the Closing Date, including all such Fuel Oil in transit to the Wyman Site, if the cost of such Fuel Oil has been (or will be pursuant to this Agreement) paid for by Seller (to the extent of Seller’s Wyman Interest therein). On the Business Day prior to the Closing Date, Buyer shall prepare and deliver to Seller a calculation of the Fuel Inventory Value, together with reasonable supporting information and documentation therefor. Such Fuel Inventory Value shall be used to calculate the Closing Amount payable by Buyer to Seller at Closing pursuant to Section 3(d)(ii)(A).

(b) Maine Tax Matters. The Parties acknowledge and agree that, for purposes of Maine real estate transfer tax and income tax withholding, the portion of the Purchase Price allocable to real estate is \$140,000 (the “**Maine Withholding Amount**”). At the Closing, Buyer shall withhold from the Purchase Price and transfer immediately to the Maine Revenue Service the Maine Withholding Amount multiplied by 2.5%, together with a Form REW-1 executed by Buyer.

(c) Allocation. The Parties shall, during the period between the Effective Date and the Closing Date (the “**Interim Period**”), use their commercially reasonable efforts to prepare, review and agree upon the allocation of the Purchase Price to the Purchased Assets in a manner consistent with the general principles of Sections 338 and 1060 of the Code and the Treasury Regulations pursuant thereto (the “**Allocation**”), and each Party agrees to reasonably cooperate with the other Party in connection therewith (including by providing to such other Party information relevant to the preparation and review of the Allocation). Once the Parties have agreed upon the Allocation, it shall be deemed final, and the Parties agree that neither Buyer, Seller, nor any of their Affiliates shall take any position (whether in audits, Tax returns or otherwise) that is inconsistent with such final Allocation. Notwithstanding the foregoing, in the event Buyer and Seller cannot agree as to the Allocation, each Party shall be entitled to take its own position in any Tax return, Tax proceeding or audit, *provided* that such position is reasonable and consistent with the general principles of Sections 338 and 1060 of the Code and the Treasury Regulations pursuant thereto. The Allocation shall be revised to take into account subsequent adjustments to the Purchase Price contemplated herein, including any post-Closing adjustments and indemnification payments, in accordance with the provisions of Sections 338 and 1060 of the Code and the Treasury Regulations pursuant thereto or any successor provision.

(d) Proration. The Parties acknowledge and agree that the costs and expenses, and the revenues or benefits, as applicable, in respect of each of the items listed on Schedule 4(d) relating to the Purchased Assets will be prorated on a daily basis as of the Closing Date. Seller will be liable for, or entitled to, its pro rata share of such amounts that relate to any time periods prior to the Closing Date. Buyer will be liable for, or entitled to, its pro rata share of such amounts that relate to periods on or after the Closing Date. At least five Business Days prior to the Closing Date, Buyer shall prepare and deliver to Seller an estimate of the aggregate net prorated amounts allocable to Seller as set forth on Schedule 4(d) (the “**Estimated Proration Amount**”), together with reasonable supporting information and documentation therefor. In connection with the determination of the Estimated Proration Amount under this Section 4(d), actual amounts will be used if known or determinable by Buyer as of the date such Estimated Proration Amount is prepared, and in the event that actual amounts for any particular item are not known or determinable at such time, the Estimated Proration Amount will be calculated based upon Buyer’s reasonable estimates of such item, which estimates will, to the extent practicable, be based upon the actual amount associated with such item for the preceding year (or other applicable period) for which such actual amounts are available. Such Estimated Proration Amount will be used to calculate the Closing Amount payable by Buyer to Seller at Closing pursuant to Section 3(d)(ii)(A) and will be subject to adjustment following the Closing pursuant to Section 4(e) below.

(e) Post-Closing Proration Adjustment.

(i) Within 30 days after the Closing Date, Buyer shall recalculate the aggregate net prorated amount allocable to Seller pursuant to Section 4(d) in accordance with the prorated items listed in and the same methodology used in Schedule 4(d) as of the Closing Date, using actual amounts for all items included in the Estimated Proration Amount that were not based on actual amounts, (such recalculated, actual aggregate net prorated amount, the “**Actual Proration Amount**”), and shall deliver to Seller its calculation of the Actual Proration Amount together with reasonable supporting information and documentation therefor. Seller shall have 30 days to

review Buyer's calculation of the Actual Proration Amount following receipt thereof. On or before the end of such 30 day period, Seller may (1) accept Buyer's calculation of the Actual Proration Amount by written notice to Buyer, upon which such calculation shall be deemed to be final and binding on the Parties, or (2) object to Buyer's calculation of the Actual Proration Amount by written notice to Buyer (the "**Objection Notice**"), setting forth Seller's objections to such calculation, together with an explanation of the reasons therefor, and shall set forth Seller's calculation of the Actual Proration Amount based on such objections. In the event Seller does not timely deliver an Objection Notice, Seller shall be deemed to have agreed with Buyer's calculation of the Actual Proration Amount, and such calculation shall be deemed to be final and binding on the Parties as of the end of Seller's 30-day review period.

(ii) If Seller timely delivers an Objection Notice to Buyer, the Parties shall, during the 30 days following such delivery or any mutually agreed extension thereof, use their commercially reasonable efforts to negotiate and reach agreement on the disputed items and amounts in order to determine the Actual Proration Amount, and upon any such agreement, such calculation shall be deemed to be final and binding on the Parties. If, at the end of such period or any mutually agreed extension thereof, the Parties have been unable to resolve their disagreements, they shall jointly retain and refer their disagreements to a nationally recognized independent accounting firm mutually acceptable to the Parties (the "**Independent Accountant**"). The Parties shall instruct the Independent Accountant to promptly review this Section 4 and to determine solely with respect to the disputed items and amounts so submitted whether and to what extent, if any, the Actual Proration Amount calculated by Buyer requires adjustment. The Independent Accountant shall base its determination solely on written submissions by Buyer and Seller. The Parties shall make available to the Independent Accountant all relevant books and records and other items reasonably requested by the Independent Accountant. As promptly as practicable, but in no event later than 45 days after its retention, the Independent Accountant shall deliver to Buyer and Seller a report which sets forth its resolution of the disputed items and amounts and its calculation of the Actual Proration Amount; *provided* that the Independent Accountant may not assign a value to any item greater than the greatest value for such item claimed by either Party or less than the smallest value for such item claimed by either Party. The decision of the Independent Accountant shall be final and binding on the Parties. The costs and expenses of the Independent Accountant shall be allocated between the Parties based upon the percentage which the portion of the contested amount not awarded to each Party bears to the amount actually contested by such Party, as determined by the Independent Accountant. The Parties agree to execute, if requested by the Independent Accountant, a reasonable engagement letter, including customary indemnities in favor of the Independent Accountant.

(iii) Within 10 Business Days after the calculation of the Actual Proration Amount becomes final and binding on the Parties in accordance with this Section 4(e), Seller or Buyer, as applicable, shall make a payment to the other Party to account for the difference between the Actual Proration Amount and the Estimated Proration Amount used to calculate the Closing Amount, plus interest accrued thereon from and after the Closing Date at the Prime Rate.

(iv) Each Party shall furnish the other Party with such documents and other records as may be reasonably requested, and shall otherwise reasonably cooperate with the other

Party, in connection with the determination of the Actual Proration Amount pursuant to this Section 4(e).

(v) Any payment required to be made by a Party pursuant to this Section 4(e) shall be made to the other Party by wire transfer of immediately available funds to the account designated in writing by such other Party.

(f) For avoidance of doubt, (i) the proration provisions set forth in Section 4(d) shall not supersede the rights and obligations of the Parties respecting the Purchased Assets, Excluded Assets, Assumed Liabilities and Excluded Liabilities, and such proration provisions shall be interpreted consistently with the allocation of rights and obligations of the Parties set forth in the definitions of such terms; and (ii) all rights and obligations of the Parties set forth in Section 4, Section 6(f), Section 6(g) and Section 8 with respect to proration, fuel, Taxes, and NEPOOL and ISO-NE payments, and all rights and obligations of the Parties respecting the Purchased Assets, Excluded Assets, Assumed Liabilities and Excluded Liabilities, shall not be duplicative, and no provision of this Agreement shall be interpreted (and no calculation to be made hereunder shall be performed) in a manner that would result in the right to receive or the obligation to make duplicative payments of any amount.

#### **Section 5. Representations and Warranties.**

(a) Seller hereby represents and warrants to Buyer:

(i) Seller is a corporation, duly organized, validly existing, and in good standing under the laws of the State of New Hampshire and authorized to conduct business in the State of Maine.

(ii) Seller has all requisite corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by Seller of this Agreement, and the performance by Seller of its obligations hereunder, have been duly and validly authorized by all necessary corporate action. This Agreement has been duly and validly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, arrangement, moratorium or other similar Laws relating to or affecting the rights of creditors generally, or by general equitable principles.

(iii) Assuming receipt of the Seller Approvals, the Buyer Approvals and the Release of Mortgage Indenture, the execution and delivery by Seller of this Agreement does not, and the performance by Seller of its obligations under this Agreement will not:

(A) result in a violation or breach of any of the terms, conditions or provisions of the organizational documents of Seller;

(B) conflict with or result in a violation or breach of any term or provision of any Law or Order applicable to Seller (other than such conflicts, violations or breaches as would occur solely as a result of the identity or the legal or regulatory or other status

of Buyer or any of its Affiliates); or

(C) (1) conflict with or result in a violation or breach of, (2) constitute a default (or event which, with or without due notice or lapse of time, or both, would constitute a default) under, (3) require Seller to obtain any consent, approval or action of, make any filing with or give any notice to any Person as a result or under the terms of, (4) result in or give to any Person any right of termination, cancellation, acceleration or modification in or with respect to or (5) result in the creation or imposition of any Lien upon the Purchased Assets under, any contract or agreement to which Seller is a party or by which any of the Purchased Assets are bound.

(iv) Except for those consents, waivers, notices or approvals disclosed in Schedule 5(a)(iv) (the "**Seller Approvals**"), no Governmental Approval on the part of Seller is required in connection with the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby.

(v) There are no bankruptcy, insolvency, reorganization or receivership proceedings pending against or being contemplated by Seller, or to its Knowledge threatened against Seller.

(vi) There are no Proceedings pending or, to Seller's Knowledge, threatened relating to or affecting Seller or the Purchased Assets that would materially and adversely affect Seller's ability to execute or deliver, or perform its obligations under this Agreement or the Transaction contemplated hereby.

(vii) Neither Seller nor any of its Affiliates have incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with the Transaction for which Buyer could become liable or obligated.

(viii) Seller has good, valid and marketable title to the Purchased Assets to the extent of Seller's Wyman Interest, subject to the Permitted Liens, and at the Closing the Purchased Assets will be free and clear of all Liens, except for Permitted Liens. Other than this Agreement, the Joint Ownership Agreement, and the Settlement Agreement and the Proceedings before the New Hampshire Public Utilities Commission related thereto, Seller is not a party to any option, warrant, purchase right or other contract or commitment that could require Seller to sell, transfer or otherwise dispose of any of the Purchased Assets.

(ix) (A) Seller has filed all required material Tax returns and paid all required Taxes shown thereon relating to the Seller's acquisition and ownership of the Purchased Assets; (B) Seller has no Knowledge of a Tax deficiency or Tax assessment from any taxing authority with respect to liabilities for Taxes of Seller relating to the Purchased Assets which have not been fully paid or finally settled; and (C) there are no outstanding agreements or waivers extending the applicable statutory periods of limitation for Taxes of Seller associated with the Purchased Assets for the Seller's ownership period.

(b) Buyer hereby represents and warrants to Seller:



(i) Buyer is a limited liability company, duly organized, validly existing, and in good standing under the laws of Delaware and authorized to conduct business in the State of Maine.

(ii) Buyer has all requisite limited liability company power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by Buyer of this Agreement, and the performance by Buyer of its obligations hereunder, have been duly and validly authorized by all necessary limited liability company action. This Agreement has been duly and validly executed and delivered by Buyer and constitutes the legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, arrangement, moratorium or other similar Laws relating to or affecting the rights of creditors generally, or by general equitable principles.

(iii) Assuming receipt of the Buyer Approvals, the Seller Approvals and the Release of Mortgage Indenture, the execution and delivery by Buyer of this Agreement does not, and the performance by Buyer of its obligations under this Agreement will not:

(A) result in a violation or breach of any of the terms, conditions or provisions of the organizational documents of Buyer;

(B) conflict with or result in a violation or breach of any term or provision of any Law or Order applicable to Buyer (other than such conflicts, violations or breaches as would occur solely as a result of the identity or the legal or regulatory or other status of Seller or any of its Affiliates); or

(C) (i) conflict with or result in a violation or breach of, (ii) constitute a default (or event which, with or without due notice or lapse of time, or both, would constitute a default) under, (iii) require Buyer to obtain any consent, approval or action of, make any filing with or give any notice to any Person as a result or under the terms of, (iv) result in or give to any Person any right of termination, cancellation, acceleration or modification in or with respect to or (v) result in the creation or imposition of any Lien upon the Purchased Assets under, any contract or agreement to which Buyer is a party or by which any of the Purchased Assets are bound.

(iv) Except for those consents, waivers, notices or approvals disclosed in Schedule 5(b)(iv) (the "**Buyer Approvals**"), no Governmental Approval on the part of Buyer is required in connection with the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby.

(v) There are no bankruptcy, insolvency, reorganization or receivership proceedings pending or being contemplated by Buyer, or to its Knowledge threatened against Buyer.

(vi) There are no Proceedings pending or, to Buyer's Knowledge, threatened relating to or affecting Buyer that would materially and adversely affect Buyer's

ability to execute or deliver, or perform its obligations under this Agreement or the Transaction contemplated hereby.

(vii) Neither Buyer nor any of its Affiliates have incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with the Transaction for which Seller could become liable or obligated.

(viii) Buyer will have available at the Closing funds sufficient to pay the Purchase Price and the fees and expenses of Buyer related to the Transaction contemplated by this Agreement.

(c) Notwithstanding anything to the contrary contained in this Agreement, Buyer agrees that Seller, its Representatives, officers and Affiliates are not making, and Buyer is not relying upon, any representation or warranty whatsoever, express or implied (including any warranty of merchantability or fitness for a particular purpose), with respect to the Purchased Assets, the Transaction or otherwise, except those representations and warranties contained in Section 5(a). Buyer acknowledges and agrees that, in making its decision to enter into this Agreement and to consummate the Transaction contemplated hereby, Buyer, the current majority Wyman 4 Owner and operator of the Wyman 4 Station, has relied solely upon its own investigation and the express representations and warranties of Seller contained in Section 5(a). Except as set forth expressly in this Agreement, the condition of the Purchased Assets shall be "as is" and "where is." Notwithstanding anything to the contrary contained in this Agreement, Seller agrees that Buyer its Representatives, officers and Affiliates are not making any representation or warranty whatsoever, express or implied, except those representations and warranties contained in Section 5(b).

#### **Section 6. Covenants.**

(a) During the Interim Period, except as expressly permitted or required by this Agreement or unless consented to in writing by Buyer or Seller, as applicable:

(i) Seller (A) shall not sell, transfer or otherwise dispose of any of the Purchased Assets, other than such sales, transfers or other disposals made by or on behalf of the Wyman 4 Owners, collectively, or otherwise as required by the Project Documents; (B) shall not mortgage or pledge, or impose or suffer to be imposed any Lien (other than a Permitted Lien) on, any of the Purchased Assets; and (C) shall perform all of its obligations under the Project Documents consistent with past practice and subject to Seller's rights thereunder.

(ii) Buyer shall operate the Wyman 4 Station in the ordinary course of business consistent with past practice and the Joint Ownership Agreement and shall otherwise perform all of its obligations under the Project Documents consistent with past practice and subject to Buyer's rights thereunder.

(b) The Parties will, in order to consummate the Transaction contemplated hereby, (i) proceed diligently and in good faith and use commercially reasonable efforts, as promptly as practicable, to obtain the Seller Approvals and the Buyer Approvals in form and substance

reasonably satisfactory to Seller and Buyer, and to make all required filings with, and to give all required notices to, the applicable Governmental Authorities (it being agreed that the FERC 203 Filing shall be made jointly by the parties), and (ii) cooperate in good faith with the applicable Governmental Authorities and provide promptly such other information and communications to such Governmental Authorities or other Persons as such Governmental Authorities or other Persons may reasonably request in connection therewith. The Parties shall request expedited treatment of any such filings, shall promptly make any appropriate or necessary subsequent or supplemental filings, and shall cooperate with each other in the preparation of such filings in such manner as is reasonably necessary and appropriate.

(c) Subject to the terms and conditions of this Agreement, each of the Parties will use commercially reasonable efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws and Orders to consummate and make effective the sale of the Purchased Assets pursuant to this Agreement. Seller will use its commercially reasonable efforts to obtain the Release of Mortgage Indenture. From time to time after the Closing, without further consideration, the Seller will, at its own expense, execute and deliver such documents to the Buyer as the Buyer may reasonably request in order to more effectively vest in the Buyer the Seller's title to the Purchased Assets. From time to time after the Closing, each Party will, at its own expense, execute and deliver such documents as the other Party may reasonably request in order to consummate more effectively the sale of the Purchased Assets and the Buyer's assumption of the Assumed Liabilities pursuant to this Agreement.

(d) For the period commencing on the Effective Date and ending on that date two years from the Closing Date, this Agreement and all written information that has been clearly marked by the disclosing Party as confidential (the "**Information**") furnished (whether before or after the date hereof) by the Representatives of any Party to the Representatives of any other Party in connection with the Transaction contemplated by this Agreement shall not be disclosed in any manner by any receiving Party to any third party (other than such receiving Party's Representatives) without prior written consent of the disclosing Party and shall be used by a receiving Party and its Representatives solely in connection with the purposes of this Agreement.

(i) The term "Information" will not include information that can be shown to have been (A) previously known by a receiving Party, (B) in the public domain (either prior to or after the furnishing of such documents or information hereunder) through no fault of a receiving Party, or (C) later acquired by a receiving Party from another source if such receiving Party is not aware that such source is under an obligation to another Party to keep such documents and information confidential.

(ii) Notwithstanding anything contained in this Section 6(d), the foregoing restrictions will not apply to (A) use after the Closing by Buyer, its successors or permitted assigns of Information furnished concerning the Purchased Assets, (B) disclosure by any Party which is or, in the Party's reasonable judgment, is likely to be, required or compelled by judicial or administrative process (including in connection with obtaining the necessary Governmental Approvals under or in respect of this Agreement and transactions contemplated hereby) or by other requirements or provisions of Law or of any recognized stock exchange, or (C) disclosure in a Proceeding brought by a Party in pursuit of its rights or in the exercise of its remedies hereunder. With respect to disclosures pursuant to Section 6(d)(ii) (except as set forth



in Section 6(e)), the disclosing Party shall provide prompt notice of such disclosure and furnish reasonable assistance to the other Party to seek a protective order or to otherwise safeguard or limit the disclosure of such Information.

(iii) Notwithstanding anything contained in this Section 6(d), a Party may reveal the Information to actual and prospective lenders or transferees of a direct or indirect ownership interest in such Party, Wyman 4 Station or the Facilities, advisers and other third parties as may be necessary for Buyer and Seller to perform their obligations under this Agreement and any financing documents so long as such Persons (A) need to know the Information for purposes of evaluating this Agreement, Wyman 4 Station or the Facilities, (B) are informed of the confidential nature of the Information, and (C) are bound by a written agreement to maintain the confidentiality of such Information in a manner consistent with the requirements of this Section 6(d) or are otherwise obligated to so maintain the confidentiality of such Information under Law or by Order or ethical rules or codes of conduct.

(e) No press release or other public announcement, regulatory filing, or public statement or comment in response to any inquiry, relating to this Agreement or the Transaction contemplated hereby shall be issued or made by either Buyer, Seller or any of their Affiliates or Representatives, without the consent of Buyer or Seller, as the case may be, such consent not to be unreasonably withheld, conditioned or delayed; *provided, however*, that a press release or other public announcement, regulatory filing, statement or comment made without such consent, including in furtherance of the requirements of Section 6(b), shall not be in violation of this Section 6(e) if it is made in order to comply with applicable Laws or stock exchange rules and in the reasonable judgment of the Party or Affiliate making such release, announcement, filing, statement or comment, based upon advice of counsel, prior review and joint approval, despite reasonable efforts to obtain the same, would prevent dissemination of such release, announcement, filing, statement or comment in a sufficiently timely fashion to comply with such applicable Laws or rules; *provided, further*, that in all instances Buyer or Seller, as the case may be, shall provide prompt notice of any such release, announcement, filing, statement or comment to the other Party.

(f) Tax Matters.

(i) All transfer, documentary, recording, notarial, sales, use registration, stamp or other similar Taxes ("**Transaction Taxes**") incurred in connection with this Agreement and the Transaction contemplated hereby shall be borne one-half by the Buyer and one-half by the Seller regardless of whether the Tax authority seeks to collect such Taxes from the Buyer or the Seller. Buyer and Seller shall reasonably cooperate as may be required to comply with the provisions of Laws relating to such Transaction Taxes. Buyer shall prepare and timely submit all filings related to any and all Transaction Taxes, subject to Seller's reasonable prior review and consent (which shall not be unreasonably withheld). Buyer will provide Seller a Maine Sales Tax Exemption Certificate for the fuel inventory transferred under this Agreement.

(ii) With respect to Taxes to be prorated in accordance with Section 4(d), only Buyer shall prepare and timely file all Tax returns required to be filed with respect to the Seller's Wyman Interest in the Purchased Assets, if any, and shall duly and timely pay all such Taxes shown to be due on such Tax returns. The Buyer's preparation of any such Tax returns shall be

subject to the Seller's approval (such approval not to be unreasonably withheld or delayed). The Buyer shall make each such Tax return available for the Seller's review and approval no later than 30 Business Days prior to the due date for filing such Tax return, and shall reasonably cooperate with Seller in addressing any comments of Seller thereon. Within 15 Business Days after receipt of such Tax return, Seller shall pay to Buyer its proportionate share (i.e., such portion for which Seller is responsible pursuant to Section 4(d)) of the amount shown as due with respect to Seller's Wyman Interest on the final version of such Tax return, determined in accordance with Section 4(d), but only to the extent such proportionate share is not reflected in the Actual Proration Amount calculation. Without duplication of any other provision hereunder, Seller shall indemnify and hold Buyer harmless from and against (A) Seller's proportionate share, as determined in accordance with Section 4(d), of any and all Taxes which may be suffered or incurred relating to the ownership, operation or use of the Purchased Assets prior to the Closing Date, and (B) any income Taxes or capital gains Taxes imposed on the Seller resulting from the sale of the Purchased Assets to Buyer. Without duplication of any other provision hereunder, Buyer shall (A) indemnify and hold Seller and its Affiliates harmless from and against any and all Taxes which may be suffered or incurred relating to the ownership, operation, sale or use of the Purchased Assets on or after the Closing Date, and (B) promptly pay to Seller any Tax refund received by or credited to the account of Buyer or its Affiliates after the Closing to the extent such refund relates to the ownership, operation or use of the Purchased Assets prior to the Closing Date.

(iii) Each of Buyer and Seller shall provide the other Party with such assistance as may reasonably be requested by the other Party in connection with the preparation of any Tax return, any audit or other examination by any taxing authority, or any judicial or administrative proceedings relating to liability for Taxes, and each will retain and provide the requesting Party with copies of any records or information which may be relevant to such return, audit or examination, proceedings or determination. Each Party will take commercially reasonable steps, act in good faith, and reasonably cooperate to permit the other Party to comply with its obligations under this Section 6(f).

(iv) The obligations of Buyer and Seller under this Section 6(f) shall survive the Closing and shall continue until the expiration of the applicable statute of limitations for Taxes.

(g) Not less than five Business Days prior to the Closing Date, Buyer shall initiate, and Seller shall confirm, with ISO-NE the Buyer's acquisition of the Purchased Assets from Seller, to be effective as of the Closing Date, pursuant to the CAMS User Guide for Company and Affiliate Maintenance, Version 1.4, Section 2.3.15 Asset Ownership Share Transfers. In the event that ISO-NE (or NEPOOL) does not recognize until after the Closing the Buyer's acquisition of the Purchased Assets as of the Closing Date (or recognizes such acquisition effective as of any date other than the Closing Date), the Parties agree that (i) any proceeds received by Seller or its Affiliates from ISO-NE (or NEPOOL) after Closing relating to the Buyer's ownership of the Purchased Assets on and after the Closing Date shall be promptly paid over to Buyer, and (ii) any proceeds received by Buyer or its Affiliates from ISO-NE (or NEPOOL) after Closing relating to the Seller's ownership of the Purchased Assets prior to the Closing Date shall be promptly paid over to Seller. The Parties further agree that (x) any amounts received by Buyer or its Affiliates from ISO-NE after the Closing respecting the

Purchased Assets, to the extent attributable to any period prior to the Closing and to the extent not reflected in the Actual Proration Amount calculation, including (A) ISO-NE Winter Reliability Program revenues attributable to any period prior to the Closing, and (B) ISO-NE Forward Capacity Market capacity payments attributable to any period prior to the Closing, shall be promptly paid over to Seller; and (y) any amounts received by Seller or its Affiliates from ISO-NE after Closing respecting the Purchased Assets, to the extent attributable to any period on and after the Closing and to the extent not reflected in the Actual Proration Amount calculation, including (A) ISO-NE Winter Reliability Program revenues attributable to any period on and after the Closing and (B) ISO-NE Forward Capacity Market capacity payments attributable to any period on and after the Closing, shall be promptly paid over to Buyer. Any payment required to be made by a Party pursuant to this Section 6(g) shall be made to the other Party by wire transfer of immediately available funds to the account designated in writing by such other Party.

(h) Except for the express rights and obligations of the Parties and their respective Affiliates, Representatives, successors and assigns under this Agreement (including under Section 4, Section 6(f), Section 6(g) and Section 8 hereof) and the other documents and agreements executed and delivered pursuant to or in connection with this Agreement, which rights and obligations shall not be released or affected by this Section 6(h), effective immediately upon the Closing, each Party, on its own behalf and on behalf of its Affiliates and its and their respective Representatives, successors and assigns (the “**Releasing Party**”), hereby (i) releases and forever discharges the other Party, its Affiliates and its and their respective Representatives, successors and assigns (collectively, the “**Releasees**”) from any and all Claims, Proceedings, Losses, liabilities and obligations of every nature whatsoever, whether known or unknown, suspected or unsuspected, accrued or unaccrued, direct or indirect, which such Releasing Party now has, has ever had, may have or may hereafter have against each of the Releasees arising out of or relating to the ownership, operation or maintenance of the Wyman 4 Station, the Purchased Assets or the Facilities (including, for the avoidance of doubt, all such Claims, Proceedings, Losses, liabilities and obligations arising out of or relating to the Joint Ownership Agreement), and (ii) irrevocably covenants and agrees not to bring any Proceeding or to assert any Claim of any nature, directly or indirectly, in any court or non-court forum, against any Releasee based upon any matter purported to be released pursuant to this Section 6(h).

(i) In order to facilitate the resolution of any Claims (including Claims respecting Taxes) made against or incurred by either Party, or for any other reasonable purpose, for a period of 30 months from the Closing Date, each Party shall (A) retain its books and records (including personnel files) respecting the Purchased Assets, the Wyman 4 Station and the Facilities in a manner reasonably consistent with the prior practices of such Party, and (B) upon reasonable notice, afford the Representatives of the other Party reasonable access (including the right to make photocopies at such other Party’s expense), during normal business hours, to those books and records pertinent to such Claim or such other purpose related to the administration of this Agreement and the Transaction contemplated herein. Notwithstanding anything in the foregoing to the contrary, (x) if the Parties are in an adversarial relationship in any pending or threatened Proceeding, the furnishing of access to books and records in accordance with this Section 6(i) shall be subject to applicable rules relating to discovery, and (y) neither Party shall be obligated to provide the other Party with access to any books or records (including personnel files) pursuant to this Section 6(i) where such access would violate any Law.

## **Section 7. Survival.**

The terms and provisions, including the representations, warranties, covenants and agreements (other than those covenants and agreements that by their terms expire or do not contemplate performance after Closing), of this Agreement shall survive the Closing of the transactions contemplated hereunder until the expiration of the statute of limitations applicable thereto. Notwithstanding the foregoing, the Parties, intending to contractually modify certain of the applicable statutes of limitations, hereby agree that representations and warranties contained in Section 5(a) and Section 5(b) shall survive the Closing of the Transaction contemplated hereby through and including the date that is 24 months from the Closing Date (the “**Survival Period**”). The indemnification obligation of a Party pursuant to Section 8 with respect to any breach of a representation, warranty, covenant or agreement hereunder shall terminate upon expiration of such representation, warranty, covenant or other agreement as provided in this Section 7; *provided*, that in the event that a written notice of a claim for indemnification for breach of any representations or warranties shall have been given pursuant to Section 10(e) within the Survival Period, the representations and warranties that are the subject of such claim shall survive with respect to such claim until such time as the claim is fully and finally resolved.

## **Section 8. Indemnification.**

(a) Subject to the terms and conditions of this Section 8, from and after Closing, Seller shall indemnify and hold harmless Buyer from and against all Losses incurred or suffered by Buyer, its officers, employees, Affiliates, equity holders, Representatives, successors and assigns to the extent based upon, attributable to or resulting from:

(i) any breach of any representation or warranty of Seller contained in this Agreement or in any certificate delivered by Seller at Closing;

(ii) any breach of any covenant or agreement of Seller contained in this Agreement or in any certificate delivered by Seller at Closing except any such covenant or agreement contained in Section 6(f) (which is instead covered in Section 6(f)); and

(iii) any of the Excluded Assets or the Excluded Liabilities.

(b) Subject to the terms and conditions of this Section 8, from and after Closing, Buyer shall indemnify and hold harmless Seller from and against all Losses incurred or suffered by Seller, its directors, officers, employees, Affiliates, equity holders, Representatives, successors and assigns to the extent based upon, attributable to or resulting from:

(i) any breach of any representation or warranty of Buyer contained in this Agreement or in any certificate delivered by Buyer at Closing;

(ii) any breach of any covenant or agreement of Buyer contained in this Agreement or in any certificate delivered by Buyer at Closing, except any such covenant or agreement contained in Section 6(f) (which is instead covered in Section 6(f)); and

(iii) any of the Assumed Liabilities.



(c) Notwithstanding anything to the contrary, in no event shall Seller's aggregate liability arising out of or relating to Section 8(a) exceed the Purchase Price (the "**Liability Cap**").

(d) Except for Claims arising from fraud or intentional misrepresentation on the part of a Party in connection with the Transaction contemplated by this Agreement, and subject to Section 10(j), the Parties acknowledge and agree that the indemnification provided in Section 8 (and in Section 6(f) with respect to Taxes for which an indemnity is available under Section 6(f)), shall be the sole and exclusive post-Closing remedy available to any Party hereto or their Affiliates or respective Representatives with respect to any Claim for breach of or otherwise relating to any representation, warranty, covenant or agreement in this Agreement (or in any certificate or other document delivered pursuant to this Agreement), or otherwise in respect of the Transaction contemplated by this Agreement, including as relating to the condition of the Purchased Assets or the ownership, operation or use of the Purchased Assets, and the Parties expressly waive any other remedy available at law or in equity.

(e) Method of Asserting Claims.

(i) Promptly after receipt by a Party of any Claim or notice of the assertion or commencement of any Proceeding by a Person other than a Buyer or Seller (or any of their respective Affiliates or Representatives) ("**Third Party Claim**") as to which the indemnity provided for in Section 8(a) or Section 8(b) may apply, the Indemnified Party shall notify the Indemnifying Party with reasonable promptness and in writing of such fact (an "**Indemnity Notice**"), which Indemnity Notice shall include a reasonably detailed description of such Third Party Claim and copies of material documentation relevant thereto. The Indemnifying Party shall have the right to participate in or by notice to the Indemnified Party to assume the defense of such Third Party Claim by all appropriate Proceedings, at the sole cost and expense of the Indemnifying Party and with the Indemnifying Party's own counsel, and the Indemnified Party shall cooperate in good faith in such defense; *provided*, that if counsel to the Indemnified Party shall have reasonably concluded that there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnified Party shall have the right to select and be represented by separate counsel, and the reasonable fees and expenses of such separate counsel shall be paid by the Indemnifying Party. In the event the Indemnifying Party assumes the defense of a Third Party Claim, it shall vigorously and diligently prosecute the relevant Proceedings to a final conclusion or settle such Third Party Claim at the discretion of the Indemnifying Party (provided that the consent of the Indemnified Party shall be required in the case of any settlement that does not provide as its sole relief the payment of monetary damages as to which the Indemnified Party will be indemnified in full). If the Indemnifying Party fails to notify the Indemnified Party, within 30 days of receipt of the Indemnity Notice, that the Indemnifying Party desires to assume the defense of the Third Party Claim or if the Indemnifying Party gives such notice but fails to prosecute vigorously and diligently or settle the Third Party Claim, then the Indemnified Party shall have the right to defend, at the sole cost and expense of the Indemnifying Party, the Third Party Claim by all appropriate Proceedings, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. If the Indemnified Party has so assumed the defense of such Third Party Claim, it shall

not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(ii) If any Indemnified Party should have a Claim under Section 8(a) or Section 8(b) against any Indemnifying Party that does not involve a Third Party Claim, the Indemnified Party shall deliver an Indemnity Notice to the Indemnifying Party, which Indemnity Notice shall include a reasonably detailed description of such Claim and copies of material documentation relevant thereto. The Indemnifying Party shall have 30 days after its receipt of such Indemnity Notice to respond in writing. During such period, the Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to such Claim, and whether and to what extent any amount is payable in respect of such Claim, and the Indemnified Party shall reasonably assist the Indemnifying Party's investigation thereof. If, within 30 days of receipt of the Indemnity Notice, the Indemnifying Party notifies the Indemnified Party that the Indemnifying Party does not dispute the claim described in such Indemnity Notice, the Loss arising from the Claim specified in such Indemnity Notice shall be conclusively deemed a liability of the Indemnifying Party under Section 8 and the Indemnifying Party shall pay the amount of such Loss to the Indemnified Party on demand following the final determination thereof. If, within such 30-day period, the Indemnifying Party disputes the Claim described in the Indemnity Notice (or if the Indemnifying Party does not respond within such 30-day period, in which case the Indemnifying Party shall be deemed to have rejected such Claim), the Indemnified Party may proceed to take any and all actions available to it in law or equity to recover any amounts due to it pursuant to, and subject to the limitations set forth in, this Section 8.

#### **Section 9. Termination.**

(a) This Agreement may be terminated:

(i) at any time prior to the Closing Date by mutual written consent of Buyer and Seller;

(ii) by Buyer or Seller if the Closing has not occurred on or before that date six months following the Effective Date (the "**Termination Date**"); *provided*, that the right to terminate this Agreement under this Section 9(a)(ii) shall not be available to any Party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before such date;

(iii) by either Buyer or Seller if (A) any Governmental Authority, the consent of which is a condition to the obligations of Buyer or Seller to consummate the Closing shall have determined not to grant its or their consent and all appeals of such determination shall have been taken and been unsuccessful, (B) one or more courts of competent jurisdiction in the United States or any State shall have issued an order, judgment or decree permanently restraining, enjoining or otherwise prohibiting the Closing, and such order, judgment or decree shall have become final and nonappealable, or (C) any statute, rule or regulation shall have been enacted by any State or federal government or governmental agency in the United States which prohibits the consummation of the Closing;

(iii) by Buyer, if there has been a material violation or breach by the Seller of any agreement, representation or warranty contained in this Agreement which has rendered the satisfaction of any condition to the obligations of the Buyer to effect the Closing impossible and such violation or breach has not been waived by the Buyer;

(iv) by Seller if there has been a material violation or breach by the Buyer of any agreement, representation or warranty contained in this Agreement which has rendered the satisfaction of any condition to the obligations of the Seller to effect the Closing impossible and such violation or breach has not been waived by the Seller;

(v) by either Buyer or Seller in the event all or any portion of the Purchased Assets are taken by eminent domain or damaged or destroyed by fire or other casualty that is reasonably likely to have a Material Adverse Effect.

(b) In the event of termination of this Agreement by either or both of the Parties pursuant to Section 9(a), written notice thereof shall promptly be given by the terminating Party to the other Party and this Agreement shall terminate and the Transaction contemplated hereby shall be abandoned without further action by any of the Parties hereto. If validly terminated, this Agreement will forthwith become null and void and there shall be no liability or obligation on the part of any Party hereto, except that the provisions set forth in Section 6(d), Section 6(e), Section 9(b), Section 10(e), Section 10(g), Section 10(h), Section 10(i) and Section 10(j) will continue to apply following any such termination. Notwithstanding the foregoing, nothing contained in this Section 9(b) shall relieve a Party from liability for any breach of any representation, warranty, covenant or agreement contained in this Agreement.

#### **Section 10. Miscellaneous.**

(a) Amendment and Modification. No amendment or modification or addition to this Agreement will be valid or effective unless the same is in writing and signed by the Buyer, on one hand, and the Seller, on the other hand.

(b) Extension; Waiver. The Party entitled to the benefit of any respective term or provision of this Agreement may (i) extend the time for the performance of any of the obligations or other acts of the other Party, (ii) waive any inaccuracies in the representations and warranties of the other Party contained in this Agreement, or (iii) waive compliance with any obligation of the other Party contained in this Agreement. Any agreement with regard to any such extension or waiver will be valid only if set forth in an instrument in writing by the Party granting such extension or waiver. A waiver or failure to enforce any of the terms or provisions of this Agreement will not in any way affect, limit or waive any Party's rights at any time to enforce strict compliance thereafter with such term and every other term and provision of this Agreement.

(c) Entire Agreement; Assignment. This Agreement constitutes the exclusive, final and entire agreement among the Parties with regard to the subject matter hereof and supersedes all other contemporaneous and prior agreements or understandings, whether written or oral, express or implied, among the Parties with regard to the subject matter hereof. In the event of any inconsistency between the statements in the body of this Agreement, the exhibits and

schedules to this Agreement, the statements in the body of this Agreement will control. All schedules referred to in this Agreement are specifically incorporated into this Agreement by reference. Terms used and not otherwise defined in the schedules to this Agreement will have the meanings given to them in this Agreement. This Agreement may not be transferred or assigned by any Party without the prior written consent of the other Party (not to be unreasonably withheld, conditioned or delayed), except that the Buyer may (i) assign this Agreement and/or any of its rights under this Agreement to any of its direct or indirect Subsidiaries or to any of its Affiliates who agree in writing to be bound by all of the terms, conditions and provisions contained herein following such assignment, and (ii) collaterally assign its interests hereunder to existing or prospective lenders; *provided, however*, in the case of each of (i) and (ii), that Buyer must provide the Seller with written notice of any such assignment and no transfer or assignment shall relieve the assigning party of any of its obligations under this Agreement. This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

(d) Severability. The provisions of this Agreement will be deemed severable, and if any provision of this Agreement is determined to be illegal or invalid under applicable Law, such provision shall (if the rights and obligations of the Parties will not be materially and adversely affected thereby) be changed to the extent reasonably necessary to make the provision, as so changed, legal, valid and binding. If any provision of this Agreement is determined to be illegal or invalid in its entirety, such illegality or invalidity will (if the rights and obligations of the Parties will not be materially and adversely affected thereby) have no effect on the other provisions of this Agreement, which will remain valid, operative and enforceable. Upon any such determination that any provision of this Agreement is illegal or invalid, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the Transaction contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(e) Notices. All notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if delivered personally, by facsimile transmission or electronic mail, by reputable national overnight courier service or mailed (first class postage prepaid) to the Parties at the addresses or facsimile numbers, as applicable, set forth below. Notices, requests and other communications will be deemed given upon the first to occur of such item having been (i) delivered personally to the address set forth below, (ii) delivered by confirmed facsimile transmission to the facsimile number, or by electronic mail (with delivery confirmation thereof) to the email address, in each case as set forth below, or (iii) delivered by mail or by reputable national overnight courier service in the manner described above to the address set forth below. Any Party may, from time to time, change its address, facsimile number, email address, or other information for the purpose of notices to that Party by giving notice specifying such change to the other Parties.

If to the Seller, to:

Public Service Company of New Hampshire d/b/a Eversource Energy  
c/o Eversource Energy  
56 Prospect Street  
Hartford, Connecticut 06103



Attention: General Counsel

with a copy to:

Public Service Company of New Hampshire d/b/a Eversource Energy  
780 North Commercial Street  
Manchester, New Hampshire 03101-1134  
Attention: Law Department

If to the Buyer, to:

FPL Energy Wyman IV LLC  
700 Universe Boulevard  
Juno Beach, FL 33408  
Facsimile: 561-304-5133  
E-Mail: Heath.Barefoot@nexteraenergy.com  
Attention: Business Manager

with a copy to:

FPL Energy Wyman IV LLC  
700 Universe Boulevard  
Juno Beach, FL 33408  
Facsimile: 561-691-7305  
E-Mail: Charles.Schultz@nexteraenergy.com  
Attention: Associate General Counsel

(f) Notifications to Third Parties. Notwithstanding the provisions of Sections 6(d) and 6(e), each Party reserves the right, as may be required by applicable Law, to file this Agreement under seal or similar process (with customary confidentiality protections) with, and disclose the fact of this Agreement (but, except for the filing under seal (or similar process), shall not disclose any material terms and conditions hereof, including the Purchase Price, except if otherwise in accordance with Section 6(d) or 6(e)), to any applicable Governmental Authority of competent jurisdiction, including but not limited to the Federal Energy Regulatory Commission and the New Hampshire and Maine state public service commissions; *provided*, the other Party is provided reasonable prior notice of such expected filing. Buyer will notify the other Wyman 4 Owners, Central Maine Power Company, ISO-NE and the Federal Energy Regulatory Commission of the fact and subject matter of this Agreement, on or after the Effective Date.

(g) Governing Law; Submission to Jurisdiction and Waiver of Jury Trial.

(i) This Agreement, its construction and the determination of any contractual or non-contractual rights, duties or remedies of the Parties arising out of or relating to this Agreement will be governed by, enforced under and construed in accordance with the Laws of the State of Maine, regardless of the Laws that might otherwise govern under applicable principles of conflicts of laws.

(ii) The Parties hereby irrevocably submit to the exclusive jurisdiction of (A) the federal courts located in the State of Maine, to the extent that such court has or can exercise jurisdiction, and (B) the state courts of the State of Maine, to the extent that the federal courts located in the State of Maine do not have or cannot exercise jurisdiction, and each Party hereby consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such Proceeding arising out of or relating to this Agreement. Service of process, summons, notice or other document by mail to such Party's address set forth in this Agreement shall be effective service of process for any Proceeding brought in any such court. The Parties irrevocably and unconditionally waive any objection to the laying of venue of any Proceeding in such court and agree not to plead or claim in any such court that any such Proceeding brought in any such court has been brought in an inconvenient forum.

(iii) EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON OR ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY RELATED AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT.

(h) Waiver of Consequential Damages. Notwithstanding any provision in this agreement to the contrary, except as provided with respect to (i) any Taxes which may be indemnified under Section 6(f), or (ii) any incidental or consequential damages incurred with respect to Third Party Claims that are part of a Loss which may be indemnified under Section 8, or (iii) any damages caused by fraud or intentional misrepresentation, no Party or its Affiliates, or any of their respective officers, directors, employees and Representatives, shall be liable for special, punitive, exemplary, incidental, consequential or indirect damages or loss of revenue, income or profits, diminution of value or loss of business reputation or opportunity of any other Party or its Affiliates, or any of their respective officers, directors, employees and Representatives, whether based on contract, tort, strict liability, other Law or otherwise and whether or not arising from the other Party's or its Affiliate's, or any of their respective officer's, director's, employee's or Representative's sole, joint or concurrent negligence, strict liability or other fault, and in particular, no "multiple of profits" or "multiple of cash flow" or similar valuation methodology shall be used in calculating the amount of any Losses, and each Party hereby expressly releases the other Party, its Affiliates, and their respective officers, directors, employees and Representatives therefrom.

(i) Expenses. Each Party's expenses in connection with the negotiation, execution and performance of this Agreement, the Transaction contemplated by this Agreement and all things required to be done in connection with this Agreement, including attorneys' fees, brokerage or financial advisor fees, filing fees and accounting fees, shall be for the account of such Party.

(j) Specific Performance. Subject to Section 8(d), the Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

(k) Parties. With the exception of the Parties and, with respect to the indemnifications provided in this Agreement, the Representatives (and other indemnified Persons) of the Parties, there will exist no right of any Person to claim a beneficial interest in this Agreement or any rights occurring by virtue of this Agreement.

(l) Counterparts; Signatures. This Agreement may be executed by the Parties in counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. This Agreement may be executed and delivered by facsimile, PDF or other electronic transmission and shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[signature page follows]

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be duly executed and delivered as of the day and year first above written.

PUBLIC SERVICE COMPANY  
OF NEW HAMPSHIRE

By: 

Name: Philip J. Rembo

Title: Executive Vice President &  
Chief Financial Officer

FPL ENERGY WYMAN IV LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be duly executed and delivered as of the day and year first above written.

PUBLIC SERVICE COMPANY  
OF NEW HAMPSHIRE

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

FPL ENERGY WYMAN IV LLC

By: \_\_\_\_\_

Name: Alex Rubio  
Vice President

Title: \_\_\_\_\_



**NHPUC Orders Authorizing the Auction Process**

**THE STATE OF NEW HAMPSHIRE**

**PUBLIC UTILITIES COMMISSION**

**DE 16-817**

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

**Auction of Electric Generation Facilities**

**ORDER OF NOTICE**

On July 1, 2016, the Commission issued Order No. 25,920 approving the 2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement and the Partial Litigation Settlement Agreement. Consistent with the terms of the Settlement Agreements, the Commission opens this expedited proceeding to oversee the process of auctioning the generation facilities owned by Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource). The Commission's primary objective in the auction process is to obtain the highest possible sale value of the generation facilities in order to minimize the level of stranded costs ultimately paid by Eversource customers. The Commission's secondary objective, to the extent not inconsistent with the primary objective, is to accommodate the participation of municipalities that host generation assets and to fairly allocate among individual assets the sale price of any assets that are sold as a group. This order of notice and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, will be posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2015/16-817.html>.

The Commission has conducted a competitive solicitation process and selected JP Morgan to act as auction advisor to the Commission. On September 7, 2016, the Governor and



Executive Council approved the contract between JP Morgan and the Commission. The proceeding will begin with a proposal by JP Morgan on the auction design and process. The Commission establishes the following first procedural steps for this docket.

September 12, 2016	Auction Advisor recommends Auction Design and Process
September 15, 2016	Petitions to Intervene due
September 19, 2016	Objections to Intervention 10:00 am; paper filing waived
September 19, 2016	Prehearing Conference/Technical Session 1:30 p.m.
September 30, 2016	Written Comments on Auction Design and Process

Additional procedural steps will be determined following discussions at the technical session and recommendations by participants.

This proceeding is intended to implement the divestiture process for the generation facilities of Eversource as approved in Order 25,920. The divestiture shall be conducted in conformance with Order 25,920, RSA Chapter 369-B, and RSA Ch. 374-F. The proceeding will culminate in a decision on auction results, and if necessary, a financing order authorizing securitization of stranded costs and stranded cost rates, in conformance with Order 25,920, RSA Chapter 369-B and RSA Ch. 374-F. Each party has the right to have an attorney represent the party at the party's own expense.

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

**ORDERED**, that a Prehearing Conference, pursuant to N.H. Code Admin. Rules Puc 203.15, be held before the Commission located at 21 S. Fruit St., Suite 10, Concord, New Hampshire on September 19, 2016, at 1:30 p.m., at which each party will be prepared to argue regarding petitions to intervene and provide a preliminary statement of its position with regard to the proceeding and any of the issues set forth in N.H. Code Admin. Rules Puc 203.15; and it is



**FURTHER ORDERED**, that, immediately following the Prehearing Conference, the Staff of the Commission and any Intervenors hold a Technical Session to review the proposed auction design and process and allow the Auction Advisor to provide any amendments or updates to its auction design; and it is

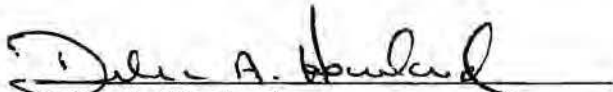
**FURTHER ORDERED**, that pursuant to N.H. Code Admin. Rules Puc 203.12, the Commission shall notify all persons desiring to be heard at this hearing by publishing a copy of this Order of Notice no later than September 8, 2016, on its web site, and by serving an electronic copy of this Order of Notice to all parties in Docket DE 14-238; and it is

**FURTHER ORDERED**, that consistent with N.H. Code Admin. Rules Puc 203.17 and Puc 203.02, any party seeking to intervene in the proceeding shall submit to the Commission seven copies of a Petition to Intervene with copies sent to the Commission, the parties to docket DE 14-238, and the Office of the Consumer Advocate, on or before September 15, 2016, 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. Code 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 10:00 a.m. on September 19, 2016, paper filing waived; and it is

**FURTHER ORDERED**, Eversource shall be made a mandatory party to this proceeding.

By order of the Public Utilities Commission of New Hampshire this seventh day of  
September, 2016.

  
Debra A. Howland  
Executive Director

Individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability should contact the Americans with Disabilities Act Coordinator, NHPUC, 21 S. Fruit St., Suite 10, Concord, New Hampshire 03301-2429; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Notification of the need for assistance should be made one week prior to the scheduled event.

## SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

Executive.Director@puc.nh.gov	f.anne.ross@puc.nh.gov
alexander.speidel@puc.nh.gov	fedelblut@gmail.com
amanda.merrill@nh.gov	gilfavor@comcast.net
amanda.noonan@puc.nh.gov	harringt@metrocast.net
andrew.hamilton@mclane.com	howard.moffett@leg.state.nh.us
catherine.corkery@sierraclub.org	james.brennan@oca.nh.gov
catherine.marsellos@puc.nh.gov	jay.dudley@puc.nh.gov
cbaia@concordnh.gov	jeb.bradley@leg.state.nh.us
cboldt@dtclawyers.com	jkennedy@concordnh.gov
cholahan@nepga.org	kate@nhsea.org
christine.vaughan@eversource.com	kerry.holmes@nh.gov
Christopher.aslin@doj.nh.gov	kristi.davie@eversource.com
christopher.goulding@eversource.com	leszek.stachow@puc.nh.gov
dan.feltes@leg.state.nh.us	lisa.cameron@brattle.com
daniel.allegretti@exeloncorp.com	mark.berkman@brattle.com
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16-817  
Docket #: ~~14-238-1~~ Printed: September 07, 2016

### FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:  
DEBRA A HOWLAND  
EXEC DIRECTOR  
NHPUC  
21 S. FRUIT ST, SUITE 10  
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.

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*16-817*  
Docket #: ~~14-238-1~~ Printed: September 07, 2016

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 16-817**

**EVERSOURCE ENERGY AUCTION OF GENERATION FACILITIES**

**Order Approving Auction Design**

**ORDER NO. 25,967**

**November 10, 2016**

In this order, the Commission approves the auction design and process recommended by the Commission's auction advisor, J.P. Morgan, with certain modifications to further accommodate participation by intervening cities and towns.

**I. PROCEDURAL HISTORY**

This docket was established to conduct the sale of the fossil and hydro electric generation facilities (Generation Facilities) owned by Eversource Energy (Public Service Company of New Hampshire) d/b/a Eversource Energy (Eversource) as ordered in Order No. 25,920 (July 1, 2016). Order No. 25,920 approved the 2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement filed with the Commission on June 10, 2015, (2015 Settlement) as amended by the Partial Litigation Settlement filed on January 26, 2016 (Litigation Settlement). Order No. 25,920 and the settlements approved in that order require the sale of the Generation Facilities to be conducted by an auction advisor selected by the Commission.

Following a competitive request for proposals (RFP), the Commission selected J.P. Morgan as its auction advisor (JPM or Auction Advisor). The contract with JPM to conduct the sale of the Generation Assets was approved by the Governor and the Executive Council on

September 7, 2016. On September 12, 2016, JPM filed a description of the proposed auction process with the Commission. On October 17, 2016, JPM filed a modification to the proposed auction process to facilitate municipal participation in the auction. On November 4, 2016, JPM filed additional comments on the auction design. The proposed auction process, together with all other filings in this docket, except for any information for which confidential treatment has been requested of or granted by the Commission, are posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2016/16-817.html>.

The Commission issued an order of notice on September 7, 2016, and held a prehearing conference on September 19. The Office of Consumer Advocate (OCA) filed its notice of participation on September 13, 2016, and the following parties sought intervention: the Towns of Gorham, Bristol and New Hampton, the Cities of Berlin and Concord, the Sierra Club, the Conservation Law Foundation (CLF), the Office of Energy and Planning (OEP), and the International Brotherhood of Electrical Workers Local 1837 (IBEW).

All parties present at the prehearing conference questioned JPM about the proposed auction process. Following the hearing, during a technical session, parties had further opportunity for questions and discussions with JPM. Commission Staff (Staff) filed a letter on September 21, 2016, summarizing the parties' discussions at the technical session. The Commission granted all intervention requests by Secretarial Letter on September 22, and required JPM to respond to follow-up questions from parties. The Town of New Hampton submitted a question to JPM on September 21, and JPM responded on September 29. The parties filed written comments on September 30, 2016, and additional comments on October 21, 2016. The Commission issued Order No. 25,954 (October 18, 2016) denying a motion to designate certain Commission Staff as staff advocates, and Order No. 25,956 (October 21, 2016)

requiring Eversource to remove two legacy mercury boilers and associated equipment from the Schiller generating station. This order will consider the remaining auction process and design issues raised by various parties in written comments and by JPM in its auction design, and its comments on auction design.

## **II. POSITIONS OF THE PARTIES**

### **A. J.P. Morgan**

#### **1. Initial Auction Design September 12, 2016**

In its proposed auction design filed on September 12, 2016, JPM described a broad two round auction process in which a wide range of potential bidders, after signing confidentiality agreements, would be given access to a confidential information memorandum (CIM) and certain third party engineering and market analyses of the Eversource portfolio of hydro and fossil Generation Facilities offered for sale. Such potential bidders would be allowed to submit non-binding indicative bids on single facilities or groups of facilities in Round 1 of the auction. A smaller group of qualified bidders in Round 1 would then be selected to participate in Round 2 in which those potential bidders would be given the opportunity to conduct detailed due diligence on the facilities. Round 2 bidders would be given access to an electronic data room containing information on each of the facilities and provided the opportunity to visit the facilities in person, including receiving a comprehensive business, operational, and financial presentation from management on those facilities. Round 2 bidders would then be invited to submit final binding bids at the end of Round 2. From the group of potential bidders that elected to submit such final binding bids, JPM would then select a winning bid, or combination of bids, and begin negotiating final terms of sale.

JPM indicated in the technical session on September 19, 2016, that municipalities would be allowed to submit final binding bids in Round 2 without non-binding proposals in Round 1. At the technical session JPM and Eversource also agreed to give the intervening municipalities a draft confidentiality agreement by September 23, 2016, and once signed, to allow municipalities access to the data room for their respective hydro facilities in November 2016. *See Staff Letter September 21, 2016.* Under the September 12, 2016, JPM auction design, Round 1 of the auction process would take place during November and December 2016 and Round 2 would start in January 2017. Final binding bids would be due in late February or early March.

## 2. Amended Auction Design October 17, 2016

After receiving the written comments from Berlin, Gorham, Bristol, and New Hampton (the Municipalities), which are described below, and conducting telephone conferences on October 6 and 13 with the Municipalities, JPM proposed a number of timing and design changes to facilitate the Municipalities' participation in the auction process. *See Staff Letter October 17, 2016, enclosing JPM amendments to its September 12, 2016, Auction Design.*

The amended proposed auction process would allow the Municipalities, once they have signed a confidentiality agreement, access to the electronic data room for their respective hydro facilities, in November 2016.<sup>1</sup> The Municipalities would also be given access to the independent market analysis and the independent engineering analysis for their respective hydro assets as soon as those reports become available, estimated to be in late November 2016.

Under the amended process, the auction schedule would be extended approximately two months. As a result, other interested bidders would be qualified to participate in Round 1 in mid-to late November, and would be given confidentiality agreements in mid-December. A CIM

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<sup>1</sup> The hydro facilities hosted by the Municipalities are, Smith Hydro in Berlin, Gorham Hydro in Gorham, and Ayers Island Hydro in Bristol and New Hampton.



would be circulated to all qualified Round 1 bidders and to the Municipalities in early January 2017. Preliminary non-binding bids would be due in mid- to late February from all bidders, except the Municipalities, which would not be required to submit preliminary non-binding bids, but would have the option of giving JPM their indication of value for their respective hosted local hydro facilities. The Municipalities electing to submit indications of value would then receive, on a confidential basis, information from JPM on how their values relate to the range of Round 1 bids on their hosted facilities. Final binding bids would be due from all bidders including the Municipalities in early to mid-May 2017. Further, in order to address municipal needs for specific price allocation to their respective hydro facilities, in its amended auction design JPM proposed to require all Round 1 and Round 2 bidders to allocate bid value among any hydro facilities included in their bids.

### 3. Comments on Auction Principles and Process Criteria November 4, 2016

On November 4, 2016, JPM filed comments describing the guiding principles for designing an auction process for the Generation Facilities that maximizes total transaction value. JPM observed that creating competition among bidders is a key driver of value. The rules of the auction process must be transparent and the process must be consistent with industry practice. JPM described the need to have fairness among bidders including equal access to information to evaluate the facilities. Finally, JPM stressed the need for process continuity and setting an appropriate pace for the auction, allowing enough time for data analysis while keeping bidders engaged.

JPM noted that the financing and power markets are supportive of a sale of the Generation Facilities at this time, but warned that further delay in the auction process creates a risk that these favorable conditions will lapse.

JPM described in more detail the criteria for selecting potential bidders for Round 2. Criteria include: bid price relative to other bidders, assets included in the bid, ability to finance, commitment to the transaction, reputation in the market, and ability to support Round 2 due diligence.

JPM stressed the need for final binding bids without financing contingencies at the end of Round 2. Round 2 bids need to be binding and financed so that the seller<sup>2</sup> knows that the bid is final and not subject to further contingencies. Without binding final bids, it is not possible for the seller to judge the best offer.

Regarding the addition of a third round of bidding following binding and fully financed bids in Round 2, JPM stated that such a structure would create uncertainty for bidders and is not commercially standard. An additional Round 3 would create a higher risk of a broken deal and would discourage bidders from expending the funds needed to complete due diligence and enter binding Round 2 bids. Based on JPM's experience, a Round 3 process would suppress bidder interest in the auction.

Finally, JPM explained that accommodations it has designed for the municipal bidders in its amended auction design are non-standard for commercial auctions. Nonetheless, it believes it can effectively manage any negative impact of the favorable treatment for that group of bidders.

## **B. City of Berlin and Towns of Gorham, Bristol and New Hampton**

### **1. September 30, 2016, Written Comments**

Berlin hosts the Smith Hydro facility, which has a nameplate capacity of 15.2 megawatts (MW) and a current city tax assessment of \$56.5 million. Gorham hosts the Gorham Hydro facility with a nameplate capacity of 2.1 MW and a current town tax assessed value of \$3.9

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<sup>2</sup> In this case, unlike conventional auction sales, the Commission and Auction Advisor will evaluate final bids to ensure highest total transaction value.

million. Bristol and New Hampton jointly host the Ayers Island Hydro facility, which has a nameplate capacity of 8.4 MW and a tax assessed value of \$6.7 million for the portion located in Bristol. Bristol described the purpose of its intervention to be:

a) to ensure that the Town's tax base is protected by this process which should be implemented in order to produce the highest sale price possible; and b) provide an opportunity for the residents of Bristol to participate in a possible purchase of Ayers Island if such sale is in the best interest of the Town.

Bristol Comments at 2. Similar to Bristol, New Hampton stated that its, "main interest in participating in the auction process is to ensure that the sales price is indicative of what the town believes is fair market value." New Hampton Comments at 8.

Berlin described its participation in the 2015 Settlement and the Litigation Settlement approved by the Commission in Order No. 25,920 and described the procedural steps leading to Berlin and Gorham's intervention in this docket. Berlin and Gorham claimed that the auction schedule proposed by JPM on September 12, 2016, was unworkable because it does not allow for participation by the Municipalities and is therefore inconsistent with the letter and spirit of the 2015 Settlement, Section IV. B. Bristol and New Hampton joined in Berlin and Gorham's comments and added further timing and process concerns in their comments.

Berlin and Gorham claimed that given the statutory notice requirements of RSA Ch. 38 to approve a municipal purchase of generation facilities, the Municipalities could not participate in an auction process like the one in JPM's initial proposal. Berlin Comments at 8. The Municipalities claimed that their decision to move forward would have to be made before they had adequate time to analyze data, educate citizens on the advantage of acquiring such facilities, and file the requisite notices of meetings. The Municipalities also asserted that there was not sufficient detail concerning how prices for individual assets will be allocated when assets are

grouped in bids. Finally, the Municipalities discussed the need to coordinate efforts among themselves potentially causing additional delay in reaching decisions on pursuing bids in the proposed auction.

According to Berlin, the City Council must approve the decision to acquire the generation facility by two thirds vote. Berlin Comments at 5-6. The City Council vote must be confirmed by a majority vote of the qualified voters at a regular or special election held within one year of the City Council vote. RSA 38:3, Berlin Comments at 6. A second vote by two thirds of the qualified voters at an election must occur within 90 days of the final determination of price for the assets, to authorize the purchase and bonding of the acquisition. RSA 33-B and RSA 38:13, Berlin Comments at 6.

Gorham and Bristol maintain a traditional form of town meeting. Gorham and Bristol's next annual town meeting is March 14, 2017. The last date for those towns to post the warrant and budget for the town annual meeting is February 27, 2017. Berlin Comments at 6. Thus, if Gorham or Bristol wishes to present a question of purchasing hydro facilities at the March 14, 2017, annual town meeting, the towns must analyze data, educate selectmen and citizens, and post a warrant before February 27, 2017. New Hampton, unlike Gorham and Bristol, has voted to conduct its town meeting over two-sessions. *See* RSA 40:13. The first is a deliberative session which, for the annual meeting in 2017, must be held between February 4 and February 11. New Hampton must post its warrant and budget for the first deliberative session of its annual meeting by January 30, 2017. The second session of the New Hampton annual town meeting, where articles are voted on, must be held on March 14, 2017. New Hampton Comments at 3.

Gorham, Bristol, and New Hampton asserted that due to a lack of administrative resources, the complexity of the issues concerning a bid on the hydro facilities, and an already full agenda for the annual meeting, they cannot present the auction questions to voters at the annual meeting. As a result, Gorham, Bristol, and New Hampton stated that they will have to hold a special meeting to deal with the decision on purchasing the hydro facilities. Berlin Comments at 7, and New Hampton Comments at 3. If Gorham, Bristol, or New Hampton wishes to hold a special meeting to consider whether to bid on the hydro generation assets, none of these towns can schedule such a meeting on biennial election-day (November 8, 2016) and they cannot schedule a special meeting within 60 days prior to an annual meeting. As a result, this year a special meeting must be held before January 13, 2017, for Gorham and Bristol and before December 5, 2016, for New Hampton, or else sometime after the annual meeting. Berlin Comments at 6.

Gorham or Bristol voters, by two thirds vote, at either an annual or special meeting, must vote that it is expedient to acquire the generation facility, and then within 90 days of the final price determination, the Gorham or Bristol voters by two thirds vote must approve the purchase and bonding of the acquisition. Berlin Comments at 6.

The Municipalities all voiced concerns with their ability to participate in a non-binding Round 1 bid process, but they accepted the alternative arrangement for Round 1, offered by JPM at the Municipalities' request. *See* JPM Response to New Hampton Question filed September 29, 2016. Under that alternative arrangement, at the conclusion of the Round 1 non-binding bids, the Municipalities would have the option of giving JPM their indication of value for their respective hosted local hydro facility. The Municipalities would then receive, on a

confidential basis, information from JPM on how their values relate to the range of Round 1 bids on their hosted facility.

The Municipalities expressed concerns over the failure to allocate prices to specific generation assets in both the Round 1 and Round 2 bids on groups of assets. If they are not bidders on the generation assets, the Municipalities also requested information on all final bid allocations on asset groupings at the end of Round 2 whether or not those allocations are winning bids.

The Municipalities acknowledged that JPM has committed to giving them access to the electronic data room for the hydro assets in early November to allow them to begin their analysis of facility value. They also confirmed receipt of confidentiality agreements from Eversource, which are currently under negotiation, and receipt of an index to a sample CIM on an electric generating asset.

The Municipalities asked that the Commission take administrative notice of testimony filed in Docket No. DE 14-238, by George E. Sansoucy dated July 16, 2015, on behalf of Berlin; Leszek Stachow dated September 18, 2015, and supplemented on January 26, 2016, on behalf of Non-Advocate Staff; and Dr. Peter Cramton dated September 18, 2015, and revised September 28, 2015, on behalf of Non-Advocate Staff. Berlin Comments September 30, 2016, at 9. Those three witnesses testified concerning an “ascending clock” auction process.<sup>3</sup> The Municipalities suggested that an ascending clock auction is a more transparent, fair, simple and efficient auction process than the process proposed by JPM. The Municipalities claimed that because, in the JPM process, bidders do not know the level of competing bids, it is not possible

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<sup>3</sup> Ascending clock auction refers to an auction in which a group of bidders begin simultaneously bidding up the price of an item offered for sale until no further bids are received. At that point the bidding is closed and the final highest bid is the winning bid.

for bidders to bid up assets and that some value may be lost due to the lack of transparency of other competing bids. *Id.* at 10-11.

The Municipalities requested that the fully populated electronic data room be made available to them by November 1, 2016. They asked that the auction be postponed to start at the conclusion of the on-going sale of TransCanada's 583 megawatt hydro facilities located on the Connecticut and Deerfield Rivers. Alternatively, they suggested that the auction process should be delayed seven months so that Round 1 would begin on May 1, 2017, or that the auction of the fossil generation facilities proceed on the schedule proposed by JPM, and that the auction of the hydro facilities be delayed until after the fossil auction is completed. As an additional option, the Municipalities proposed that they be allowed to participate in Round 2 without participating in Round 1 and that Round 2 be delayed so that it begins on May 1, 2017. Finally, the Municipalities proposed that the auction of the hydro facilities be run as a "reserve auction" with the reserve price set at the 2016 municipal tax assessed value of each of the hydro generating facilities.<sup>4</sup>

The Municipalities also requested further options for discovery, testimony and a hearing on the auction process proposed by JPM. The Municipalities argued that the current procedural schedule in this docket is too short to allow meaningful participation by them in the design of the auction process.

## 2. October 21, 2016, Written Comments

Berlin and Gorham filed additional comments on the amended auction design filed by JPM on October 17, 2016. They stated that the amended auction design did not address municipal concerns and that the additional two months of delay in the Round 1 and Round 2

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<sup>4</sup> A reserve auction refers to an auction in which there is a reserve price which serves as a minimum price. If no bid is received above the reserve price the item is not sold.

process still would not allow municipalities sufficient time to coordinate necessary educational sessions with voters, hold votes or negotiate agreements for operation, maintenance, and marketing of the multi-million dollar facilities. Berlin Comments at 5. They claimed, as a consequence, that they were effectively frozen out of the bidding process. *Id.* Berlin and Gorham were also concerned that the amended auction's emphasis on: having as little conditionality as possible, ability to consummate a transaction, and fully financed offers, in the selection of winning bids in Round 2, creates a presumption against municipal bids because the municipalities must wait for a bid to be accepted as a winning bid by JPM before taking it back to the voters for a second vote to bond the purchase pursuant to RSA 38:13. *Id.* at 5-6. Berlin and Gorham requested that the Commission expressly rule that the fact that "a municipality with the higher bid must go through the RSA 38 process is not grounds for rejection of that municipal bid" in Round 2. *Id.* at 6. They requested rights to review the full bidding process results as part of a final adjudicatory proceeding concerning the Commission's approval of the final bids and the allocations associated with the sale of the Eversource assets. *Id.*

As a solution to all of their concerns, Berlin and Gorham suggested the use of a third round of bidding after the Round 2 bidding, scheduled for mid-May 2017 in the amended auction design. If the highest Round 2 bid does not exceed the municipal bid, or some other lower benchmark chosen by the municipality, then the municipality could force a third round where the bidders could potentially "bid up" the price to acquire the asset. *Id.* at 6-7. Berlin and Gorham claimed that the responses in the JPM amended auction design to various municipal suggestions, including ascending clock auctions, the suggested delay until the conclusion of the TransCanada sale, the methods for selecting group bids, or the undesirability of separating the fossil and hydro assets into separate auctions, are not sufficiently detailed and require further discovery. *Id.*



at 7-8. Berlin and Gorham argues that the Commission should allow additional time for data requests, technical sessions, pre-filed written testimony from JPM, Staff and other parties, and hearings, to allow all of these issues to be adjudicated before the Commission. *Id.* at 8.

Bristol reiterated that its “primary purpose in participating in this case is to protect its tax base.” Bristol October 21, 2016, Comments at 1. Bristol claimed that JPM’s October amendments failed to ensure that the Municipalities would be able to protect their tax bases. *Id.* Although JPM offered the Municipalities the ability to test their facilities’ value against the indicative bids in Round 1, Bristol observed that there is no guarantee that final binding bids will come in as high as earlier indicative bids. *Id.* at 2. Therefore, according to Bristol, the Municipalities must bid in the second binding bid round in order to protect their tax base. Bristol asserted that even with the Round 2 bids due in mid-May rather than early March, there is not time for multiple board of selectmen meetings to analyze the burdens and benefits of a purchase of Ayers Island Hydro, and additional meetings with the public to educate residents prior to a vote. *Id.* at 3; RSA 38:4 and :13.

New Hampton stated that issues remain with the timing of release of confidential information, insufficient time to educate the public and hold required special town meetings, the Municipalities’ access to information regarding submitted bids so that municipal governing boards can timely determine whether it is necessary to submit a bid in order to protect the municipal tax base which requires bidder approval, and finally the need for municipal input on allocation of sales price to facilities located within the Municipalities. New Hampton October 21, 2016, Comments at 1.

New Hampton stated that a May 15, 2017, deadline for final bids proposed in JPM’s amended auction design would require notice of the special meeting by March 18, 2017, for a

deliberative session April 1, 2017, and a vote on May 2, 2017. New Hampton claimed that such a schedule would not allow sufficient time for meaningful opportunity to educate the voters regarding these multi-million dollar facilities. *Id.* at 4. New Hampton also asserted that the amended auction design does not provide the Municipalities with the CIM until January, which delays the Municipalities analysis of data until January which is a time when selectmen are busy getting ready for the annual town meeting. *Id.* at 4. New Hampton claimed that a New Hampton selectman will testify that New Hampton cannot hold the vote to authorize a purchase of the Ayers Island Hydro facility before the end of July 2017. *Id.* New Hampton asserted that JPM has provided no evidence that extending the bidding deadline or separating the fossil and hydro assets is unacceptable. *Id.* at 6. Finally, New Hampton asked that the Commission require JPM to accept bids by the Municipalities in the final round of bidding without regard to the fact that those bids will need to be ratified and bonding approved by the voters in a subsequent town meeting. According to New Hampton, the Municipalities are legally prohibited by RSA 38:13 from submitting bids with financing pre-approved. *Id.* at 7.

### **C. Testimony from Docket DE 14-238 Adopted by the Municipalities**

The Municipalities asked the Commission to take administrative notice of testimony by three witnesses in Docket No. DE 14-238, and the Municipalities relied on that earlier testimony on auction design by Mr. Sansoucy, Mr. Stachow, and Dr. Cramton in their written comments. Berlin and Gorham Comments September 30, 2016, at 9-11.

Mr. Sansoucy is an engineer and an appraiser who has provided services including “valuation of public utility infrastructure, energy projects, and complex industrial properties.” Sansoucy Testimony at 1. Mr. Sansoucy did not claim any direct experience with auction processes or any experience in managing auctions of electric generation facilities.

Mr. Sansoucy's testimony addressed the auction process proposed in the 2015 Settlement and emphasized the need for an open and public auction process supervised by the Commission to prevent the sale of the Generation Facilities at a "fire sale." *Id.* at 2. Mr. Sansoucy claimed that the 2015 Settlement Agreement at Section IV does not provide sufficient detail concerning the auction process or the accommodations needed to allow municipalities to participate in the auction. *Id.* at 5. Mr. Sansoucy asked that the auction be held after the 2016 town meetings to allow towns to authorize bids prior to the bidding in the auction. *Id.* at 6. Mr. Sansoucy also recommended that municipalities be allowed to bid on individual assets. Finally, Mr. Sansoucy recommended that all bids be evaluated in an open and public process with bidder identities kept private. *Id.* at 7.

Mr. Stachow is educated as an economist and has extensive experience in acquisitions and mergers in central Europe. Stachow Testimony Exhibit 1. Mr. Stachow's testimony summarized testimony by other staff members and also discussed the auction process. Mr. Stachow suggested a 6 step process in which the first 4 steps mirror the broad Round 1 and the due diligence portion of Round 2 in the JPM auction design. Mr. Stachow departed from the JPM design at step 5 in which an ascending clock auction would be conducted with the Commission selecting winning bidders in step 6. Stachow Testimony at 16-20.

Dr. Cramton is a professor of economics with extensive research on auction theory and practice. Cramton Testimony at 1. Dr. Cramton recommended the same 6 step auction process described in Mr. Stachow's testimony. Dr. Cramton described the simultaneous ascending clock auction as an auction where all bidders have real time access to competing bid amounts on assets or groups of assets without knowing the identity of the other bidders. Bidding continues until the highest bids are established on individual assets or groups of assets. *Id.* at 3-5. Dr. Cramton

gave examples of how the ascending clock auction design has been used in electricity-related contexts. *Id.* at 6. The examples included numerous sales of purchase power agreements for electricity in Canada, Netherlands, Denmark, Spain, Portugal and Germany. *Id.* According to Dr. Cramton, a similar process has been used to procure default service electricity supply in New Jersey and Pennsylvania and also to procure electricity capacity on an annual basis in the ISO-NE, Midwest ISO, and Texas PUC forward capacity auctions. *Id.* at 7.

#### **D. Conservation Law Foundation**

CLF supported the broad and open auction process recommended by JPM. CLF Comments at 1. CLF stressed the need to complete the sale of the Eversource generation portfolio quickly and to establish a competitive market. *Id.* at 2. CLF noted that the JPM auction design does not describe a separate process in the event a facility does not sell at the end of the auction. CLF cited the Failed Auction section of the 2015 Settlement, Section IV. G, which provides that in the event that a facility does not sell at auction, it be offered for sale in a second auction or retired. *Id.* at 1. CLF argued that if bidders know that there is likely to be a second offering of a facility, they may refrain from bidding in the initial auction. *Id.* at 2. To remedy this concern, CLF suggested that the “Commission should consider making clear, at the outset, that it will proceed directly to the retirement option in the event of a failed auction ....” *Id.* Otherwise, according to CLF, the process leaves open the possibility that there will be a second auction of unsold assets, and increases the likelihood of one or more assets remaining unsold, as well as the likelihood that bidders might approach the upcoming auction strategically, anticipating a potential second auction for unsold assets. *Id.* Further, CLF recommended that the Commission and the Auction Advisor obtain information regarding the cost of retirement of individual facilities for use in analyzing bids on the portfolio. Finally, CLF pointed to the 2015

Settlement's goal of achieving the divestiture of the Eversource Generation Facilities expeditiously, and asked that the Commission and the Auction Advisor avoid process changes that create any delay in the divestiture. *Id.*

### **E. Sierra Club**

The Sierra Club objected to two aspects of JPM's proposed auction design. First, the Sierra Club asserted that there was a lack of criteria for JPM to use in selecting the Round 1 bidders to participate in Round 2. Sierra Club Comments at 3. Second, the Sierra Club disagreed with JPM's recommendation that Eversource remove the two legacy mercury boilers from Schiller station. The issues surrounding the removal of the two boilers were decided in Order No. 25,956 (October 21, 2016). With regard to selection criteria for bidders moving into Round 2 the Sierra Club stated:

Phase II would consist of '[p]arties who continue in the process,' but does not indicate whether or not that population would be self-selected (i.e., whether or not the parties bidding in Phase II would consist of the parties from Phase I less those that decided to drop out). Instead the proposal contemplates '5-10 parties' participating in Phase II, 'depending on the number and quality of preliminary, non-binding bids' and notes that the 'bidders allowed into' Phase II would be 'driven by initial bids, consideration offered, and the ability to move quickly.' This appears to indicate that there would be an element of judgment on the part of the auction manager in determining who gets into the Phase II process and who is excluded, yet the proposal does not identify with any specificity what criteria would be used for such determinations.

Sierra Club Comments at 3.

The Sierra Club argued that this lack of clarity regarding the criteria for selection to proceed to Round 2 bids would cause uncertainty and result in fewer and lower quality bids and would depress sale results. *Id.* at 4. Further, the Sierra Club asserted that allowing JPM too much discretion would undermine the purposes of the auction. Without specific rules spelled out

ahead of time, the Sierra Club maintained that the sale would look less like an auction and more like a brokered sale. *Id.*

### **III. COMMISSION ANALYSIS**

#### **A. Analytical Framework for Auction Design**

The framework for our analysis of the auction design proposed by JPM is provided by the 2015 Settlement, the Litigation Settlement, and RSA 369-B:3a. Those settlements, as well as the enabling legislation, direct our supervision of the sale of the Generation Facilities. A key element of the 2015 Settlement is the “[e]xpeditious pursuit of the divestiture of PSNH’s generating plants after a final decision by the Commission approving the settlement set forth in this Agreement.” 2015 Settlement, I at 2. The 2015 Settlement also describes clearly the objective of the auction and the Auction Advisor’s role in designing the auction.

The fossil and hydro auction processes will be conducted by a qualified auction advisor whose primary objective will be to maximize the realized value of the fossil and hydro generation assets. A secondary objective of the auction processes, to the extent not inconsistent with the primary objective, will be to accommodate the participation of the municipalities that host generation assets and to fairly allocate among individual assets the sale price of any assets that are sold as a group ....

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 grouping, 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.

2015 Settlement IV. B. As the Commission held in Order No. 25,920:

We have reviewed the technical aspects of the 2015 Settlement Agreement and the 2016 Litigation Settlement and find that their provisions properly address the need to manage the divestiture process in an efficient and reasonable manner. We believe that it is wise to defer the questions related to the auction design to a separate proceeding, as informed by the advice to be provided by the Auction Advisor....Furthermore, we find that the manner of retaining an Auction Advisor contemplated by the 2016 Litigation Settlement will ensure a fair, transparent, and effective process.

Order No. 25,920 at 69.

Thus, we defer to our Auction Advisor, JPM, regarding the optimal design and process for the conduct of the sale of the Eversource Generation Facilities. The settlements clearly anticipated that the Auction Advisor would control the process and that the Commission would oversee it to the extent it deems necessary. We will not substitute our judgment as to whether various alternative auction processes would produce better results, because we have selected an Auction Advisor with the experience and judgment to advise us on those issues.

#### **B. Selection of Auction Advisor**

The Litigation Settlement approved in Order 25,920 described the process for selecting an Auction Advisor:

19. The Settling Parties and Staff agree that it is premature to establish a specific auction design prior to the Commission's retention of an auction advisor.

20. The Settling Parties and Staff agree that selection of an expert auction advisor by the Commission should be accomplished through a competitive request for proposals ("RFP") process conducted by the Commission with appropriate input from other parties to this proceeding.

Litigation Settlement at 5. Consistent with the settlements and Order No. 25,920, the Commission conducted a public, transparent and competitive selection process and chose JPM as

its Auction Advisor. The selection of JPM and the contract with JPM were approved by the Governor and Executive Council on September 7, 2016.

The Commission selected JPM because the firm has extensive experience marketing and selling a variety of electric generation assets owned by both regulated and private businesses. That experience, spanning a period of more than 20 years, qualifies JPM to design and conduct a successful sale of the Eversource Generation Assets and gives the Commission a basis for deferring to JPM's expertise, over the expertise of other parties and experts in this docket, with regard to the design and conduct of the auction.

### **C. Role of Auction Advisor and Auction Design**

Pursuant to the 2015 Settlement and Litigation Settlement, the role of the Auction Advisor is to design and conduct the auction of the Generation Facilities with Commission oversight. Although the settlements provide for the settling parties to have input on issues such as design of the auction process, asset groupings and approval of final bids, those issues are to be resolved in expedited adjudicatory proceedings, with the Commission retaining such control as it deems necessary. 2015 Settlement, IV, B. As provided in the settlements, having selected JPM to serve as Auction Advisor, the Commission has asked JPM to recommend an auction design and process for the sale of the Generation Facilities which meets the goals of the settlement agreements.

JPM has described a number of principles that will guide a successful auction of electric generation facilities and will maximize the value received from bidders. The auction process should be transparent with clear rules and procedures. JPM Comments November 4, 2016, at 3. The transaction should foster a sense of competition among the bidders, while maintaining confidentiality with respect to whether and how much other bidders may have bid, to incentivize



each bidder to offer their highest value for the asset or group of assets. *Id.* The auction should be governed by rules that are consistent with industry standards for similar sales so that the rules are familiar to competitive bidders. *Id.* There should be fairness among the bidders so that they are treated equally and judged on consistent standards. *Id.* at 3-4. There should be continuity to the process without changes in the middle of the auction. *Id.* at 4. The pace of the process should be appropriate to allow enough time for due diligence but expeditious enough to maintain market interest. *Id.* Finally, the right amount of data should be available to bidders to allow them to conduct their analysis and submit meaningful bids. *Id.*

Consistent with those guidelines, JPM has provided its advice on the auction design through written comments filed with the Commission on September 12, October 17, and November 4, 2016. JPM has structured the auction process in two rounds, with Round 1 reaching a broad group of potential bidders and Round 2 involving a smaller number of selected bidders who appear to be the best prospects after Round 1. JPM plans to reach out to a broad universe of potential buyers in advance of Round 1 to alert them to the process and allow them to submit their qualifications to participate in the process. JPM September 12, 2016 Comments at 7.

The schedule of the auction as a result of the amended design is as follows. The request for qualification process for Round 1 bidders will begin in mid- to late November 2016. Criteria for selection into Round 1 include ownership and operation of similar facilities, expected sources of financing to purchase the facilities, ownership, governance structure, and operations of the bidder. JPM Comments September 12, 2016, at 7.

Confidentiality agreements will be circulated to qualified Round, 1 bidders and finalized in mid-December 2016 to early January 2017. JPM Comments October 17, 2016 at 1. A CIM

will be circulated to, Round 1 bidders in early January 2017. Preliminary non-binding offers for the facilities will be due in mid- to late February, 2017.

Round 2 bidders will be selected in early to mid-March, allowed access to detailed due diligence material on the facilities through an electronic data room, and given facility tours and meetings with existing Eversource management. Selection criteria for Round 2 bidders include: the bid price, the assets bid on, demonstrated commitment to the transaction, ability to get financing, past market behavior or reputation, and their experience owning and operating similar facilities JPM Comments November 4, 2017 at 4-5.

Round 2 is expected to last approximately 8 weeks, which should allow the bidders time to complete due diligence and to mark up the draft purchase agreement prior to submitting their final binding bids. JPM Comments September 12, 2016, at 8-9. JPM will then prepare a presentation summarizing such proposals and review the results of the auction with the Commission, prior to beginning final negotiations. Depending on the nature of the final proposals received, JPM is likely to recommend that the Commission select more than one party for final negotiations of the transaction contract. This is typical in competitive auction processes as it fosters competition among the final parties and can potentially lead one of them to improve their bid (in terms of price or terms) above what they included in their final proposal. This process also helps to ensure that agreement is reached with one party in the event the other party withdraws or ceases to participate in final negotiations.

#### **D. Ascending Clock Auction Design**

Pursuant to N. H. Code of Admin. R. Puc 203.27 (a)(2), we will grant the request by Berlin and Gorham to take administrative notice of the following pre-filed written testimony in Docket No. DE 14-238: (1) George E. Sansoucy dated July 16, 2015, on behalf of Berlin and

Gorham, (2) Leszek Stachow dated September 18, 2015, and supplemented on January 26, 2016, on behalf of Non-Advocate Staff, and (3) Dr. Peter Cramton dated September 18, 2015, and revised September 28, 2015, on behalf of Non-Advocate Staff.

Our expert, JPM, with experience selling similar generation portfolios, has recommended a broad two round auction process to generate robust interest in the power industry market for the Generation Assets. JPM has indicated that it knows of no sales of similar electric generation portfolios that have been conducted using the ascending clock auction recommended by the Municipalities, and by Mr. Sansoucy, Mr. Stachow, and Dr. Cramton. JPM Comments October 17, 2016, at 3. Although in theory an ascending clock auction can create transparency and fairness, none of the three witnesses filing testimony in DE 14-238 can point to its use in selling assets such as electric generation facilities. Electric generation facilities are highly complex industrial facilities whose value is derived primarily from their ability to generate cash flow in the future. Purchasing such complex assets requires buyers to conduct extensive due diligence on the assets, including operational, financial, economic, environmental, and regulatory due diligence. This due diligence takes significant effort and cost on the part of potential buyers before reaching a point where they can submit a binding proposal. JPM Comments November 4, 2016, at 3.

All of Dr. Cramton's examples of ascending clock auctions are for commodities, electric power or capacity, not for the ownership and operation of generating plants. Commodities are typically uniform, standard, broadly available assets whose price is relatively knowable and thus require minimal buyer due diligence. On the other hand, JPM has given us numerous examples of sales of electric generation plants using the bid process it proposes for the sale of Eversource's

generation facilities. In fact, the Seabrook Nuclear Power Station was successfully sold in 2002 in a similar two round auction process conducted by JPM.

We have reviewed the written testimony and recommendations of the various experts. In examining this evidence, we rely on the experience of each expert and the specific results that each expert can identify with regard to use of the recommended auction design for the sale of electric generating facilities. On that basis, we find that the use of an ascending clock auction in a sale of this type would be without significant, relevant precedent. We take seriously the importance of maximizing the potential value of the Generation Facilities and do not wish to try an experimental approach to this auction design. It is apparent that the broad two round process recommended by JPM is the appropriate auction design for Generation Facilities and we reject the suggestion that we have JPM conduct an ascending clock auction.

#### **E. Third Round of Bidding**

The Municipalities also recommend a third round of bidding after the conclusion of JPM's Round 2 binding bids in which the Municipalities would have an opportunity to bid up specific assets against the highest Round 2 bidders. Alternatively, the Municipalities suggest that if they do not bid, they be allowed to see winning and losing bids at the end of Round 2 so that they can be involved in negotiating the allocation of bid prices among assets. JPM states that creating a third bidding round would add uncertainty and confusion for bidders which would very likely negatively impact the ability of the process to maximize transaction value. JPM Comments October 17, 2016, at 3. Further, according to JPM, allowing the Municipalities access to confidential bidding information would not be consistent with standard practice and would discourage bidding. *Id.* at 3-4. Based on the advice of our Auction Advisor that such activity would likely reduce total transaction value, we reject the suggestion that there be a third

bidding round, or that the Municipalities participate in negotiations with final Round 2 bidders over allocation of value to various assets.

#### **F. Reserve Price**

The Municipalities suggest that the Eversource hydro assets be auctioned with a reserve price set at the level of the 2016 municipal tax assessments of the facilities. Setting a reserve price for this auction is contrary to the terms of the 2015 Settlement, which directs that all assets be sold. If a reserve price for an asset is set above market value, it will increase the likelihood that the asset will not sell. We have no indication of how the municipal tax assessed values of the hydro assets compare to the market values. In fact, the auction will establish the market value of the assets. Further, JPM recommends against setting a reserve price for this auction, because in JPM's experience setting reserve prices is unlikely to help maximize the value of the assets sold. JPM Comments October 17, 2016, at 3. Therefore, we reject the suggestion that the hydro facilities be auctioned with a reserve price.

#### **G. Asset Groupings for Bidding**

The Municipalities request that they be allowed to bid on individual hydro facilities. JPM has designed an auction process which allows the Municipalities and any other bidders to bid on individual assets, therefore the auction design fulfills this request. The Municipalities also suggest that the hydro assets be sold as a separate portfolio. JPM does not recommend selling the hydro facilities separate from the fossil units because JPM does not believe that this approach will maximize value for the portfolio. *Id.* JPM's experience is that certain bidders may find purchasing the portfolio has more value than buying part of the portfolio. JPM's auction design does not force any groupings of assets and instead allows bidders flexibility to bid on all or some of the assets. The winning bidder (or bidders) can then be selected based on whatever

combination of proposed transactions maximizes value. We believe that JPM's recommendation regarding asset groupings is market based and reasonable.

#### **H. Allocation of Purchase Price to Specific Facilities**

The 2015 Settlement Agreement requires that we "fairly allocate among individual assets the sale price of any assets that are sold as a group." 2015 Settlement IV. B. The Municipalities have requested that value be allocated to specific hydro facilities. JPM has provided in its amended auction process that all Round 1 and Round 2 bidders must allocate bid prices to hydro facilities in order to participate in the auction. JPM Comments October 17, 2016, at 2. This auction process accommodates the Municipalities' request and is consistent with the settlement requirements.

#### **I. Lack of Criteria for Bidder Entry into Second Round**

Sierra Club argues that there is a lack of specificity concerning the criteria used by JPM in selecting Round 1 bidders to enter into Round 2. Sierra Club claims that this lack of clarity will depress bidder participation and result in lower sale results. JPM indicated in its final comments that criteria for entry into Round 2 include: the bid price, the assets bid on, demonstrated commitment to the transaction, ability to get financing, past market behavior or reputation, and their experience owning and operating similar facilities. JPM Comments November 4, 2017 at 4-5. We find such criteria sufficiently detailed to give bidders notice of the factors considered by JPM in allowing entry into Round 2.

#### **J. Failed Auction**

CLF asks that the Commission eliminate the option of re-auctioning an asset that doesn't sell at auction and instead require retirement of that asset. CLF claims that if bidders know that

an asset will be re-offered if it doesn't sell they are not likely to bid on it in the first auction, or they are likely to bid lower. The 2015 Settlement provides,

Should generation assets be left unsold as a result of the auction process or as a result of the Commission not approving a sale, the Commission in consultation with the auction advisor shall initiate a new divestiture process for such unsold assets no later than ninety days from the date of the Commission's order approving the sale of the other generating assets or direct PSNH to pursue retirement of such unsold asset in an economic manner ....

2015 Settlement IV G. We will follow the settling parties' directive and will determine, in consultation with JPM, what course to pursue and what information we will require from Eversource, if and when we encounter a failed auction. At this time, we are focused on approving an auction design and process that will maximize the value of the portfolio and result in a sale of all the Eversource generation facilities.

#### **K. Delay of Sale**

The Municipalities suggest a number of later dates for beginning various stages of the auction. They argue that the auction should not start until after the sale of generation assets owned by TransCanada is completed. We note that TransCanada has announced the sale in the trade press and so that request is already met. Further, the Municipalities request that Round 1 of the sale not start until after May 1, 2017, or alternatively that Round 2 not start until May 1, 2017. Finally, the Municipalities suggest that the sale be further delayed so that the final binding bids are due in July 2017. All of those requests for delay are based on the Municipalities' claim that the issues of approving a bid for one of the hydro facilities are too complex to be part of the annual town meeting, to be held on March 14, 2017, for the three towns involved. As a result, all three towns assert that they must hold special meetings and that the votes on bidding on the acquisition of a generation asset cannot occur before July 2017.

Under the amended auction process, in order to accommodate the Municipalities' participation, JPM has extended the process so that final binding bids are due in early to mid-May 2017. JPM has advised us that the current financing environment is favorable for asset sales like the sale of the Generation Assets. JPM Comments November 4, 2016, at 4. JPM has further advised us that once we move the sale date out beyond May 2017, the risk of the financial environment changing increases, and for that reason JPM does not recommend further delay if we are to maximize total portfolio value for these assets. *Id.* To the extent we must balance the risk of delay and diminution in overall transaction value against the particular needs of the Municipalities, the 2015 Settlement is clear that maximizing value must be our primary objective. Therefore, we will not require additional delay of the auction process, beyond the two months proposed by JPM under the amended auction process, to further accommodate the Municipalities' requests for more time.

#### **L. Firm Bids and Municipal Bids**

The Municipalities request that we rule that their bids, if they are the highest but come without any financing commitment, be selected as winning bids even though the Municipalities will then have to take the bid amount to the voters, a process which will take two to three months. The Municipalities take the position that RSA 38:13 prevents them from offering a binding bid with financing because they cannot know the price to be paid for the plant until their bid is accepted as the final winning bid.

RSA 38:13 provides in part:

Within 90 days of *the final determination of the price to be paid* for the plant and property to be acquired ..., the municipality shall decide whether or not to acquire the plant and property at such price by a vote to issue bonds and notes pursuant to RSA 33-B as may be necessary and expedient for the purpose of defraying the



cost of purchasing or taking the plant, property, or facilities of the utility which the municipality may thus acquire. (emphasis added)

While we understand that RSA 38 is designed for a slightly different process where the municipality and the utility may reach an agreement on price, or alternatively the Commission may determine a price for the taking, the auction process requires a different interpretation of the final price language in RSA 38:13. An alternative reasonable interpretation of that language in an auction process requiring a fully financed bid, is that the bid amount is the final determination of the price to be paid. That final price is subject to the condition that it be the highest bid, but that does not negate the fact that when the bid is submitted the price is final. In this auction, if the municipal bid in Round 2 is accepted, the municipality will be obligated to purchase at the price it bid. Given this interpretation, the governing body of a municipality can approve a final bid amount pursuant to RSA 38:8 and then the citizens may vote on financing that bid, pursuant to RSA 38:13 and RSA 33-B, prior to submitting the bid as a binding bid in the auction.

JPM has explained the reasons for requiring financed and binding bids in Round 2 of the auction. JPM Comments November 4, 2016, at 5. It is important that the process end promptly and that winners be selected so that parties expending substantial resources on due diligence have some reasonable chance of being selected as the final winning bid. *Id.* Requiring all bidders to submit final binding bids with as little contingency as possible is more likely to maximize the price paid for the assets and treats all final bidders equally. *Id.* at 6.

Moreover, given the importance of final binding bids not being subject to financing contingencies in any auction, it is difficult to understand how any of the various alternative auction processes proposed by the Municipalities would work if they are not able to submit bids with financing approval. Even if the Commission were to direct an ascending clock auction, as

suggested by the Municipalities, the bidders would need to be similarly situated so that the winning bid could be accepted and the transaction closed. We cannot design an auction process that accomplishes fairness and transparency but allows one group of bidders to bid with a significant contingency to displace other qualified non-contingent bids. JPM has advised us that such an arrangement would be very unusual, would create uncertainty around the process, and would therefore discourage bidders from participation, which in turn would not be conducive to maximizing value. *Id.* at 3 and 6.

#### **M. Timing Issues for the Municipalities**

The Municipalities argue that they cannot make a decision to bid in the auction in the time frame provided, even under the amended schedule contained in the JPM October 17, 2016, comments. The Municipalities argue that they do not have sufficient resources to analyze data, educate selectmen, and educate citizens in time to present the acquisition of the Eversource facilities for a vote at this year's annual meeting to be held on March 14, 2017.<sup>5</sup> Even if we assume that these arguments are correct, the Towns are not prevented from hiring outside experts and consultants to assist in the process leading up to annual meeting. Further, they have not asserted that it is legally impossible for the issue of purchasing the generation facilities to be presented at their respective annual meetings.

JPM has made several changes to the auction process to assist the Municipalities. First JPM agreed to give the Municipalities early access to the electronic data room relating to the hydro assets they host, in November 2016, as soon as confidentiality agreements are signed. JPM also agreed to provide the Municipalities the independent engineering report and the

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<sup>5</sup> The City of Berlin does not claim that it has timing problems regarding an annual meeting because it is a City with more flexibility in making decisions. These arguments are made by the Towns of Bristol, Gorham and New Hampton.

independent market report as soon as those reports are available, estimated to be in November 2016. Other bidders will not have access to the electronic data room until mid-March and will not have access to the independent engineering and market reports until early January 2017 when the CIM is distributed. According to JPM, this early access to data and reports, although treating the Municipalities differently from other bidders, will not materially interfere with the auction process. JPM Comments November 4, 2016, at 6.

We will require a revision to the proposed auction process to further accommodate the Municipalities. We direct JPM and Eversource to make the portions of the CIM relating to the hydro assets that the Municipalities host, available in November 2016 when the independent engineering and market reports are available. This early access to data on the generating facilities will allow the Municipalities the months of December and January to analyze the data and to determine whether they wish to proceed with a bid in the upcoming auction. New Hampton must post a warrant for this year's annual meeting by January 30, 2017, Gorham and Bristol must post their warrant by February 27, 2017. Berlin Comments September 30, 2016, at 6.

One additional accommodation that JPM has made for the Municipalities is to exempt them from any requirement to make an indicative bid in Round 1 in the mid- to late February time frame. JPM has offered to let the Municipalities give an indication of value in Round 1 and has agreed to give the Municipalities feedback, on a confidential basis, concerning how their value relates to the other indicative bids. JPM has stated that this accommodation may be made to the Municipalities without negatively impacting the auction process. JPM Comments November 4, 2016, at 6.

Given these accommodations, we believe that the Municipalities have sufficient time to give the legal notice they are required in order to vote to bid on their respective assets, and to vote to finance the bid with a municipal bond under RSA 33-C. While the Towns of Gorham, Bristol, and New Hampton have claimed that they are not able to approve bids in the time offered, based on our understanding of the comments filed and the statutes cited, we believe it is legally possible for all three towns, to go through the process to approve a fully financed bid by mid-May 2017. In order to meet this schedule, the Towns may need to do more in preparation for their annual meetings than they had anticipated, so that they can present the decision to acquire the hydro assets to their voters at their annual meetings in March 2017.

#### **N. Process Required by Settlement for Auction Design**

The Municipalities ask that we provide for additional data requests, technical sessions, testimony, and hearings, to determine what auction design will work best to maximize the value of the Eversource portfolio. We decline to have the parties in this proceeding engage in further process for several reasons. We have a record in this docket sufficient to decide the important issues of auction design. Based on the advice of our Auction Advisor, JPM, we need to have this auction process continue at a commercially reasonable pace in order to generate and maintain market interest and to maximize the total transaction value. Finally, we are required by the terms of the settlements to expedite the adjudicated issues concerning the auction design.

Our process thus far conforms to the requirements of RSA 541-A:31 and all parties have had an opportunity to present two rounds of comments on auction design, to adopt prior written testimony on auction design, and to ask questions of JPM, both at the prehearing conference and in writing following the pre-hearing conference. Parties have presented their positions and concerns to the Commission, both orally at the prehearing conference and in writing. We believe

this process is fair and adequate in order for the Commission to rule on an appropriate auction design. We have afforded notice and an opportunity to be heard on issues of auction design and we note that administrative agencies are granted some flexibility in fashioning appropriate procedures for adjudications. *See Mathews v. Eldridge*, 424 U.S. 319, 334 (1976).

**O. Subsequent Issues Arising During Auction Process**

The auction design suggested by JPM moves the process from today's date through the conclusion of the second round bids without any specific Commission approval required. Given JPM's expertise in conducting similar auctions, and the clear criteria that JPM will apply to its decision as to which bidders enter Round 1 and which bidders will move from Round 1 to Round 2, we believe that it is appropriate to allow the process to proceed without further Commission approval. We direct Staff to stay involved with the process and to let us know of any problems that may emerge and need our attention.

During the auction process, we ask the parties and Staff to begin discussions with JPM about the process needed for our review and approval of final bids at the end of the process in May 2017. The final review should be designed to allow expedited consideration and approval of bids with participation of intervenors, and with minimal disturbance to the final acceptance of bids and closing on the purchases. If the parties are unable to agree on and recommend a process, we will open a proceeding as Round 2 gets underway to establish an appropriate process for our approval in the May 2017 timeframe.

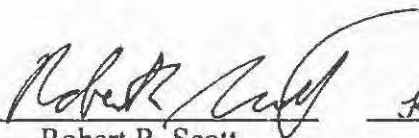
**Based upon the foregoing, it is hereby**

**ORDERED**, that the auction design recommended by JPM as described and modified herein is **APPROVED**.

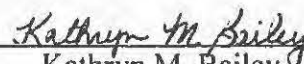
By order of the Public Utilities Commission of New Hampshire this tenth day of  
November, 2016.



Martin P. Honigberg  
Chairman

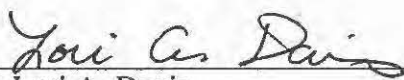


Robert R. Scott  
Commissioner



Kathryn M. Bailey  
Commissioner

Attested by:



Lori A. Davis  
Assistant Secretary

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 16-817**

**EVERSOURCE ENERGY AUCTION OF GENERATION FACILITIES**

**Order Denying Request for Reconsideration of Auction Design  
And Stay of Auction Process**

**ORDER NO. 25,973**

**December 23, 2016**

In this order, the Commission denies the request by several municipalities for reconsideration and a stay of Order No. 25,967 approving the auction design recommended by the Commission's auction advisor, J.P. Morgan.

**I. PROCEDURAL HISTORY**

This docket was established to conduct the sale of the fossil and hydro electric generation facilities (Generation Facilities) owned by Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource) as directed in Order No. 25,920 (July 1, 2016). Order No. 25,920 approved the 2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement filed with the Commission on June 10, 2015 (2015 Settlement), as amended by the Partial Litigation Settlement filed on January 26, 2016 (Litigation Settlement) (collectively the Settlements). Order No. 25,920 and the Settlements approved in that order require the sale of the Generation Facilities to be conducted by an auction advisor selected by the Commission.

Following a competitive request for proposals (RFP), the Commission selected J.P. Morgan as its auction advisor (JPM or Auction Advisor). The contract with JPM to conduct the sale of the Generation Assets was approved by the Governor and Executive Council on

September 7, 2016. On September 12, 2016, JPM filed a description of the proposed auction process and on October 17, 2016, JPM filed a modification to the auction process to further accommodate municipal participation in the auction. On November 4, 2016, JPM filed additional comments on the auction design.

The Office of Consumer Advocate (OCA) filed its notice of participation on September 13, 2016, and the following parties sought intervention: the Towns of Gorham, Bristol and New Hampton, the Cities of Berlin and Concord, the Sierra Club, the Conservation Law Foundation (CLF), the Office of Energy and Planning (OEP), and the International Brotherhood of Electrical Workers Local 1837 (IBEW).

On September 15, 2016, by secretarial letter, the Commission gave all parties notice that the Auction Advisor, would be available for questioning concerning its recommended auction design at the prehearing conference on September 19, 2016. All parties present at the prehearing conference had an opportunity to question the witness for JPM, Neil Davids, who testified under oath about the proposed auction process described in JPM's September 12 filing. *See* Hearing Transcript Sept. 19, 2016, at 27.

Following the hearing, during a technical session, parties had further opportunity for questions and discussions with Mr. Davids. Commission Staff (Staff) filed a letter on September 21, summarizing the parties' discussions at the technical session. The Commission granted all intervention requests by Secretarial Letter on September 22, 2016, and required JPM to respond to follow-up questions from parties. The Town of New Hampton submitted a question to JPM on September 21, and JPM responded on September 29.

The parties filed written comments on September 30, 2016, and additional comments on October 21, 2016. On November 10, 2016, the Commission issued Order No. 25,967 (Auction



Order) approving the auction process and design recommended by JPM, with certain modifications to further accommodate participation by intervening cities and towns.

On December 9, 2016, the City of Berlin and the Towns of Gorham and New Hampton (together the Municipalities) filed a joint motion for Reconsideration and Stay (Joint Motion).

On December 15, 2016, Eversource filed an objection to the Joint Motion (Objection). The filings in this docket, except for any information for which confidential treatment has been requested of or granted by the Commission, are posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2016/16-817.html>.

## **II. POSITIONS OF THE PARTIES**

### **A. Joint Motion**

#### **1. Requirements of an Adjudication on Auction Design**

The Municipalities claim that this docket did not afford them sufficient process and did not comply with N.H. Code of Admin. Rules Puc Part 203. Specifically, they claim they were entitled to all of the discovery allowed under Puc 203.09, including data requests, technical sessions, depositions, and any other discovery method permissible in civil proceedings, when necessary to enable parties to acquire admissible evidence. Joint Motion at 8. The Municipalities argue that JPM has presented conclusory and unsupported assertions in support of its auction design. Specifically, the Municipalities question JPM's statements concerning use of ascending clock auctions for electric generating facilities, grouping of hydro facilities separately from the fossil facilities, delaying bids by Municipalities until May 1, 2017, setting a reserve price, and allowing the Municipalities into a final negotiation process. *Id.* at 9.

The Municipalities argue that they must be allowed to cross-examine JPM concerning sworn testimony and to submit evidence, either at hearing or in the form of pre-filed testimony.

*Id.* at 10. According to the Municipalities, if they had been allowed to submit pre-filed testimony, they could have expanded on their concerns that the proposed auction design makes participation by the Municipalities practically impossible. *Id.* at 11. They also stated that had they been allowed to submit prefiled testimony they might have submitted testimony on auction design from individuals familiar with auction processes used in market conditions similar to the Eversource divestiture. *Id.* They claim that cross-examination of a JPM witness would have allowed them to challenge JPM's bare assertions concerning the advisability of certain auction processes. *Id.* Finally, the Municipalities argue that the process provided by the Commission falls short of the adjudication required under the Litigation Settlement, and violates their rights to due process. *Id.* at 12-13.

## 2. Auction Process and Municipal Participation

The Municipalities repeat arguments made in both rounds of their written comments, that the approved auction process does not allow them enough time to comply with processes required by RSA Chapter 38 and effectively shuts them out of the auction. According to the Municipalities, RSA 38 requires two votes, one to authorize a bid, and a second to approve financing. *Id.* at 16. They assert that they cannot determine the price to be paid under RSA 38:13 until their bid is selected as a winning bid, and only after that can they submit a financing to voters for approval. *Id.* at 14 and 17. The Municipalities claim that the Commission's interpretation of RSA 38:13 is incorrect. They assert that RSA 38:13 prevents them from determining a final price to submit as a bid and submitting that amount to voters before entering the bid in the auction. They also assert that the Commission incorrectly found that, under RSA 38, they would only have to hold one vote in order to participate in the auction. *Id.* at 14 and 16.

The Municipalities argue that they may not acquire their hosted hydro facilities under RSA 374-D because they do not currently own the sites where the facilities are located. *Id.* at 17, fn 7. They also argue that RSA 374-D applies only if a municipality is seeking to construct or develop a new small energy facility, and does not allow purchase of existing facilities. *Id.* The Municipalities claim that requiring them to obtain financing approval before submitting their binding bid would put them at a disadvantage because their bid amount would then be public while other second round bids would not be public. *Id.* at 19.

The Municipalities repeat arguments that Gorham and New Hampton cannot present the question of whether or not to participate in an auction at their respective annual town meetings in March 2017. They argue that they must review complicated and extensive materials concerning the hydro facilities during an exceptionally busy time of year, and that determining the advisability of participating in the auction process and holding the necessary public education meetings in time for the March 14, 2017, annual meeting is “practically impossible.” *Id.* at 20. They assert that they are not able to hold a special meeting to authorize a bid in the auction until May 1, 2017. *Id.* at 22. Under their interpretation of RSA 38, they would then need to have a second vote on issuing bonds following a determination that theirs was the winning bid. They also contend that they should be allowed to submit a bid in round two without bond approval and that their bid should not be disadvantaged as compared with commercial parties’ bids with pre-financing approval. *Id.* at 21-22.

Finally, the Municipalities repeat arguments that a third round of bidding should occur, where the Municipalities would review the second round bids, and if the bids were not competitive with the Municipalities’ assessment of the facilities’ value, the Municipalities would be allowed to submit bids which would then be subject to voter ratification of bonding. *Id.* at 23.

They claim that the “third round has little downside, primarily where [their] involvement will act as a firewall against a depressed sale and will not materially delay the divestiture of PSNH’s assets.” *Id.*

3. Proposed Procedural Schedule

The Municipalities recommend a procedural process for additional discovery, pre-filed testimony, and a hearing on auction design. The proposed schedule would take approximately four and a half months (19 weeks) and, if begun immediately, would end sometime in mid-May 2017. The auction process itself could then not begin until the summer of 2017 at the earliest.

**B. Eversource Objection**

1. Requirements of an Adjudication on Auction Design

Eversource argues that the Commission properly expedited the process on auction design and that the 2015 Settlement contemplates that the auction advisor establish the structure and details of the auction process under the Commission’s oversight. *Id.* at 11. Eversource points out that the Commission provided an expedited adjudicatory process consistent with the Administrative Procedure Act, RSA 541-A. Under the Municipalities’ suggested procedural schedule, Eversource states that a final hearing would not take place until May 2017 and an auction would not commence until June or July 2017. In addition, if the Municipalities’ process arguments under RSA 38 were accepted, Eversource posited that the auction would not conclude until early 2018. *Id.* at 11 fn 2.

Eversource points out that delay of the auction harms ratepayers who must continue to pay a return on the equity in the generation assets as part of their default service rates. *Id.* at 12. In addition, according to Eversource, as interest rates rise the potential value of the assets is

reduced, while the cost of securitizing the stranded costs at the end of the auction process increases. Eversource disagrees with the Municipalities' speculation that delay of the auction could increase generation asset values because of a new federal administration. Eversource further argues that outstanding National Pollutant Discharge Elimination System permits for Eversource's Merrimack Station could be issued in the future and might negatively impact the auction. *Id.* at 4.

Eversource also refutes the Municipalities' claim that "concerns over rising interest rates have not materially occurred." Joint Motion at 25. According to Eversource in July 2016 when Order No. 25,920 was issued interest rates on the 10 and 20 year Treasury Bonds were 1.46% and 1.81% respectively. Objection at 4. On the date of the Joint Motion those rates were 2.47% and 2.87%. Eversource states that Triple-A rated securitization bonds, required by the 2015 Settlement to pay for stranded costs, bear rates reflective of the underlying Treasury bond rates. *Id.* Eversource points out that on December 14, 2016, the Federal Reserve did increase interest rates further. *Id.* Such increases raise the costs of securitizing the stranded costs following the auction.

## 2. Auction Process and Municipal Participation

Eversource first argues that the Municipalities complaint that it is too late for Gorham and New Hampton to get town meeting approvals to participate in the auction, is the result of the Towns' "failure to act in a timely manner." *Id.* at 2. The Commission approved the Settlements by Order No. 25,920 on July 1, 2016, and both Berlin and Gorham were party intervenors in that docket. Since then, it has been clear that there would be a "near-term process for the divestiture of PSNH's fossil and hydro generating assets ...." 2015 Settlement at lines 24-25. The Settlement also describes the divestiture process as "expeditious," *id.* at line 33, and

“expeditiously pursued,” *id.* at line 430. According to Eversource, despite the Municipalities’ knowledge that the divestiture auction would occur soon, they did not take steps to set up special meetings to authorize their participation in the auction process, nor did they take steps to include the question of auction participation in the upcoming annual Town meetings in March 2017.

In addition to failing to take prompt action to be in a position to participate in an auction, according to Eversource, the Municipalities failed to avail themselves of an alternative statute that would allow them to eliminate the problems caused by the need for multiple Town Meeting approvals under RSA 38. Objection at 5. RSA 38:32 provides an exemption from the provisions of RSA 38 for the development by a municipality of any small scale power facility as defined in RSA 374-D:1, IV. Eversource claims that all of its hydro facilities are less than 80 megawatts in capacity and qualify under the small scale power facility definition of RSA 374-D:1, IV.

Eversource asserts that RSA 374-D allows municipalities to acquire small scale power facilities with only one vote to authorize bonding of the purchase. Eversource disagrees with the Municipalities’ interpretation of RSA 374-D:2 as limited to situations where the municipality owns the site or is acquiring the site to develop a new facility. Eversource cites a prior Commission order which states “[t]he Legislature has explicitly determined that ‘the development by a municipality of any small scale power facility, as defined in RSA 374-D:1, IV shall not be subject to the provisions of [Chapter 38].’” Order No. 23,350, November 22, 1999, Docket No. DE 99-135. Docket 99-135 involved the City of Manchester’s proposed acquisition of the existing Amoskeag Hydro Station in Manchester. Objection at 6. Eversource also quotes from a Memorandum of Law filed by the City of Berlin, on June 1, 2001, in Commission dockets DE 00-210 and DE 00-211. In that Memorandum, the City of Berlin argued that RSA 374-D

was available for Berlin to acquire the Smith Hydro station without following the provisions of RSA 38. Objection at 7-8.

Although Eversource acknowledges that the exemption under RSA 38:32 is not available if there is a dispute between the utility and the municipality, Eversource claims that in this case there is no dispute because the purchase will be made by a winning bidder by contract with terms agreed to between Eversource and the bidder and approved by the Commission. *Id.* at 8. Eversource describes legislative history regarding language rejected by the Legislature that would have required facilities acquired by municipalities under RSA 374-D to be new. Eversource argues that the fact that this language was not enacted supports the interpretation that RSA 374-D applies to existing as well as new facilities. *Id.* 8-9.

Eversource notes that the 2015 Settlement makes clear that the “primary objective will be to maximize the realized value of the fossil and hydro generation assets,” Settlement at lines 459-460, and that the “secondary objective of the auction processes, to the extent not inconsistent with the primary objective, will be to accommodate the participation of municipalities that host generation assets . . . .,” *id.* at lines 460-462. Eversource challenges the Municipalities’ assertions that the auction design recommended by JPM will not maximize the value of the prices bid for the generation assets.

Eversource states that its own auction witness, John J. Reed, recommended the same two-round auction process for the sale of the Eversource generation assets in Docket No. DE 14-238. Further, Eversource asserts that the auction process recommended by JPM (except for certain accommodations offered the Municipalities) is the same process used for every utility divestiture to date. Objection at 9. Finally, Eversource points out that the Municipalities are not

experts in generation asset auctions and argues that the Commission properly relied upon the advice of its own auction advisor, JPM, for the auction design.

### **III. COMMISSION ANALYSIS**

The Commission may grant rehearing or reconsideration for “good reason” if the moving party shows that an order is unlawful or unreasonable. *See* RSA 541:3, RSA 541:4; *Rural Telephone Companies*, Order No. 25,291 (November 21, 2011). A successful motion must establish “good reason” by showing that there are matters the Commission “overlooked or mistakenly conceived in the original decision,” *Dumais v. State*, 118. N.H. 309, 311 (1978) (quotations and citations omitted), or by presenting new evidence that was “unavailable prior to the issuance of the underlying decision,” *Hollis Telephone Inc.* Order No. 25,088 at 14 (April 2, 2010); *Verizon New Hampshire Petition to Approve Carrier to Carrier Performance Guidelines*, Order No. 23,976 (May 24, 2002); *Consumers New Hampshire Water Co., Inc.*, 80 NH PUC 666 (1995). A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome. *Public Service Co. of N.H.*, Order No. 25,676 at 3 (June 12, 2014); *see also Freedom Energy Logistics*, Order No. 25,810 at 4 (September 8, 2015).

We agree with Eversource that the Joint Motion does not present any new information that would change our original decision on the design of the auction process recommended by our Auction Advisor, JPM. Further, the Joint Motion does not demonstrate that the Commission overlooked or mistakenly conceived of the meaning and interpretation of the relevant agreements and statutes addressed therein. Nonetheless, for the sake of clarity, we will address the arguments made in the Joint Motion.



**A. Requirements of an Adjudication on Auction Design**

The Municipalities' rights regarding the auction design come from the 2015 Settlement Agreement, the 2016 Amendments to that Agreement, and the Litigation Settlement. Those documents in turn are controlled by the provisions of RSA 369-B:3-a and all provide the process offered in this docket. In the order approving the divestiture of the Eversource generation assets, the Commission held that, "[w]e believe that it is wise to defer the questions related to the auction design to a separate proceeding, as informed by the advice to be provided by the Auction Advisor .... Furthermore, we find that the manner of retaining an Auction Advisor contemplated by the 2016 Litigation Settlement will ensure a fair, transparent, and effective process." Order No. 25,920, at 69 (July 1, 2016).

The 2015 Settlement provides, "[t]he structure and details of the auction process(es) shall be established by the auction advisor, under the oversight of 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." Section X of the 2015 Settlement states:

The Settling parties request that following closure of Docket No. 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 RRBs, and calculation and reconciliation of the stranded costs recovery charge.

2015 Settlement at ln. 908-911. The statute requiring our review of the 2015 Settlement requires us to expedite our review process. RSA 369-B:3-a, II. The 2015 Settlement does not elaborate on the "expedited adjudicatory" process for approving an auction design recommended by the Commission's auction advisor.

JPM provided a written auction design with its proposal for approval by the Governor and Executive Council on September 7, 2016, and filed that written auction design in this docket on September 12, 2016. The Commission made a JPM witness available for questioning at the prehearing conference on September 19, 2016. Attorneys Boldt, Tanguay and, Whitelaw each appeared at the prehearing conference and Mr. Boldt questioned the JPM witness under oath at that hearing. At the conclusion of his questioning Attorney Boldt indicated that “the remainder of my questions can go into tech session.” Transcript Prehearing Conference, September 19, 2016, at 35.

Following the prehearing conference all parties were given the opportunity to ask the JPM witness questions during a technical session. In addition, following the technical session, parties were given the opportunity to submit further written questions to the JPM witness, before written comments were filed. Only one party, the Town of New Hampton, submitted a written question to JPM and JPM responded with a written answer filed with the Commission on September 29, 2016. The JPM response to that question provided an accommodation to the Municipalities in the proposed auction design.

All parties, including the Municipalities, filed the first round of written comments on the auction design on September 30, 2016. Following written comments, Commission Staff (Staff) and JPM witnesses had two conference calls with counsel for the Municipalities concerning the various process and auction design concerns described in the Municipalities’ first round comments. Following those discussions, on October 17, 2016, JPM filed a modified auction design and provided responses to the Municipalities’ first round comments, as well as the Municipalities’ concerns raised with Staff and JPM in the two conference calls. On October 21, 2016, the Municipalities filed a second round of written comments on the auction process

modifications JPM had offered that were designed to accommodate municipal participation further than the auction design filed with the Commission on September 12, 2016.

At the Municipalities' request, we also took administrative notice of pre-filed testimony on auction design by several witnesses in DE 14-238. That testimony was submitted by the City of Berlin and by Staff in support of an ascending clock auction design. We reviewed and considered that written testimony and weighed it against the advice we received from JPM in our Auction Order.

Under the Settlements, the competitive bid process and the review and approval by the Governor and Executive Council were designed to assure all parties, including the Municipalities, that the auction advisor was both qualified and impartial and would conduct an auction in a manner designed to maximize overall asset value. The adjudicative process we offered the parties in this docket allowed cross-examination of a JPM witness at the prehearing conference, written questions submitted to a JPM witness, a technical session with the JPM witness, and two rounds of written comments.

N.H. Admin. Code Rule Puc 203.09 provides a range of discovery tools, including written data requests, technical sessions, depositions and other forms of discovery available in civil courts in New Hampshire. Nonetheless, we are not bound by our own administrative rules to offer the same process in all adjudicated proceedings. We have the flexibility to allow questions in technical sessions, as was done here, rather than providing for extensive written data requests. We are also able to offer parties an opportunity for written comments instead of sworn pre-filed testimony in order to gather parties' positions on issues raised. The process offered in this proceeding conforms to requirements of RSA 541-A.

The Settlements were clear that the expedited adjudicated process for considering auction design was to be determined by the Commission. The Settlements were equally clear that we were to open an “appropriate ongoing proceeding to address the administration of the divestiture auction.” 2015 Settlement, Section X. The expedited process offered in this proceeding appropriately balanced the need for parties to question the auction design offered by JPM against the need to move quickly and allow the sale of the generation assets to proceed expeditiously. We have already disposed of the Municipalities’ constitutional due process claims in our Auction Order. *See* Auction Order at 33.

**B. Auction Process and Municipal Participation**

**1. Timing of Approvals under RSA Chapter 38**

The Municipalities continue to argue that the timing of the proposed auction will prevent them from participating due to the need to conduct two town meeting votes under RSA 38. Contrary to the Municipalities’ assertion, in the Auction Order we agreed that two votes were required under RSA 38, but we held that the first vote authorizing participation in the auction could be taken at the annual town meeting. Despite arguments by the Municipalities that voting at annual town meeting could not happen, the Municipalities did not claim that it is legally impossible to hold the vote to authorize participation in an auction under RSA 38 at annual town meetings. Instead they claimed that they did not have the resources available to educate voters and to prepare for a vote at the annual town meeting.

Given the importance of this auction claimed by the Municipalities in their written comments, and the length of time that they have known that an auction will occur,<sup>1</sup> we agree with Eversource that the Municipalities should have taken actions to enlist additional resources

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<sup>1</sup> The Municipalities have known since we issued Order No. 25,920 on July 1, 2016, approving the sale of Eversources’ generation facilities, that an auction would occur in the near future.

to prepare for a vote on auction participation, and to begin to educate municipal officials and voters about the auction process.

The Municipalities repeat an additional argument under RSA 38:13 that we rejected in the Auction Order. They claim that the language in RSA 38:13 dealing with ratification and bonding approval prevents them from voting on bonding until after an auction has occurred and their bid has been selected as a winning bid. They base this argument on RSA 38:13's requirement that a final price be determined before a vote is taken on bonding for the purchase.

Within 90 days of the *final determination of the price to be paid* for the plant and property to be acquired under the provision of RSA 38:8, 38:9 or 38:10 and any consequential damages under RSA 38:33, the municipality shall decide whether or not to acquire the plant and property at such price by a vote to issue bonds and notes pursuant to RSA 33-B as may be necessary and expedient for the purpose of defraying the cost of purchasing or taking the plant, property, or facilities of the utility which the municipality may thus acquire ....

RSA 38:13 (emphasis added)

In our Auction Order, we held that “final determination of the price to be paid” could include a municipality’s decision to offer a binding bid in an auction of utility assets. If the Municipalities’ interpretation of this final determination of price is correct, then they can never offer a binding bid in an auction with pre-approved financing. The Municipalities insist that this is the case and therefore demand that their bid, contingent on a future successful financing vote, should not be disadvantaged over competing commercial bids. Berlin Comments, at 6, October 21, 2016. This disparate treatment for municipal bids as well as the subsequent delay needed to determine whether the financing will be approved, is unusual for auction processes of this type, puts commercial bidders at a disadvantage relative to municipal bidders, and in JPM’s opinion would discourage a robust auction. JPM Comments, November 4, 2016 at 6.

2. RSA Chapter 374-D for Municipal Participation in Auction

The Municipalities claim that they cannot use an alternative statutory basis for acquiring their hosted hydro facilities under RSA 374-D. The process under RSA 374-D appears less complicated and is exempt from RSA 38. *See* RSA 38:32. RSA 374-D does not require the two votes that the Municipalities find impractical under RSA 38. Further, RSA 374-D does not contain the final price determination language found in RSA 38:13. As a result, under RSA 374-D, the Municipalities would not have a similar basis for insisting that they cannot offer a bid with financing pre-approved. RSA 374-D:2 provides in part:

Municipalities may design, develop, acquire, and construct small scale power facilities at sites owned or leased by them or otherwise made available to them for a period at least equal to the term of any financing undertaken under this chapter ....

The Municipalities argue that acquisition of an existing small power facility is not included under RSA 374-D:2. We disagree. The use of a list of actions joined by “and” under a plain reading would allow a municipality to engage in any one of those activities, including “acquir[ing] ... small scale power facilities.” Further the Municipalities claim that RSA 374-D:2 only allows Municipalities to develop small scale power that they own or lease. Again, a plain reading of the additional phrase “or otherwise made available to them” would seem to allow purchase of the site at the time that the facility is acquired. Eversource in its objection brought to our attention the fact that a prior Commission found RSA 374-D applicable to municipal purchases of existing hydro facilities. *See* Order No. 23,350, November 22, 1999, Docket DE 99-135. Eversource also cited to a memorandum of law in which the City of Berlin asserted its right to use RSA 374-D in the past to acquire Smith Hydro. *See* Memorandum of Law filed by the City of Berlin, June 1, 2001, in Commission Docket Nos. DE 00-210 and DE 00-211. We

believe Berlin had it right in 2001 and that Eversource is correct today in arguing that RSA 374-D is available to the municipalities who want to acquire their hosted hydro facilities.

3. Other Auction Design Issues Raised by the Municipalities

JPM has offered a number of accommodations to the Municipalities in the auction design. The Municipalities may offer indications of value in round one without submitting a proposal formally, to explore whether their values are competitive with non-binding proposals received from commercial bidders as part of round one indicative bids. The Municipalities were given access to the “data room” for their respective hydro assets in November 2016, while commercial bidders will not get access to such information until approximately March 2017. The auction process has been delayed by several months, with final binding proposals now expected to be due in early to mid-May, which gives the Municipalities more time to prepare their bids, if they decide to participate in the process. JPM Comments, November 4, 2016, at 6.

The Municipalities have suggested many other modifications to the process as designed by JPM. As discussed in the Auction Order, JPM has recommended against making those modifications as they would be expected to impact the auction process negatively by creating uncertainty for commercial bidders and likely reducing the competitiveness of the Auction. The Municipalities continue to suggest auction process modifications that would provide them an advantage over commercial bidders with respect to their respective hydros. This includes a request for a “third round” that would permit the Municipalities to submit proposals and potentially be selected over any commercial bidders for the assets even after commercial bidders have completed their extensive due diligence and submitted final, fully-financed, binding proposals, without the Municipalities having submitted any proposal earlier in the process. Moreover, the Municipalities suggest they should have this right even though such “third round”

proposals from them would not be fully-financed and would also be subject to further voter approval.

We have selected an auction advisor with extensive experience selling electric generation assets and we are justified in following their suggestions concerning an auction design and its likely impacts on the value received for the assets sold. As Eversource points out, the broad, two round auction design recommended by JPM was also recommended by Eversource's own expert in testimony filed in docket DE 14-238, and further, it is the process used for all similar divestitures of utility generation assets. Objection at 9-10. JPM testified that they have handled more than forty sales of similar generation assets, and they have advised the New England public utilities commissions on all regional generation divestiture processes, including the divestiture of the Seabrook Nuclear Generating station in 2002. Transcript, September 19, 2016, at 29. JPM testified that the process is designed to be transparent and flexible and to maximize bidder participation. *Id.* at 29-30. Rather than improving the auction design and encouraging robust participation by commercial parties, the suggestions by the Municipalities will likely discourage such participation and reduce overall transaction value. JPM has indicated that it is important that an auction proceed at an appropriate pace and that bidders have a reasonable chance of winning a bid at the end of the process. JPM Comments, at 4, November 4, 2016. Bidders must expend substantial amounts of time and money for experts and due diligence before bidding on electric generation assets. JPM has advised us that bidders will not likely expend such funds and potentially not participate in the auction at all, if the Municipalities' third round suggestions are incorporated. *Id.* at 6.

The Settlements provide a clear priority in our administration of an auction, and that is to maximize the overall sale value of the assets. Further the Settlements require that we expedite



the auction process. The Municipalities have repeatedly expressed concerns about preserving the assessed tax value for the hydro assets they host as a result of the auction. The Settlements address this concern by providing for payments for three years to any municipalities whose hosted generation assets sell for prices below the tax assessed value. 2015 Settlement at ln. 617-646. Nonetheless the Municipalities assert that they must continue to litigate in order to protect their right to provide “a firewall against a depressed sale.” Joint Motion at 23.

Under the Settlements the Municipalities are given the right to participate in an auction process so long as their participation does not interfere with maximizing asset value. Were we to adopt the Municipalities’ third round of bidding, we would be elevating their priority of participating to preserve their tax base over the competing and higher priority of maximizing the overall transaction value. We must design an auction that will maximize the total transaction value, and the Municipalities’ ability to participate must give way to that primary goal if there is a conflict. We have crafted accommodations to the Municipalities while preserving a commercially reasonable sale process based upon JPM’s advice.

#### **IV. CONCLUSION**

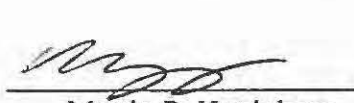
The process we have offered has allowed the Municipalities ample opportunity to present their concerns. We do not believe further litigation will solve their problems. We are bound by RSA 369-B:3-a, II to expedite our review and implementation of the 2015 Settlement. The 2015 Settlement requires that we conduct an auction of the Eversource assets expeditiously. JPM advises us that the market for these assets is favorable at this time. Further delay will only add risk that conditions in the market will shift. Given these considerations, we deny the stay requested by the Municipalities.

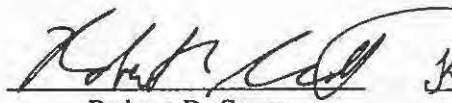
Although the Settlements anticipated a single proceeding to consider the design and to approve the results of the auction, we issue this order as our final order on auction design and we will close this docket. This will allow all parties with appeal rights regarding auction design to pursue those remedies immediately, so that we can conduct a commercially reasonable auction without interruption for ongoing litigation.

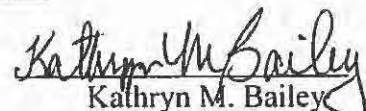
**Based upon the foregoing, it is hereby**

**ORDERED**, that the Motion for Rehearing filed by the City of Berlin and the Towns of Gorham and New Hampton is DENIED.

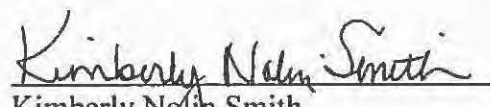
By order of the Public Utilities Commission of New Hampshire this twenty-third day of December, 2016.

  
Martin P. Honigberg  
Chairman

  
Robert R. Scott  
Commissioner

  
Kathryn M. Bailey  
Commissioner

Attested by:

  
Kimberly Nolin Smith  
Assistant Secretary

**Verifications on Cross-Subsidization**

In Order Nos. 669, 669-A, and 669-B, the Commission identified a four-factor test that applicants must satisfy in order to address the concerns identified in section 203(a)(4) of the FPA regarding any possible cross-subsidization, pledge, or encumbrance of utility assets associated with a proposed transaction.<sup>39</sup> Under this test, the Commission examines, based on facts and circumstances that are known or that are reasonably foreseeable, whether a proposed transaction would result, at the time of the transaction or in the future, in:

- 1) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company;
- 2) any new issuances of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company;
- 3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; and
- 4) any new affiliate contract between non-utility associate companies and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under FPA sections 205 and 206.

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<sup>39</sup> See *Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 at P 194 (2005), *order on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214 at P 155 (2006), *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006) (collectively, “Order No. 669”) (codified at 18 C.F.R. § 33.2(j)(1)(ii)).

In its *FPA Section 203 Supplemental Policy Statement*, the Commission stated that it will recognize three classes of transactions that are unlikely to raise the cross-subsidization concerns described in the Order No. 669 rulemaking proceeding.<sup>40</sup> The first such class involves

transactions where the applicant shows that a franchised public utility with captive customers is not involved. If no captive customers are involved, then there is no potential for harm to customers. Therefore, compliance with Exhibit M could be a showing that no franchised public utility with captive customers is involved in the transactions.<sup>41</sup>

The Transaction involves the transfer to an unaffiliated entity (Wyman IV) of PSNH's undivided ownership interest as a tenant in common in certain real and personal property, located at or near the Wyman 4 Station. Buyer is not a franchised utility and does not have any captive customers. While an affiliate of the Buyer, FPL, is a franchised utility or otherwise has captive customers, FPL is not involved in the Transaction in any way. Consequently, the Commission should find that PSNH and the Buyer have complied with Exhibit M and that the Transaction does not raise cross-subsidy concerns described in Order No. 669.

In addition to the Transaction falling within the safe harbor described above, the PSNH and the Buyer represent that, based on facts and circumstances known to them or that are reasonably foreseeable, the proposed Transaction will not result in, at the time of the Transaction or in the future, cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company. Specifically, PSNH's existing indenture lien on its ownership interest in Wyman 4

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<sup>40</sup> See *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 at P 13 (2007), *order on clarif.*, 122 FERC ¶ 61,157 (2008).

<sup>41</sup> *Id.* at P 17.

Station will be released by the bank as part of the Transaction, and the Transaction will not result in: (a) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (b) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns, or provides transmission service over, jurisdictional transmission facilities, for the benefit of an associate company; (c) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (d) any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and service agreements subject to review under sections 205 and 206 of the FPA.

**Attachment 1**

**Proposed Accounting Entries for PSNH  
Pursuant to 18 C.F.R. § 33.5**

Public Service Company of New Hampshire sale of Wyman IV

Proposed Accounting Journal Entries

<u>Account</u>			
<u>No.</u>	<u>Title</u>	<u>Debit</u>	<u>Credit</u>
<u>Sale of Generating Plant Entitlement</u>			
131	Cash	\$ 1,580,878	
108	Accumulated provision for depreciation	6,612,109	
282	Accumulated deferred income tax	31,000	
101	Utility Plant		\$ 6,985,270
102	Electric Plant purchased or sold		573,055
151	Fuel Inventory		665,662
 <u>Clearance of Account 102</u>			
102	Electric Plant purchased or sold	573,055	
421.1	Gain on disposition of property		(573,055)
 <u>Deferral of Gain to regulatory liability</u>			
421.1	Gain on disposition of property	573,055	
254	Regulatory liability		(573,055)

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION


Public Service Company of New Hampshire )  
FPL Energy Wyman IV LLC

Docket No. EC17-\_\_\_\_\_

VERIFICATION OF APPLICATION FOR AUTHORIZATION  
FOR DISPOSITION OF JURISDICTIONAL FACILITIES

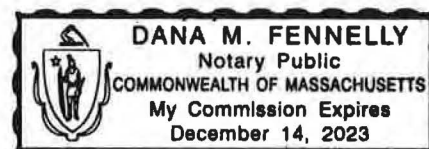
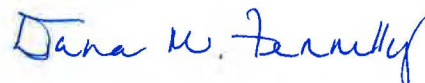
County of Hillsborough )  
State of New Hampshire )

Christine L. Vaughan, being duly sworn, deposes and says: he/she is the duly authorized representative of the Applicant and has the authority to verify the foregoing Application. He/She has read the Application and, to the best of his/her knowledge, information and belief, all of the statements relating to Public Service Company of New Hampshire contained therein are true and accurate.



Christine L. Vaughan  
Vice President Rates and Regulatory  
Requirements and Treasurer  
Public Service Company of New Hampshire dba  
Eversource Energy

Subscribed and sworn to before me on this 20<sup>th</sup> day of June, 2017.





UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

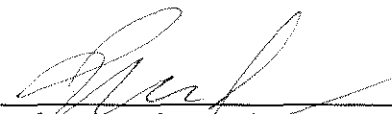
Public Service Company of New Hampshire     )  
FPL Energy Wyman IV LLC

Docket No. EC17-\_\_\_\_\_

VERIFICATION OF APPLICATION FOR AUTHORIZATION  
FOR DISPOSITION OF JURISDICTIONAL FACILITIES

County of Palm Beach                     )  
  )  
State of Florida                            )

Rebecca Kujawa, being duly sworn, deposes and says: she is the duly authorized representative of the Applicant and has the authority to verify the foregoing Application. She has read the Application and, to the best of his knowledge, information and belief, all of the statements relating to FPL Energy Wyman IV LLC contained therein are true and accurate.

  
\_\_\_\_\_  
Rebecca Kujawa  
President, FPL Energy Wyman IV LLC

Subscribed and sworn to before me on this 21 day of June, 2017.



  
\_\_\_\_\_  
Elizabeth Bloom  
Notary Public

My commission expires 9/9/18