

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

**DE 16-817**

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

**Auction of Electric Generation Facilities**

**COMMENTS OF INTERVENER TOWN OF NEW HAMPTON TO THE  
AMENDMENT TO THE AUCTION DESIGN & PROCESS**

NOW COMES Intervener Town of New Hampton (“the town”) in the above-captioned Docket and hereby submits its Comments on the *Amendment to the Auction Design & Process filed September 12, 2016* (“original auction process”) tendered by JP Morgan as the Auction Advisor (“JPM”) and certain PUC Staff (primarily Attorney Anne Ross and referenced herein as “Staff”) on October 17, 2016.

The town incorporates herein by reference the concerns and comments set forth in its Comments of September 30, 2016 and Exhibit A to these Comments.

**SCHEDULE DOES NOT AFFORD NEW HAMPTON MEANINGFUL OPPORTUNITY TO BID ON AYERS DAM**

1. The town and the other intervenor municipalities, the city of Berlin and the towns of Gorham and Bristol (collectively “the municipalities”) expressed their various concerns regarding the auction procedures during both the Pre-hearing Conference held on September 19, 2016 and the immediately following brief technical session. The municipalities reiterated their concerns in their respective *Comments to the Auction Design & Process*. The municipalities’ main issues were and continue to be: a) the timing of the release of confidential information; b) insufficient time to educate the public and hold required special town meetings; c) access to information regarding submitted bids so the municipalities’ governing boards could timely determine whether it will be necessary to submit a bid in order to protect the municipalities’ tax bases, which

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requires voter approval; and d) input on the allocation of sales price to the facilities in the respective municipalities.

2. The municipalities and representatives from Eversource, JP Morgan, and Staff participated in telephone conferences on October 6 and October 13 to discuss possible changes to the Auction Schedule to accommodate the procedural and substantive needs of the municipalities that are distinct from non-municipal bidders. The undersigned and Attorney Ross had a lengthy telephone conversation on October 12, 2016 regarding the scheduling difficulties New Hampton faces as the only "SB2" municipality involved in this docket. As explained in detail in the town's *Comments* of September 30, 2016, and discussed during the various telephone conferences, the SB2 town meeting format requires two sessions, and the least amount of time required to hold both, with the required notices and postings of the warrants, is approximately two months.

3. Through Staff, on Friday, October 14, 2016 at 6:38 a.m., JP Morgan submitted a draft "*Amendment to the Auction Design & Process*" to the service list for review and comment, with comments to be submitted by 3:00 p.m. that day. Attorney Ross did not object to Attorney Boldt's notice that the municipalities' comments would be filed on Monday, October 17, 2016. The municipalities' respective comments were submitted Monday afternoon. The town's comments reiterated that the proposed final bidding schedule did not allow sufficient time for the town to prepare for and hold the required special town meeting. See Attachment A, Email 10/17/16, 3:41 pm, Jae Whitelaw to Attorney Ross. JP Morgan's *Amendment to the Auction Design and Process* ("amended auction process") was emailed to the PUC and service list Monday afternoon after the close of business.

4. The town appreciates the effort of Staff, JP Morgan and Eversource to work

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with the municipalities in an attempt to understand the various ways in which the municipalities' requirements differ from those of prospective non-municipal bidders. The town also recognizes that JP Morgan made some amendments that address the municipalities' specific needs, such as providing access to information in the Virtual Data Room ("VDR") specific to the facilities in their respective communities earlier than other potential bidders to give more time to the governing bodies and their advisors to review the information, and authorizing the municipalities to submit a Request for Information at the time that others are required to submit a "soft" bid (Phrase 1) so that JP Morgan can inform the municipalities whether the municipalities' opinions of sale price are competitive with submissions by the "soft" bidders. JP Morgan also extended the time frames for filing the soft bids/Requests for Information and the final, binding bids by about two months: soft bids/Requests for Information from late December to mid-late February and final, binding bids from late February/early March to early-mid May.

5. Unfortunately, as thoroughly explained by the town during telephone conferences and written comments, the two-month extension for filing the final bid does not provide sufficient time for the town to hold the two-session special town meeting which is required before the selectmen are can legally submit a binding bid. The town's position that it cannot present this issue to the voters at the annual town meeting has not been disputed. The second session of the 2017 annual town meeting is held on March 14, 2017. Assuming under JP Morgan's and Staff's proposed schedule a hard bid deadline of May 15, 2017, the second, voting session of the special town meeting would have to be held May 2, 2017; this means the first deliberative session could be held no later than April 1, with the warrant posted March 18, the week of the annual town meeting. All of the information relevant for the voters' consideration must be ready

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and available to the voters when the warrant is posted. The time frame is simply too tight to allow for any meaningful opportunity to educate the voters regarding these multi-million dollar facilities, even before considering the preparation that is required prior to the special town meeting.

6. The parties herein do not dispute that the governing bodies which choose to move forward and ask the voters to authorize a binding bid will have to engage in substantial voter education prior to the town meeting if approval is to have a reasonable chance of success. While the amended auction process extended the bid deadlines, it also extended the distribution of the Confidential Information Memorandum ("CIM") for all bidders, including municipalities, from November to early January. This means that the town's selectmen and their advisors will not have the information until the town is well into preparing for the annual town meeting, which entails: preparing for and holding a variety of public hearings for bonds, budgets, and zoning amendments; addressing petitioned warrant articles; dealing with updating voter checklists, absentee ballots, and declarations of candidacy for various local offices; preparation of the Annual Report; and continuing to conduct all regular town business. These activities involve not only the selectmen and the town administrator, but most staff and many volunteer board/commission members. In short, the town simply cannot thoroughly address all of the information that will be provided and the issues involved in the potential purchase of the Ayers Dam between January and March 14 and prepare for and hold educational sessions for the voters.

7. To be clear, the selectmen will continue their due diligence review of the information provided through both the VDR and CIM and continue to work with their advisors to address the variety of issues related to this matter throughout the winter and during their preparation for the annual town meeting in March. However, it is simply

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unrealistic to take the position that they can also prepare educational materials, hold public educational meetings, and prepare the information that JP Morgan will no doubt require the town to provide in a binding bid, by mid-May. Further, the selectman whose term expires in March is not expected to run, and a new selectman will be in place in mid-March who will need to be brought up to speed in this complicated matter. The selectmen firmly believe that the town could not meaningfully participate in the auction process if it was required to hold the voting session of the required special town meeting before the end of July, 2017. One of the town's selectmen is available to testify before the PUC in support of this position.

8. The town understands that JP Morgan, Eversource, and Staff believe that the auction process must be expedited as set forth in the amended auction process schedule submitted by JP Morgan. However, the Settlement Agreement<sup>1</sup> mandates that the host municipalities are to be provided a reasonable opportunity to participate in the auction process and to purchase the facility in their community. The parties to that agreement were aware or should have been aware of the differences, both statutory and political, between municipal and non-municipal bidders and the potential impact those differences would have on the auction procedures.

9. The PUC has oversight and administration of the auction procedures, to include determining asset groupings. JP Morgan has rejected multiple proposals submitted by the municipalities for amending procedures or time lines to accommodate not only the municipalities' time line issues but also to provide municipalities opportunities to protect the tax base value of the assets while not adversely impacting the time line for all bidders. *See Amendment to Auction Design & Process, Section C.* The only basis for the rejections is that the proposals are not, in JP Morgan's sole

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<sup>1</sup>Docket DE 14-238, *2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement* dated June 10, 2015.

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judgment, conducive to maximizing the transaction value. JP Morgan provides no facts or explanation as to why further extending the hard bid deadline for the municipalities or separating the subject hydro facilities from the other assets is unacceptable. JP Morgan was chosen to manage the auction, in part, on its experience auctioning hydroelectric facilities, and now asks the municipalities and the Commission to rely solely on JP Morgan's experienced opinion in resolving the question of whether the municipalities will be provided a meaningful opportunity to engage in the process. JP Morgan should be required to provide evidence to support its decision that a further delay of several months, separating the municipalities' hydro facilities from the others for bidding purposes, or instituting a third bid process for municipalities would adversely impact the process or the ability to maximize the realized value.

10. It is important to point out that JP Morgan proposed several changes to the auction schedule which were not required to meet the municipalities' concerns. These extensions should not be perceived or viewed as an effort by JP Morgan to accommodate the municipalities or to show that the involvement of the municipalities has slowed the process. Specifically:

RFQ process: October to mid-late November

Confidentiality Agreements distributed and negotiated: October-November to mid-December/early January

CIM release - November to January

11. The town requests that the Commission reject the deadline for submitting final bids as set forth in the amended auction process. The town further tenders the suggestion that a Third Round Bid for municipalities be adopted, as set forth in the Comments of the town of Gorham and city of Berlin, filed this date.

**MUNICIPAL BID CANNOT BE REJECTED ON GROUND THAT PURCHASE PRICE AND FINANCING MUST BE RATIFIED BY THE VOTERS**

12. JP Morgan included statements in the amended auction process which raise an issue that must be addressed and resolved by the PUC at this juncture. JP Morgan stated that only final bidders who demonstrate “an ability to consummate a transaction (including financing any transaction proposed) will be selected as a winning bidder,” and that only bidders whose offers are “fully financed” will be chosen. *See Amendment to the Auction Design & Process*, p. 3 (sixth dark bullet); p. 4 (last three bullets). JP Morgan also stated that “no party will be given an advantage over another.” *Id.* JP Morgan’s statements can reasonably be interpreted as a warning that a municipality will not be selected as a winning bidder if it submits a bid subject to the voters approval of the price and the financing. If this is JP Morgan’s position, it is contrary to the Settlement Agreement and the provisions of RSA 38, and is unacceptable.

13. Pursuant to the provisions of RSA 38:13, the voters must approve the purchase of the hydrofacility and the bonding of the purchase price. The vote is a *ratification* of the sale price; it cannot be done prior to reaching a final, negotiated agreement.

14. The municipalities are legally prohibited from presenting a financially unconditional bid. RSA 38:13. As a matter of law, any municipal bid must be contingent on the voters approving the purchase price and the financing. The town requests that the PUC confirm that the municipalities’ statutory requirements cannot be used as a reason to reject their bids or otherwise undermine the rebuttable presumption under RSA 38 that municipalization of utility assets is within the public interest.

October 21, 2016

Respectfully submitted,

**TOWN OF NEW HAMPTON**

By Its Attorneys,  
**MITCHELL MUNICIPAL GROUP, P.A.**

Dated: Oct 21, 2016

By:



Judith E. Whitelaw, #2730  
Walter L. Mitchell, #1778  
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**Certificate of Service**

I hereby certify that I served a copy of these Comments pursuant to Puc 203.11 to the current service list in this Docket this 21st day of October, 2016.

By:



Judith E. Whitelaw



**Jae Whitelaw**

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

Hello Anne -

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

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

Thank you.

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

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

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

stanguay@townandcitylaw.com; terrance.large@nu.com; tirwin@clf.org; Frantz, Tom;  
william.smagula@nu.com; zachary.fabish@sierraclub.org  
Subject: DE 16-817 JP Morgan Auction Process Modifications

Good Afternoon Anne:

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

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

38 can only occur within 90 days AFTER the actual purchase price to the municipality is determined.

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

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

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

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

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

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

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

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

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

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

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

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

All the best.

Chris

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

The Towle House, 164 NH Route 25, Unit 2

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

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

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

Thanks, Anne