

**THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

Docket No. DE 16-817

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

Auction of Electric Generation Facilities

COMMENTS OF THE SIERRA CLUB ON AUCTION DESIGN AND PROCESS

The Sierra Club submits the following comments concerning the proposed auction design and process put forward by J.P. Morgan. The Sierra Club generally agrees with the two-stage approach and the timeline embraced by the proposal, as it is important that the auction process be completed rapidly in order to provide certainty about the future of the Eversource generation assets. However, the Sierra Club has two significant concerns with the proposal: the lack of criteria for the auction manager to determine which potential bidders may participate in the second auction round, and the proposal that Eversource begin remediation of mercury and other toxic contamination at the Schiller Station site rather than allowing that potential liability to be borne by Schiller's purchaser.

A. The Criteria for Evaluating Phase I Bids Should Be Clearly Articulated

Under the J.P. Morgan Proposal, the auction would be conducted in two rounds: a Phase I in which parties, after receipt of "certain limited information about the assets," can submit non-binding "indication[s] of interest," followed by a Phase II in which parties are granted "access to full due diligence" as well as other materials prior to submission of final, binding bids. J.P. Morgan Proposal at 7-8. J.P. Morgan proposes that this process would take place relatively quickly: Phase I would wrap up in December-January, and Phase II bids would be received in

late February to early March, with signing occurring in March 2017. *Id.* at 10-11. Overall, the proposal contemplates a roughly 14-week process. *See id.* at 9.

While this two-phase approach and swift timeline appears to make sense, the proposal lacks critical detail concerning the transition from Phase I to Phase II. The proposal notes that 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). *Id.* at 8. 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 ability to move quickly.” *Id.* at 9 (emphasis added). 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.

This is problematic for at least two reasons. First, without clear ex ante criteria as to what would qualify (or disqualify) Phase I participants from Phase II, there is likely to be needless additional uncertainty for potential auction participants. This uncertainty could result in fewer or lower quality bids, as parties may be less willing to invest resources in putting together well-researched initial bids if they run risks of not being “allowed” into Phase II. Ultimately, this could depress the total revenue from the process, shifting an even higher portion of the burden of divestiture and Eversource’s book costs onto the backs of ratepayers.

Second, deferring too much to the auction manager’s judgment in determining which parties are allowed to participate in Phase II undermines the goals of having an auction in the

first place. As the Commission rightly recognized in its order resolving Docket No. DE 14-238, and as the parties signing the settlement agreement in that docket noted, an auction is likely to maximize the revenue received as part of divestiture, helping to offset some of the over \$600 million in book costs ratepayers are faced with. However, to function properly, an auction needs to have its rules spelled out ahead of time: to the extent that significant aspects of the process (such as who is allowed to participate in Phase II) are left to the judgment of the auction manager, the process begins to function less like a true auction, and more like a brokered sale.

There are, as recognized by J.P. Morgan in its proposal, tensions between flexibility, speed, and overall revenue in an auction process. Here, however, the lack of specificity as to the Phase II criteria is likely to dampen auction participation, to the detriment of ratepayers, with little process benefit in terms of transparency or speed. Sierra Club accordingly recommends that J.P. Morgan supplement its proposal with a more detailed statement of how bids in both Phase I and Phase II are to be evaluated, and how determinations as to the parties able to participate in Phase II are to be made.

B. Mercury Remediation Should Not Be Undertaken Prior to the Auction Process

The Sierra Club believes very strongly that the mercury, asbestos, and other toxic contamination problems at Schiller Station stemming from Eversource's decision to employ mercury boilers there in the 1950s must ultimately be resolved. However, the entire purpose of divestiture is to shield as much as possible the ratepaying public from being forced to bear such costs. As regards the mercury issue, the evidence in the record indicates it would be better to allow potential buyers of Schiller Station to carry that burden, instead of placing the costs on the backs of ratepayers without the benefit of the auction. The most recently available data on the remediation costs should be included in the materials available to bidders, such that informed

bids are made, and ratepayers are not subject to yet another costly investment in Eversource's aging coal fleet.

J.P. Morgan, in its proposal, as a "preliminary recommendation" suggests that mercury remediation take place immediately, out of fear that potential bidders "will not be familiar with [the] legacy technology" of the mercury boilers and will accordingly discount their bids (or refrain from bidding). *Id.* at 6. While it acknowledges that mercury remediation is likely to cost \$20-30 million, J.P. Morgan has not, however, included in its proposal any quantitative assessment of *how much* potential bid discounting might ultimately impact total auction revenue. This is a critical inquiry: while it may be likely that, writ large, improving the Schiller property prior to sale would tend to increase offer prices, unless one knows whether the sale price would increase by *more than* the \$20-30 million cost of remediation it does not make sense for Eversource to move forward with the remediation now.

This is particularly true since the evidence in the record points toward the remediation costs exceeding any likely increased value in bid prices. First, in testimony before the Commission in Docket No. DE 14-238, Eversource's witness John Reed of Concentric Energy Advisors discussed the "risk premium" or bid discount that potential bidders would likely apply in face of the need for mercury remediation at Schiller Station. *See* DE 14-238 Hearing Trans. Day 3 Morning Session at 7:12 *et seq.* (Feb. 4, 2016). Mr. Reed testified that this risk premium would likely be \$10 million, and that undertaking mercury remediation at a cost of \$20-30 million would likely only increase the total transaction value "by about \$10 million." *Id.* at 17:21, 18:2-5.

Second, the March 2014 La Capra Report (Docket No. DE 14-238, Exhibit V) calculated a total valuation for Schiller Station of only \$5 million dollars without reference to the need to

remediate mercury contamination. Using this price as a likely benchmark,¹ it is improbable that spending \$20-30 million to remediate mercury would increase the bid price for Schiller Station enough to make a \$20-30 million investment a prudent use of utility funds. Finally, at least some portion of the \$20-30 million likely cost for remediating mercury at Schiller Station is due to the heightened difficulty of performing the cleanup while maintaining Schiller as a generation-ready facility. Remediating the contamination at a later date after a potential shutdown of the Schiller power plant could well be significantly cheaper. This is important since it is anticipated that many—perhaps all—potential bidders on Schiller Station would be seeking the property not to operate it as a generation asset, but instead for brownfield redevelopment or its shared infrastructure with nearby Newington Station. The \$20-30 million cost for remediation thus could represent a needless premium to preserve capacity that a potential buyer may place zero value on.²

Accordingly, the best strategy would be to include the bid prices received by Eversource in its investigation of mercury remediation costs in the package of information available to potential Phase I bidders;³ this would minimize the risk premium, in that potential bidders would have before them the best possible information available about likely costs for remediation, and

¹ This price may well be optimistic—continuing to operate Schiller Station as a power plant is likely to involve additional significant capital investments in conjunction with forthcoming National Pollutant Discharge Elimination System, or NPDES, permitting, for example, as the draft November 2015 NPDES permit for Schiller Station released by EPA postdates this La Capra analysis.

² While it is true that Schiller Station has capacity obligations extending into the near future, this does not mean that mercury needs to be cleaned up *today*. Eversource was comfortable leaving the contamination in place for nearly half a century; waiting a bit longer to ensure that remediation is conducted more cheaply seems prudent.

³ This information is likely the best available assessment of remediation costs—Eversource certainly does not have experience with remediating contamination from mercury boilers, since it has not yet undertaken it.

could make internal assessments of whether or not they could secure remediation more cheaply as they assemble their bids. This would help minimize costs facing ratepayers.⁴

Respectfully Submitted,

/s/
Zachary M. Fabish
Attorney for the Sierra Club
50 F Street NW, 8th Floor
Washington, D.C. 20001
(202) 675-7917
zachary.fabish@sierraclub.org

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⁴ Even in the potential case of a failed auction, in which event Schiller Station would be retired, it is likely that deferring mercury remediation would save costs, as remediation could occur as part of decommissioning, and therefore likely be logistically simpler and cheaper than if it occurs while the plant is still operating.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Sierra Club's Comments on Auction Design and Process has been served electronically on the persons in the Commission's service list for Docket No. DE 16-817 in accordance with Puc 203.11 on this 30th day of September, 2016.

_____/s/
Zachary M. Fabish