

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

November 27, 2017 - 9:05 a.m.
Concord, New Hampshire

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RE: DE 17-124
EVERSOURCE ENERGY:
Sale of Generating Facilities.

PRESENT: Chairman Martin P. Honigberg, Presiding
Commissioner Kathryn M. Bailey
Commissioner Michael S. Giaimo

Sandy Deno, Clerk

APPEARANCES: Reptg. Public Service Company of
New Hampshire d/b/a Eversource Energy:
Robert A. Bersak, Esq.

Reptg. the City of Berlin and the
Town of Gorham:
Christopher L. Boldt, Esq. (Donahue..)
Eric A. Maher, Esq. (Donahue Tucker..)

Reptg. the Town of New Hampton:
Judith E. Whitelaw, Esq. (Mitchell...)

Reptg. the Town of Bristol:
Shawn M. Tanguay, Esq. (Gardner...)

Reptg. Conservation Law Foundation:
Thomas F. Irwin, Esq.

Court Reporter: Steven E. Patnaude, LCR No. 52

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ORIGINAL TRANSCRIPT

1
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Initiatives (OSI):**

4 Christopher G. Aslin, Esq.
5 Assistant Attorney General
N.H. Department of Justice

6 **Reptg. Residential Ratepayers:**

7 D. Maurice Kreis, Esq., Consumer Adv.
Office of Consumer Advocate

8 **Reptg. PUC Staff:**

9 F. Anne Ross, Esq.
10 Alexander F. Speidel, Esq.
11 Thomas C. Frantz, Dir./Electric Div.
Richard Chagnon, Electric Division
Paul Corey, Esq. (West Group Law)
Neil Davids, J.P. Morgan

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18 ***NOTE TO READER:** *There is a section of this*
19 *transcript noted as "Confidential"*
20 *starting at Page 20/Line 4 and*
21 *ending on Page 21/Line 8. A*
22 *redaction has been made on*
23 *Page 21/Line 2. The rest*
24 *of the text in that section has*
been deemed public information.

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P R O C E E D I N G

1
2 CHAIRMAN HONIGBERG: Good morning,
3 everyone. We're here in Docket DE 17-124, in
4 which we are considering the results of the
5 auction of the last of PSNH's generation
6 assets. We're here for a hearing on the
7 merits. Although, I know we have some
8 preliminary matters and a motion to discuss
9 first.

10 Before we do anything else, let's
11 take appearances.

12 MR. BERSAK: Good morning,
13 Commissioners. Robert Bersak, on behalf of
14 Eversource Energy.

15 MR. BOLDT: Chris Boldt, Donahue,
16 Tucker & Ciandella, for the City of Berlin,
17 joined by my junior partner, Eric Maher.

18 MS. WHITELAW: Jae Whitelaw, Mitchell
19 Municipal Group, on behalf of the Town of New
20 Hampton.

21 MR. TANGUAY: Shawn Tanguay, Gardner,
22 Fulton & Waugh, on behalf of the Town of
23 Bristol.

24 MR. IRWIN: Good morning,

1 Commissioners. Tom Irwin, Conservation Law
2 Foundation.

3 MR. ASLIN: Good morning. Chris
4 Aslin, on behalf of the Office of Strategic
5 Initiatives.

6 MR. KREIS: Good morning. I'm D.
7 Maurice Kreis, the Consumer Advocate, here on
8 behalf of residential utility customers.

9 MS. ROSS: Good morning,
10 Commissioners. Anne Ross, on behalf of
11 Commission Staff.

12 MR. COREY: Good morning,
13 Commissioners. Paul Corey, West Group Law, on
14 behalf of J.P. Morgan.

15 CHAIRMAN HONIGBERG: Anyone else?

16 *[No indication given.]*

17 CHAIRMAN HONIGBERG: All right. We
18 have the motion filed by Mr. Boldt and the
19 other Municipalities to not do the hearing
20 right now, to go back to the original schedule.

21 Mr. Boldt, you've seen what everybody
22 had to respond, and Ms. Whitelaw, I don't know
23 who is going to be speaking, but you saw what
24 the others said. Anything else you want to

1 say?

2 MR. BOLDT: Yes, Your Honor. We
3 respectfully remind this body that its
4 August 3rd order, before the Petition was
5 filed, adopts a procedural schedule. That
6 procedural schedule creates day 1 as the date
7 the Petition is filed, day 60 to 62 is the
8 hearing on the merits, and a written statement
9 or closing statements day 65. That states in
10 that procedural order that we are here to
11 "review the results of the auction process",
12 and "*inter alia*, the issues related to whether
13 the sale or sales maximize the value...and
14 conforms [with the underlying] Order 25,920,
15 and the settlement agreements" adopted therein.

16 On September 19th, the Commission's
17 order for confidential treatment in this
18 docket, and I must say we must reserve our
19 objection to this being partially under the
20 confidential hearing method in light of 91-A
21 restrictions, that the docket again is to
22 authorize and review the results of the auction
23 to maximize the value of the generation
24 facilities and consistent with the 2015

1 Settlements.

2 On October 12th, Attorney Bersak
3 filed the Petition that is before us today. In
4 his cover letter, he states that it -- he asks
5 for approval per the procedural schedule
6 adopted by the Commission's August 3rd order.
7 The Petition is filed on October 12th. That
8 means the 60th day is December 11th. The next
9 day, October 13th, the PUC issues a secretarial
10 letter which moved the hearing forward by two
11 weeks to the November 30th date, with December
12 1st and December 4th as additional hearing
13 dates, and written closing statements due on
14 the 7th of December.

15 All of the parties have honestly, in
16 good faith, complied with the requirements set
17 forth in that October 13th letter. This is a
18 rocket docket to say the least, and we have
19 tried diligently to comply with the Board's
20 orders.

21 There have been -- there was a
22 stipulation concerning the thermal PSA, and a
23 statement filed by the municipal intervenors
24 expressing some concerns, but saying that that

1 could go forward, as long as we were not going
2 to be hamstrung in our arguments concerning the
3 hydro PSA.

4 Frankly, there may be some evidence
5 that could give a impartial body pause on
6 whether the thermal PSA is appropriate.

7 CHAIRMAN HONIGBERG: And there you
8 go, Mr. Boldt. That's why we had to hear you,
9 and the others, on the thermal PSA. Because
10 you seem to want to talk about things that
11 might implicate both. And, so, that's one of
12 the reasons we need to be talking about this.
13 And, so, you may get some questions about that
14 when you're done with your recitation.

15 MR. BOLDT: I appreciate that, Your
16 Honor. I would note, however, there is no
17 change in circumstances of the thermal PSA from
18 the date it was originally filed, or the date
19 of the secretarial letter of the 13th.

20 We filed our objection on
21 November 20th, after we had had the third tech
22 session on Friday, the 17th, in an effort to
23 resolve the matter. We had put forward an idea
24 to try to resolve the matter without further

1 ado. That matter and that effort was
2 understandably rejected on the Wednesday
3 morning before Thanksgiving.

4 At that time, Staff reached out to us
5 to see if another option might be available.
6 We provided alternate language to Staff that
7 afternoon. We get the secretarial letter that
8 afternoon indicating that this body will take
9 up the matter of our objection before hearing.
10 Accordingly, we have had to scramble to try to
11 prepare for today's hearing.

12 I can attest that my presentation
13 will be less than polished, with the lack of
14 the three days being allowed to us. It is one,
15 in short, that it appears the Commission is on
16 a rush to judgment.

17 CHAIRMAN HONIGBERG: When did you get
18 the testimony that is going to be presented
19 first? How long have you had that testimony?

20 MR. BOLDT: That, the bulk of the
21 testimony was filed with the application. We
22 have had numerous data requests that have come
23 in over the time. And it is positively one, as
24 you well recall from private practice, Your

1 Honor, you try diligently to minimize the
2 expenses to your client to the greatest degree
3 possible.

4 CHAIRMAN HONIGBERG: So, we've saved
5 your client money by cutting off your time to
6 prepare?

7 MR. BOLDT: No.

8 CHAIRMAN HONIGBERG: That was a joke.
9 You've had the testimony that you needed to
10 prepare for for many, many weeks, have you not?
11 Tell me what it was you would be doing Monday,
12 Tuesday, and Wednesday of this week that you
13 would that -- that you should not already have
14 done to prepare to examine the witnesses who
15 are going to be testifying, whose testimony you
16 have had for many weeks?

17 MR. BOLDT: Honing my
18 cross-examination, Your Honor, trying to be
19 more efficient, trying to get the documents in
20 a better order for you, so that we have a more
21 efficient hearing.

22 CHAIRMAN HONIGBERG: So, accepting
23 the possibility that there will be some
24 inefficiency in the presentation, if we're

1 willing to live with some inefficiency, then
2 you have no problem with us proceeding at least
3 along those lines. There may be other
4 objections. But, with respect to the
5 efficiency and conciseness of your
6 presentation, we have no problem if you're a
7 little bit less efficient than you otherwise
8 might be. So, we can put that one aside.

9 With respect to what other work you
10 would be doing, let me hear about it. And in
11 responding to that, tell me why it is you
12 waited until last week to let us know you had a
13 problem with a secretarial letter that had been
14 issued roughly ten days before, although I
15 understand there were two weekends in between.
16 Why did you wait a week?

17 MR. BOLDT: Because we were actively
18 trying to negotiate a settlement of this
19 matter, Your Honor. And that settlement was
20 not rejected until Wednesday morning, at about
21 ten o'clock, before Thanksgiving.

22 CHAIRMAN HONIGBERG: All right.

23 MR. BOLDT: I am standing on the
24 prejudice to my client, Your Honor, and it is

1 one where I fully expect that you will
2 disregard it, and move forward.

3 CHAIRMAN HONIGBERG: I don't
4 understand "prejudice". I mean, all you've
5 identified so far is all of us having to put up
6 with some inefficiency and a less concise
7 presentation than you would otherwise do.

8 Did I miss something else? Was there
9 something else that you would have done that
10 would have improved the presentation to your
11 client's benefit?

12 MR. BOLDT: There are thousands of
13 pages of documents that were produced through
14 the course of this proceeding in data
15 responses. Have I read every one of them?
16 Heck no. Has every member of the team read
17 every one of them? I doubt it. So, I have no
18 idea if I am missing something that is
19 important to my client.

20 But I have prepared, with the
21 expectation that we will be -- one of my
22 colleague reminds me, we had to reopen access
23 to the virtual data room. It was redone on
24 November -- November 16th. That for some

1 reason it was shut down, and we had to get
2 reaccess.

3 But, be that as it may, this is one
4 where there is a due process and fundamental
5 fairness, to changing a deadline, when we have
6 the holiday weekend in play, we have everything
7 going on one schedule, and nothing has changed
8 from the other side from the date the
9 application was filed.

10 CHAIRMAN HONIGBERG: All right.
11 Let's talk. Does anyone want to respond to
12 anything Mr. Boldt said? Or, Ms. Whitelaw, do
13 you want to add anything, or Mr. Tanguay? Or
14 is Mr. Boldt speaking for everybody here?

15 MS. WHITELAW: Jae Whitelaw. Thank
16 you.

17 *[Court reporter interruption.]*

18 MS. WHITELAW: Thanks. Attorney
19 Boldt does speak for all of us. I would like
20 to add, though, that I don't believe that it
21 was unreasonable for at least myself to trust
22 on the days that we were assigned for trial.

23 When dealing with the workload at my
24 office, and not to feel sorry for me, but I am

1 involved in FairPoint, and up until two weeks
2 ago, the FairPoint trial was scheduled for
3 right after this, we prioritize our workload,
4 and priorities oftentimes are based on what the
5 schedule is.

6 When there were no changes to
7 anything in this docket that would indicate a
8 need for a change in the schedule, I think that
9 it was reasonable to rely on the schedule that
10 was provided to us.

11 CHAIRMAN HONIGBERG: Understood. As
12 Mr. Boldt reminded me, I was in private
13 practice for many years, and I am sympathetic
14 to changing schedules. However, I think it's
15 incumbent on private practitioners, if they get
16 a scheduling notice or order that doesn't
17 square with their schedule or something they
18 need to do, they need to let the tribunal know
19 immediately. Because that's how you can deal
20 with schedules.

21 When you wait and hope that things
22 settle, it doesn't work out well. It's much
23 more difficult for everyone to deal with
24 anything.

1 Mr. Boldt.

2 MR. BOLDT: Mr. Chairman, I
3 respectfully remind you, we filed our objection
4 timely, within the Commission's rules.

5 CHAIRMAN HONIGBERG: Understood.
6 Anyone have anything else they want to say
7 regarding the schedule?

8 Mr. Kreis, I think we received a
9 filing from you, which I only saw this morning.
10 It was in a letter form?

11 MR. KREIS: Correct, Mr. Chairman.
12 And I'd be happy to reiterate what I said in
13 that letter. The only additional point I would
14 make, assuming that you have read that letter,
15 is that the fundamental reason that some of the
16 parties at least are pressing the Commission
17 very hard to move forward is that there is a
18 significant or, at least as I understand it,
19 there is a significant financial cost to not
20 closing the thermal divestiture by January 1st
21 of this year.

22 I don't know, because you haven't yet
23 said, how inclined you are to grant the motion
24 of the municipal intervenors. But, to the

1 extent you are inclined to grant their motion
2 and delay this proceeding, I think it would be
3 useful for the Commission to hear some sort of
4 offer of proof, if not actual testimony, from
5 Public Service Company, about exactly how much
6 it will cost per day to delay the closing of
7 the thermal transaction. Because I think, at
8 some point, the Commission has to weigh that
9 cost against whatever harm the municipal
10 intervenors are suggesting they might be
11 suffering.

12 CHAIRMAN HONIGBERG: I think we're
13 generally aware, without knowing specifics. It
14 may -- maybe it would be helpful for Mr. Bersak
15 to make an offer of proof about what his
16 witnesses would testify in connection with
17 helping us decide this.

18 But let me circle back to the
19 Stipulation that was filed regarding the
20 thermal assets and the municipals' response to
21 it, and what I gather then ensued were some
22 discussions about whether something else could
23 be said by the Municipalities to allow this to
24 go forward.

1 I've read all of the filings that
2 you've made, Mr. Boldt, and I've read the
3 testimony. And I've yet to see any problems
4 that your witnesses identified or that are in
5 your pleadings that call into question the
6 conduct of the auction, other than the price it
7 produced, especially for the thermal assets,
8 but there is one reference, as I recall, to at
9 least -- I'm sorry, the hydro assets, there's
10 one reference to one of the thermal assets as I
11 recall.

12 Am I missing something there? Is
13 there an argument you're going to make or a
14 line you're going to pursue that would call
15 into question the fundamentals of the auction
16 itself?

17 MR. BOLDT: Yes. And that will come
18 out on cross-examination.

19 CHAIRMAN HONIGBERG: Do you have a
20 witness that you're going to be presenting on
21 auctions and how to do this or is it going to
22 be strictly through cross-examination?

23 MR. BOLDT: Strictly through cross,
24 and that which Mr. Sansoucy and his team have

1 testified to. And they may testify, depending
2 upon what questions are asked by Mr. Bersak or
3 Ms. Ross or Mr. Kreis. It depends.

4 There is a lot of record that is not
5 yet before you, because we have not had a
6 hearing on the merits.

7 CHAIRMAN HONIGBERG: Mr. Bersak, you
8 want to put on the record, make an offer of
9 what it would cost the state, the ratepayers,
10 whomever, to delay beyond the end of the year,
11 the closing on the thermal assets?

12 MR. BERSAK: Yes, Mr. Chairman.
13 There has been a document prepared that goes
14 through what those costs may be. It was
15 prepared by J.P. Morgan. And I believe it's
16 one of the confidential documents.

17 CHAIRMAN HONIGBERG: I think we'd
18 like to get it on the record. So, --

19 MS. ROSS: Can we check to see who in
20 the room has signed an NDA before we do that?

21 MR. ANDERSON: I think the shorter
22 list may be who has not.

23 MS. ROSS: Who has not?

24 CHAIRMAN HONIGBERG: Yes. Let's go

1 off the record for a minute.

2 [Brief off-the-record discussion
3 ensued.]

4 * CONFIDENTIAL SESSION BEGINS - REDACTION MADE *

5 CHAIRMAN HONIGBERG: All right. So,
6 Mr. Bersak, we're in a confidential portion of
7 the proceeding. So, --

8 MR. BERSAK: I'd ask Attorney Ross,
9 since it's your witness who prepared it, can
10 you present that document?

11 MS. ROSS: Yes.

12 CHAIRMAN HONIGBERG: Ms. Ross, are
13 you going to have someone else do it?

14 MS. ROSS: I'm going to have Mr. Neil
15 -- I'm sorry, Mr. Davids.

16 MR. COREY: Mr. Davids.

17 MS. ROSS: Neil Davids is going to
18 speak to that. He is the J.P. Morgan witness.
19 I assume, for this purpose, we don't need to
20 swear him in, it's just an offer of proof?

21 CHAIRMAN HONIGBERG: Correct.

22 MR. DAVIDS: Sure. So, in order to
23 answer your question, I'd say that the
24 difference between a January 1st, 2018 closing

1 and the difference between a February 1st, 2018
2 closing is about _____.

3 CHAIRMAN HONIGBERG: And that's just
4 with respect to the amount of money that will
5 come from the purchaser, is that correct?

6 MR. DAVIDS: That's correct. That's
7 correct, on the thermal.

8 * END OF CONFIDENTIAL SESSION *

9 CHAIRMAN HONIGBERG: Ms. Ross, is
10 there someone here who can identify whether
11 there are any offsetting benefits or mitigating
12 costs that will be avoided through rates,
13 through reductions in deferrals, anything along
14 those lines?

15 (Atty. Ross conferring with
16 Atty. Bersak and Mr. Chung.)

17 MS. ROSS: I'll let Mr. Bersak take
18 that one.

19 MR. BERSAK: Yes, Mr. Chairman. The
20 magnitude of potential mitigating amounts are
21 small. There are, of course, the Company would
22 get the benefit of capacity revenues for that
23 period, which otherwise would go to the new
24 owner. But, beyond that, it really depends on

1 what the weather is going to be during that
2 time period.

3 If it turns out to be relatively
4 cold, and if the plants are in the money and
5 they're dispatched, then customers would
6 benefit from the below-market costs of those
7 generating facilities.

8 If it turns out to be warm, then
9 there would be no such mitigating offsets, and
10 the amounts would be minor compared to the
11 decrease in the purchase value.

12 CHAIRMAN HONIGBERG: Commissioner
13 Bailey.

14 CMSR. BAILEY: Isn't there some
15 offsetting depreciation and a lower net book
16 value after a month?

17 MR. BERSAK: Yes. There would be
18 that as well.

19 CMSR. BAILEY: So, order of magnitude
20 on that?

21 (Atty. Bersak conferring with
22 Mr. Chung.)

23 MR. BERSAK: I'm told by my
24 colleague, Mr. Chung, that that would be in the

1 very low millions at best.

2 CMSR. BAILEY: So, low millions for
3 the depreciation and the change in net book
4 value?

5 MR. BERSAK: Correct.

6 CMSR. BAILEY: And low millions for
7 capacity revenue, do you have any idea how
8 much -- that's all weather-dependent on how
9 much the plant runs?

10 MR. BERSAK: Capacity --

11 CMSR. BAILEY: No.

12 MR. BERSAK: Capacity is steady.

13 CMSR. BAILEY: Right.

14 MR. BERSAK: It's the energy value
15 that would vary, depending upon dispatch.

16 We'd have to get back to you on that.
17 I don't have that off the top of my head,
18 Commissioner Bailey.

19 CHAIRMAN HONIGBERG: Ms. Whitelaw, I
20 see you back there. Commissioner Giaimo has a
21 question first.

22 CMSR. GIAIMO: And are there Winter
23 Reliability payments associated with the plants
24 for January?

1 MR. BERSAK: The only plant I believe
2 that has -- that participates in that program
3 is Newington. And do you have an idea what
4 those might be?

5 UNIDENTIFIED SPEAKER: The Winter
6 Reliability period --

7 CHAIRMAN HONIGBERG: Off the record.

8 *[Brief off-the-record discussion*
9 *ensued.]*

10 CHAIRMAN HONIGBERG: Mr. Bersak.

11 MR. BERSAK: Thank you. Commissioner
12 Giaimo, the answer to your question is, for the
13 entire winter period, we're expecting
14 approximately \$1.7 million for Winter
15 Reliability payments on behalf of Newington
16 Station.

17 CMSR. GIAIMO: So, if there is that,
18 the 1.7 -- it's a three-month program. So,
19 there is --

20 *[Court reporter interruption.]*

21 CMSR. GIAIMO: I said, the Winter
22 Reliability Program I believe is a three-month
23 program. If you're going to get \$1.7 million,
24 you divide it over three months to figure out

1 the January prorated share. So, we're talking
2 somewhere in the neighborhood of about 600 --
3 \$600,000?

4 MR. BERSAK: That sounds correct.

5 CMSR. GIAIMO: Okay. Thanks.

6 CHAIRMAN HONIGBERG: Ms. Whitelaw.

7 MS. WHITELAW: Yes. Thank you. I
8 have a question about timing. Today is
9 November 27th. And there's a 30-day appeal
10 period. Are the Parties ready to close at the
11 end of that appeal period? And what does that
12 mean as far as a date by which the Commission
13 has to issue an order?

14 CHAIRMAN HONIGBERG: I think the last
15 question, you can probably do the math in your
16 head. And I don't -- I can't speak for the
17 Parties. I'm working on the assumption the
18 Parties are ready to close, but if someone will
19 correct me if I'm wrong?

20 MR. BERSAK: I will try to, you know,
21 let people know where we are. You know, if you
22 read through the Purchase and Sale Agreements,
23 they both have a number of closing conditions.
24 Amongst those closing conditions are various

1 regulatory approvals.

2 With respect to the fossil sale, we
3 need the approval from this Commission; we need
4 approval from FERC; we need Hart-Scott-Rodino
5 approval for antitrust matters.

6 Can I guarantee that every one of
7 those agencies will get us a decision in time
8 for a closing at the end of the year? No. I
9 can't. We're doing everything we can to try to
10 make that happen. And this proceeding today is
11 one of those important pieces to get us to that
12 point of a closing at the end of the year. The
13 calendar is very unfriendly to us this year,
14 with December 31st being a Sunday, you can't
15 close that day; Saturday, the 30th, you can't
16 close that day. So, the last business day of
17 the year is December 29th.

18 If we get an order from this
19 Commission any date past tomorrow, if we get
20 one on November 29th, the rehearing period
21 won't close until the close of business on the
22 29th, making a closing this calendar year more
23 difficult.

24 It's not to say that the Parties

1 can't waive that closing condition and close
2 notwithstanding the continued running of the
3 rehearing period. But we can't speak for the
4 buyers as to whether they're going to be
5 willing to waive that condition or not.

6 So, all I can say is that we are
7 trying to move this process so that we're in a
8 position to, in fact, close on the fossil deal
9 by the end of this year, in order to capitalize
10 on the good value we've gotten from the auction
11 results, in order to make it easier for our
12 fossil plant employees, so they can have a very
13 clean January 1 cutoff from our benefits to
14 their new owner's benefits, so they don't wind
15 up with issues for things like social security
16 withholding. There's a number of reasons why
17 January 1 is a very elegant date for everybody,
18 much less the preservation of the value from
19 the contracts.

20 Now, if we turn to the deal that the
21 municipal intervenors are concerned with, the
22 hydro sale, that one will not close this year.
23 There has not yet been a filing with FERC for
24 the transfer of the hydro licenses. We are

1 awaiting the buyer. The buyer is setting up
2 special purposes entities in order to be the
3 licensees for each of the FERC licensed
4 facilities. And we can't file a license
5 transfer until those entities have been created
6 and are of good standing so we can represent
7 that to FERC.

8 So, given that that hydro license
9 transfer application has not yet been filed,
10 and given what the FERC's normal period is to
11 approve such license transfers in divestiture
12 situations, they normally take 60 to 120 days.

13 So, right now there is no way we'll
14 be able to close on the hydro deal. Hence,
15 when we responded to the municipal intervenors'
16 request to move the hearing, we were trying to
17 accommodate as best we can, saying we need to
18 try to do everything we can to preserve the
19 value of the fossil sale, while providing
20 adequate time as they deem necessary for the
21 hydro deal, since that one is not
22 time-sensitive for customers for the closing.

23 However, when we just heard that
24 there is, in fact, at least one common element

1 that the municipal intervenors seem to be
2 challenging, I am not sure how we can bifurcate
3 the hydro from the fossil.

4 I had a list of issues written down
5 here that I thought were common, that I did not
6 think were going to be challenged, such as the
7 employee benefits that are being provided, the
8 request for findings for exempt wholesale
9 generator status, the way that the deal with
10 environmental liabilities going forward, but
11 the final one was the auction process itself.

12 CHAIRMAN HONIGBERG: It's got to be
13 the auction process.

14 MR. BERSAK: But, if the auction
15 process itself is in contest, I guess we're a
16 bit hamstrung.

17 CHAIRMAN HONIGBERG: I feel your
18 pain. This question may be for Mr. Davids, but
19 someone out there.

20 The way the fossil penalties or delay
21 provisions work, does it matter -- if we miss
22 the end of the year, does it matter? Is
23 January 5th the same as January 12th, the same
24 as January 19th, is the same as February 1st,

1 or is it a daily thing?

2 MS. ROSS: It's a daily penalty. So,
3 it's prorated.

4 CHAIRMAN HONIGBERG: Mr. Boldt, you
5 look like you want to say something.

6 MR. BOLDT: If only to remind this
7 body, that we are not asking for the
8 postponement, we're asking for the return. And
9 that we have a standing offer on the table that
10 would resolve the entirety of the matter that
11 we've not yet heard from. It may be worth the
12 Board deliberating on whether or not to grant
13 our continuance to Thursday to allow the
14 parties to speak.

15 CHAIRMAN HONIGBERG: The end of that
16 is "speak to each other".

17 MR. BOLDT: Correct.

18 CHAIRMAN HONIGBERG: That's what you
19 mean by that, right?

20 MS. ROSS: May I respond?

21 CHAIRMAN HONIGBERG: Certainly.

22 MS. ROSS: A couple things. Staff is
23 not inclined to agree to the latest proposal,
24 which is very similar to earlier ones that have

1 been discussed.

2 CHAIRMAN HONIGBERG: Ms. Ross, let's
3 not negotiate --

4 MS. ROSS: Okay.

5 CHAIRMAN HONIGBERG: -- in front of
6 us, okay?

7 MS. ROSS: I just -- we're not
8 inclined to accept it. So, I don't think that
9 is a good reason to delay.

10 Further, as we know, the
11 Municipalities are inclined to challenge
12 decisions of the Commission and to appeal those
13 decisions. So, even if you think that, based
14 on what you've heard today, the hydro sale
15 could be delayed, it is likely not to close
16 anyway on January 1st, keep in mind that, in
17 addition to the 30-day rehearing period, there
18 is a 30-day appeal period, and then an
19 indefinite period after that, while the
20 reviewing court determines whether or not to
21 take the appeal. So, we're not talking about a
22 30-day delay beyond any order the Commission
23 would issue on the hydro sale. We're talking
24 about a 60 or 90 or more day delay, depending

1 on how much appellate activity occurs.

2 So, I just -- and I would also like
3 to point out that I spent the weekend in here
4 preparing. So, I'm ready to go forward, and I
5 will be very disappointed if that work was
6 wasted.

7 Thank you.

8 CHAIRMAN HONIGBERG: Mr. Kreis, you
9 wanted to say something?

10 MR. KREIS: Well, I feel obliged to
11 continue to urge the Commission, on behalf of
12 residential customers, to move ahead with this
13 case in a manner that is at least allowing for
14 the possibility for the thermal sale to close
15 before the end of the year.

16 I've signed a piece of paper that
17 says that we have no problems with the thermal
18 transaction. And I don't know what problems
19 the Commission might have with it. I've heard
20 the Municipalities now indicate that they have
21 some unspecified issue that they wish to raise
22 with respect to it. I think you ought to know
23 what that issue is before you make a ruling.

24 CHAIRMAN HONIGBERG: Mr. Boldt.

1 MR. BOLDT: I believe I get to stand
2 on my cross-examination rights, Mr. Chairman.
3 And I do remind Attorney Ross that we were --
4 our offer included a willingness to waive
5 appeals.

6 (Chairman and Commissioners
7 conferring.)

8 CHAIRMAN HONIGBERG: All right.
9 We're going to break for ten, fifteen minutes
10 and discuss this.

11 MR. BOLDT: Thank you much.

12 CHAIRMAN HONIGBERG: You are free to
13 discuss among yourselves what other progress
14 you might be able to make. Because, if there
15 is a way to eliminate issues that might present
16 a problem to the fossil transaction, that would
17 be a good thing.

18 So, we'll be back ten, fifteen
19 minutes.

20 (Recess taken 9:37 a.m. and the
21 hearing resumed at 10:12 a.m.)

22 CHAIRMAN HONIGBERG: Mr. Boldt.

23 MR. BOLDT: We're happy to announce
24 that we have a resolution.

1 CMSR. BAILEY: Awesome.

2 CHAIRMAN HONIGBERG: Cool.

3 *[Laughter.]*

4 CHAIRMAN HONIGBERG: Who wants to
5 tell us about it?

6 MR. BOLDT: I will take first crack,
7 if I may. We have all agreed, the Company
8 Attorney Ross, Attorney Kreis, all the
9 municipal intervenors, J.P. Morgan, Staff
10 members, and I believe that we even have the
11 OSI.

12 And do we have the Conservation Law
13 Foundation on board?

14 MR. IRWIN: We won't take a position.

15 MR. BOLDT: Got it. For an addition
16 to any order approving the hydro sales, we
17 don't deem it necessary to have it be in the
18 separate order requested by the Company for the
19 thermals, that states the following, and I will
20 email it to all the parties, so you thereby
21 will have it in written text.

22 If you wish, I can email it to you,
23 Mr. Commissioner?

24 CHAIRMAN HONIGBERG: If you get it

1 to -- if you send it to the parties, Ms. Ross
2 can work with Ms. Howland how best to get it to
3 us.

4 MR. BOLDT: Fine. "Notwithstanding
5 anything to the contrary contained in this
6 order approving the hydro PSA the Commission
7 finds and holds that, due to the circumstances
8 of the sales being approved by this order,
9 including but not limited to the underlying
10 legislative requirement for the sales, the
11 implementation of various public policies
12 including significant employee benefits, the
13 requirement that the new owner have the plants
14 available for dispatch for a period of 18
15 months after closing, and the minimization of
16 long-term liabilities that ratepayers may
17 otherwise face, and the nature of the auction
18 process involved, the total sales price and any
19 allocated prices for the generation facilities
20 contained in the Hydro Purchase and Sales
21 Agreement being approved by this order is not a
22 statement of fair market value of those
23 facilities for any state and/or local property
24 tax purposes, including but not limited to New

1 Hampshire RSA 72:6, RSA 72:8 and RSA 83-F."

2 CHAIRMAN HONIGBERG: Was that one
3 sentence?

4 MR. BOLDT: In the time-honored
5 tradition of Herman Melville, yes.

6 MR. KREIS: You can't blame that on
7 Herman Melville.

8 *[Laughter.]*

9 MR. BOLDT: With that paragraph --
10 or, sentence being added to the order, without
11 amendment, the municipal intervenors will not
12 need to have a hearing and will waive their
13 rights to appeal.

14 CMSR. BAILEY: In the hydro order
15 too?

16 CHAIRMAN HONIGBERG: The thermal
17 order?

18 MR. BOLDT: In the hydro.

19 CHAIRMAN HONIGBERG: Oh, both orders?

20 MR. BOLDT: Correct. You can approve
21 both without a hearing, and we will waive our
22 rights to appeal.

23 I've given the best I can, sir.

24 CHAIRMAN HONIGBERG: Understood. Ms.

1 Ross, Mr. Bersak, Mr. Kreis, anyone want to add
2 anything? Actually, before you do that, I
3 understood Mr. Boldt to be saying that, Mr.
4 Aslin, your client is on board with that
5 language, is that correct?

6 MR. ASLIN: That's correct. We have
7 no objection to that language.

8 CHAIRMAN HONIGBERG: And, Mr. Irwin,
9 you're taking no position?

10 MR. IRWIN: Correct.

11 CHAIRMAN HONIGBERG: But not opposed,
12 correct?

13 MR. IRWIN: Correct.

14 CHAIRMAN HONIGBERG: All right. And
15 the other municipals, Mr. Tanguay,
16 Ms. Whitelaw?

17 MR. TANGUAY: Yes. We're in support.

18 MS. WHITE LAW: Yes.

19 CHAIRMAN HONIGBERG: All right. Mr.
20 Bersak, Ms. Ross, Mr. Kreis, is there any
21 further process from your perspective that's
22 required? At least what comes to mind for me
23 is that the witnesses' testimony needs to
24 become full exhibits, part of this record, that

1 we can rely on in issuing any order.

2 Are there any other things from your
3 perspective? It's possible that Commissioners
4 may have questions to clarify certain things.
5 I think Commissioner Bailey may have -- may or
6 may not have questions.

7 But is there anything else, from a
8 process standpoint, that we need to do?

9 MR. BERSAK: We have premarked with
10 the Clerk certain exhibits that I think will
11 form the record for you to make your decisions.

12 We've premarked as "Exhibit 1" the
13 Eversource Application for approval of the
14 sale. We've premarked as "Exhibit 2" the
15 Purchase and Sale Agreement for the hydro
16 facilities. We've marked as "Exhibit 3" the
17 Purchase and Sale Agreement for our thermal or
18 fossil facilities. "Exhibit 4" has been
19 premarked to be the Testimony of Eric Chung.
20 Marked as "Exhibit 5" is the Memorandum of
21 Agreement between PSNH and the IBEW Local
22 Number 1837 from this past August. "Exhibit
23 No. 6" is the Testimony of Mr. Neil Davids.
24 "Exhibit 7" has been premarked to be the J.P.

1 Morgan Auction Report.

2 And I can provide you with a list so
3 you don't have to write this all down. I've
4 got copies I can give to you.

5 Number "8" is our confidential
6 exhibits to the J.P. Morgan Auction Report.
7 Number "9" is the Stipulation entered into with
8 the Parties, but for the municipal intervenors,
9 regarding the thermal PSA. "Exhibit 10" is the
10 Joint Statement of the Municipal Intervenors
11 indicating that they had no objection to the
12 Thermal Stipulation, as long as it didn't bleed
13 over into the hydro deal. "Exhibit No. 11" has
14 been marked to be the Eversource Request for
15 Findings and Rulings Regarding Exempt Wholesale
16 Generator Status.

17 Those are the documents that have
18 been premarked. And I'll provide you with that
19 listing of documents, so you have it.

20 (The documents, as described,
21 were herewith marked as
22 **Exhibit 1** through **Exhibit 11**,
23 respectively, for
24 identification.)

1 CHAIRMAN HONIGBERG: And, so, the
2 sentence that Mr. Boldt read becomes an
3 additional part of the record. It was -- Mr.
4 Patnaude got it, and Mr. Boldt is going to
5 provide it in writing.

6 Ms. Ross, from a process perspective,
7 would it make sense for that to be -- would we
8 have Mr. Boldt submit that and we reserve
9 Exhibit 12 for that, that way we don't need to
10 make Mr. Patnaude produce a transcript for us?

11 MS. ROSS: I think that would be
12 helpful, because we will have it immediately as
13 part of the record today.

14 CHAIRMAN HONIGBERG: All right.

15 ***(Exhibit 12 reserved)***

16 MR. BOLDT: We have sent that as an
17 email to Attorney Ross and all the other
18 attorneys already. So, if we can just print it
19 out, and we'll happily slap a sticker on it.

20 CHAIRMAN HONIGBERG: All right.

21 MS. ROSS: We can call it a
22 "stipulation"?

23 CHAIRMAN HONIGBERG: That's fine. I
24 think it's clear to us on the record what it

1 means.

2 MS. ROSS: In terms of process, I
3 would recommend that we do call the panels, for
4 purposes of at least a little bit of summary
5 and potential questions from the Bench, and a
6 few clarifying questions that I have for gaps,
7 I believe, in the information that will be
8 needed for the Commission to consider the two
9 sales. So, I think the Parties would like to
10 call the two witnesses as a panel, that is Eric
11 Chung, for Eversource, and Neil Davids for J.P.
12 Morgan.

13 CHAIRMAN HONIGBERG: That's fine. Is
14 from Sansoucy's testimony or the testimony of
15 his group, is that going to be an exhibit, part
16 of this record?

17 MR. BOLDT: It was listed on the list
18 already that was before you. So, I was
19 anticipating it was there to do with what the
20 Commission wish. It is not deemed
21 "confidential".

22 CHAIRMAN HONIGBERG: Is there a
23 number reserved for it? Mr. Bersak, I don't
24 remember you saying.

1 MS. ROSS: It was listed as number
2 "12" on our Exhibit List. So, then I think
3 "13" would be the stipulation on findings.

4 MR. BERSAK: I was not -- I'm sorry.
5 I'm not sure whether, in light of where we are
6 in this proceeding, whether the panel testimony
7 of Mr. Sansoucy was going to proceed or whether
8 it was going to be withdrawn.

9 CHAIRMAN HONIGBERG: Mr. Boldt?

10 MR. BOLDT: While I would -- while I
11 am fine that it not be an exhibit, I would
12 avoid the word "withdrawal" with its
13 connotations. Just for some reason that you
14 are submitted to body snatchers in the back
15 room and the condition of stipulation is not
16 agreed to, that it be there.

17 But I am fine it not being raised as
18 an exhibit, --

19 CHAIRMAN HONIGBERG: Okay.

20 MR. BOLDT: -- and not having to take
21 the time to have the panel go forward.

22 CHAIRMAN HONIGBERG: That's fine.
23 Anything else?

24 *[No indication given.]*

1 CHAIRMAN HONIGBERG: All right.
2 Then, I think, if you want to have the
3 witnesses come, we can have them sworn in, and
4 ask whatever clarifying questions you want to
5 ask. And, if there are questions from the
6 Bench, those will be asked.

7 [Short pause.]

8 CHAIRMAN HONIGBERG: While the
9 witnesses are getting settled, can I ask
10 someone to print the language from Mr. Boldt
11 and have it copied for the three of us up here?

12 Mr. Patnaude, do the honors please.

13 (Whereupon **Eric Chung** and
14 **Neil Davids** were duly sworn by
15 the Court Reporter.)

16 CHAIRMAN HONIGBERG: Mr. Bersak.

17 MR. BERSAK: Thank you, Mr. Chairman.
18 Good morning, Mr. Chung. Good morning, Mr.
19 Davids.

20 As you know, I'm Robert Bersak. I'm
21 Chief Regulatory Counsel for Eversource Energy.
22 And I just wanted to ask a few foundational
23 questions of Mr. Chung.

24 **ERIC CHUNG, SWORN**

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NEIL DAVIDS, SWORN

DIRECT EXAMINATION

BY MR. BERSAK:

Q Eric, can you please identify yourself for the record?

A (Chung) Good morning. My name is Eric Chung. I am Director of Revenue Requirements and Regulatory Projects at Eversource Energy Service Company. And I'm the overall Eversource Company lead for the divestiture.

Q Mr. Chung, you prefiled testimony in this proceeding on October 12th, which consists of 18 pages. Do you have any updates or corrections to that testimony that's been marked as "Exhibit No. 4"?

A (Chung) Yes. I have one correction to my testimony, on Page 13 of 18, Lines 4 through 5, with the sentence starting "We estimate that including various closing adjustments". That part of the sentence should read "We estimate that excluding various closing adjustments".

That's the only correction I have.

Q With that correction, do you adopt that prefiled testimony as your testimony here

1 today?

2 A (Chung) Yes.

3 Q Do you have a brief summary of what that 18
4 pages of testimony says?

5 A (Chung) Yes. In short, my testimony presents
6 the two Purchase and Sale Agreements for the
7 thermal and the hydro assets. And if I take a
8 step back, I would like to highlight that we
9 thought this was a smooth and fair auction
10 process that was run by J.P. Morgan and
11 overseen by Commission Staff, and included the
12 participation of countless Eversource employees
13 to support that auction process, ran smoothly,
14 fairly, and successfully.

15 And we're pleased that the divestiture
16 process successfully concluded with contracts
17 for the sale of all of its generation, all of
18 our generating assets. And we have signed two
19 Purchase and Sale Agreements. One with Granite
20 Shore Power, LLC, for the purchase of the five
21 thermal generating assets. And the second PSA
22 with Hull Street Energy for the purchase of our
23 hydro generating facilities. Prior to any
24 closing adjustments, the overall sale price for

[WITNESS PANEL: Chung|Davids]

1 the portfolio is 258.3 million.

2 I can represent that the Company finds the
3 terms of the contracts, both contracts,
4 commercially reasonable and appropriate. And
5 we feel it offers an appropriate balance
6 between net proceeds and other terms of the
7 transaction that effectively maximizes the
8 total transaction value, as warranted by law
9 and as warranted by the 2015 Settlement
10 Agreement.

11 One aspect of the thermal contract I would
12 like to highlight is that there is a
13 time-sensitive component to that contract. If
14 the closing does not occur on or before
15 January 1, 2018, there is a downward price
16 adjustment. Which, if it takes effect, would
17 result in an increase to stranded costs.

18 In order to preserve the value of these
19 contracts, and the overall benefits for
20 customers set forth in the Settlement
21 Agreement, the Company requests that the
22 Commission issue an order approving the sale,
23 so that one of the conditions of closing,
24 receipt of a final order not subject to

{DE 17-124} [REDACTED - For Public Use] {11-27-17}

[WITNESS PANEL: Chung|Davids]

1 rehearing, is met before the end of this year,
2 which requires that an order be received as
3 soon as practical.

4 I'll also highlight two ancillary items
5 for the Commission that are a part of this
6 proceeding, but outside of the explicit
7 Purchase and Sale Agreements. As noted in our
8 Application, due to the length of time it has
9 taken to conduct this auction process, certain
10 of the employee protections became ambiguous
11 due to the expiration of the prior Collective
12 Bargaining Agreement. PSNH and the Union met
13 and resolved these ambiguities by agreeing to
14 the clarifying Memorandum of Agreement that is
15 attached to my testimony and dated September
16 7th, 2017. PSNH requests that the Commission
17 approve that resolution as part of this
18 proceeding.

19 In addition, pending before the Commission
20 is PSNH's Request for Finding of Fact necessary
21 for FERC to approve Exempt Wholesale Generator
22 status for these assets. Similar requests for
23 such findings are pending before the
24 Connecticut Public Utilities Regulatory

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[WITNESS PANEL: Chung|Davids]

1 Authority and the Massachusetts Department of
2 Public Utilities. The Commission -- the
3 Company asks the Commission to make and include
4 these required findings in its orders approving
5 these sales.

6 In closing, Eversource requests the
7 Commission approve each of these Purchase and
8 Sale Agreements. The Company is grateful to
9 Commission Staff and to the Commission -- and
10 to the Commission and to J.P. Morgan for the
11 success of the auction process, and we now
12 leave it to the Commission to act expeditiously
13 to protect the value of that auction that we
14 have together obtained. Thanks.

15 MR. BERSAK: Thank you. I have no
16 further questions for Mr. Chung. Ms. Ross.

17 CHAIRMAN HONIGBERG: Ms. Ross.

18 MS. ROSS: Thank you. And before I
19 ask a couple of clarifying questions of Mr.
20 Chung, I just want to distribute the printout
21 of the stipulation.

22 *[Atty. Ross distributing*
23 *documents.]*

24 MR. BOLDT: Anne, will that be number

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[WITNESS PANEL: Chung|Davids]

1 13?

2 MS. ROSS: That will be number 13.

3 CMSR. BAILEY: Twelve.

4 MS. ROSS: Oh, I'm sorry.

5 CHAIRMAN HONIGBERG: Sandy, what
6 number is it?

7 MS. ROSS: It's 12, because we're not
8 actually marking Mr. Sansoucy's.

9 MR. BOLDT: Thank you.

10 (The document, as described, was
11 herewith marked **Exhibit 12** (as
12 *previously reserved*) for
13 identification.)

14 MS. ROSS: Thank you. Before dealing
15 with Mr. Davids, I'd like to ask a couple of
16 clarifying questions of Mr. Chung.

17 BY MS. ROSS:

18 Q In the discussion of the MOU that we just had
19 with regard to the Union, has the Company
20 estimated the cost of the additional
21 transitional benefit protections that the Union
22 obtained in those negotiations?

23 A (Chung) The Company has estimated what I'd call
24 an "outer bound" or a "maximum" for the total

{DE 17-124} [REDACTED - For Public Use] {11-27-17}

[WITNESS PANEL: Chung|Davids]

1 change in pension liability. So, this is due
2 to what is called in the MOA the "Rule of 85
3 Grow-in". And our Benefits Department
4 estimated a maximum of 5 to 6 million, if the
5 most number of employees who could grow in
6 could receive that benefit.

7 However, the actual amount won't be known
8 until we know the number of employees that will
9 transfer to the buyer, and how many of those
10 actually grow in to the benefit. So, it's hard
11 to tell, but I'd say an upper bound is 5 to 6
12 million, according to our Benefits Department.

13 Q Thank you. The other clarifying question, Mr.
14 Chung, has to do with the environmental
15 insurance that the Company is obtaining to
16 cover some liabilities on both the fossil and
17 the hydro side. Do you have an estimate of the
18 cost of those premiums yet?

19 A (Chung) Yes. The Eversource Insurance
20 Department estimated that, on the thermal side,
21 the total costs for a little beyond the term of
22 the liability stated in the contract, would be
23 approximately 700,000, and that's for a
24 ten-year term.

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[WITNESS PANEL: Chung|Davids]

1 Q And that's to cover 25 million, up to 25
2 million in environmental liabilities?

3 A (Chung) Yes. Yes, 25 million of unknown
4 environmental liabilities. And, on the hydro
5 side, for a ten-year term, with a similar
6 profile of unknown liabilities, coverage is
7 160,000 for up to 10 million of costs related
8 to unknown future environmental liabilities.

9 Q And just --

10 A (Chung) So, the total is about 860,000.

11 Q Thank you. And just to build the record out a
12 little, the Company did conduct Level 1
13 environmental assessments of all of its
14 facilities in preparation for the auction,
15 correct?

16 A (Chung) Yes. That's right. And those were
17 conducted largely in the Fall of 2015.

18 Q And they did not disclose any dangerous
19 conditions to your knowledge?

20 A (Chung) Not that I'm aware of.

21 Q Okay. All right. With that, Mr. Davids, if
22 you would please just give your name and your
23 job with J.P. Morgan, and then a brief summary
24 of the process that you've conducted for the

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[WITNESS PANEL: Chung|Davids]

1 auction of both the fossil and hydro fleets?
2 A (Davids) Sure. Thank you, Anne. My name is
3 Neil Davids. I'm an Executive Director in the
4 Energy Investment Banking Group of J.P. Morgan.
5 I joined the firm in 2008, and now lead our
6 power generation and renewable energy segment
7 of the practice. And I just wanted to thank
8 everyone for giving me the opportunity to speak
9 at the hearing today.

10 As you know, J.P. Morgan was retained by
11 the Commission on September 7th, 2016 as
12 Auction Advisor. We are a full service
13 investment bank, and a leader in power and
14 utility M&A. Since 2007, we've advised on over
15 60 transactions, totaling more than \$170
16 billion of transaction value. We've also been
17 an advisor on numerous New England public
18 utility commission run auctions.

19 Today, we are very pleased with the
20 outcome of the Eversource auction. J.P. Morgan
21 abided by the principal objectives set forth
22 and approved by the Commission, which includes
23 following the auction design order, maximizing
24 total transaction value, the sale of the entire

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[WITNESS PANEL: Chung|Davids]

1 portfolio, all consistent with the Settlement
2 Agreement.

3 We led a fair and transparent,
4 well-structured, two-stage auction process
5 consistent with industry best practices. In
6 auction processes, creating competitive tension
7 throughout the process is the key to deriving
8 value. And I am pleased to report that we had
9 reputable, experienced power generation
10 investors seriously engaged throughout all
11 phases of the Eversource auction process.

12 J.P. Morgan set the right pace for the
13 auction process, that balanced the needs of the
14 Municipalities, while keeping strategic and
15 financial bidders engaged. And the Company did
16 a fantastic job addressing over 2,000 diligence
17 questions related to the portfolio.

18 Some of the timing and the design changes
19 implemented to facilitate municipal
20 participation include the accelerated access to
21 confidential information, automatic admission
22 into Round 2, with the potential ability to
23 receive feedback from J.P. Morgan on their
24 Round 1 value. A two-month timing extension,

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[WITNESS PANEL: Chung|Davids]

1 and the requirement that bidders break out
2 their asset valuations.

3 In the end, J.P. Morgan received seven
4 final bids. Three for the entire portfolio and
5 four for individual subsets of assets. This
6 robust level of participation provided
7 optionality negotiation leverage, allowing us
8 to maximize total transaction value by
9 selecting a thermal and hydro bid that exceeded
10 any other consideration for any combination of
11 the full portfolio.

12 We feel good about the results as no stone
13 is left unturned during our outreach, as we
14 went out to over 182 power generation investors
15 that was in conjunction with an Eversource
16 press release. We also have confidence that
17 the competitiveness of the structured process
18 allowed up to capture full value for the
19 portfolio from the interested parties.

20 So, thanks again. It was great to work
21 with the Eversource folks, as well as the
22 Commission Staff. And I'm open for questions.

23 MS. ROSS: I just have a couple
24 clarifying questions.

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1 BY MS. ROSS:

2 Q First of all, I know there were a number of
3 written due diligence questions from the Round
4 2 bidders. Could either of the witnesses
5 indicate the number of questions asked and
6 answered in that process?

7 A (Chung) Yes. I'd estimate the number of
8 questions is around and probably slightly
9 higher than 2,000 across all of the Round 2
10 bidders.

11 Q Thank you. And, Mr. Davids, one of the things
12 that the Settlement Agreement requires of this
13 auction is that it be a, and I quote this
14 language, "market-based determination of
15 stranded costs". Is it your opinion that the
16 auction results are a market-based
17 determination of the overall fleet value?

18 A (Davids) Yes. It is my opinion that this is a
19 market-based valuation for the fleet. We ran a
20 very competitive, structured auction process,
21 in accordance with the auction design that was
22 approved.

23 MS. ROSS: Thank you. I don't have
24 any further clarification questions.

[WITNESS PANEL: Chung|Davids]

1 CHAIRMAN HONIGBERG: Do any of the
2 intervenors or the OCA have clarifying
3 questions they wish to ask the panel? I see
4 Mr. Boldt. I see Mr. Kreis.

5 Mr. Boldt.

6 MR. BOLDT: Just a simple point of
7 order, Mr. Chairman. Could we ask for a
8 conditional ruling on the Stipulation Exhibit
9 No. 12, if the Board is inclined to grant that?

10 CHAIRMAN HONIGBERG: Yes. What I was
11 going to do is actually break for ten minutes
12 or so after these clarifying questions were
13 asked. Does our answer dictate whether you
14 will ask questions of the panel?

15 MR. BOLDT: Positively.

16 CHAIRMAN HONIGBERG: Okay.

17 MR. BOLDT: Because, if for some
18 reason, you denied that stipulation, we'd have
19 to go through everything.

20 CHAIRMAN HONIGBERG: No, I understand
21 where you are. We will take our break then
22 before you are called on to ask questions.

23 MR. BOLDT: Thank you.

24 CHAIRMAN HONIGBERG: Mr. Kreis, is

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[WITNESS PANEL: Chung|Davids]

1 there anything you want to do in the way of
2 clarification with the panel?

3 MR. KREIS: Just a couple of really
4 quick things. I think my -- I just have a
5 couple of questions for Mr. Chung.

6 **CROSS-EXAMINATION**

7 BY MR. KREIS:

8 Q Mr. Chung, the very last page of your testimony
9 is an exhibit labeled "Attachment 3" that
10 offers a preliminary estimate of securitization
11 of the amount to be securitized at the end of
12 all of this. It's an estimate that you
13 calculated back on October 10th.

14 And I just wanted to clarify, you have, in
15 fact, revised since October 10th your estimate
16 of the amount to be securitized, true?

17 A (Chung) That's correct. And that estimate was
18 presented in Docket DE No. 17-096 for
19 securitization. And there's a supplemental
20 testimony that I provided that lays out an
21 updated version of this testimony. And this
22 exhibit was provided really to give the
23 Commission and the intervenors a sense of
24 directionally what the stranded costs were

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[WITNESS PANEL: Chung|Davids]

1 going to be, knowing that it was subject to a
2 change, and we have, in fact, updated that in
3 the other docket.

4 Q Thank you. And my other question, earlier
5 today you heard -- you were in the room when
6 there was a confidential offer of proof made
7 with respect to the daily cost of a delayed
8 closing of the Thermal Purchase & Sale
9 Agreement, were you not?

10 A (Chung) Yes.

11 Q Do you agree with that offer of proof?

12 A (Chung) I do. I do agree with that.

13 MR. KREIS: Thank you, Mr. Chairman.
14 That's all I have.

15 MS. ROSS: I have one housekeeping
16 matter. I apologize, I neglected to have these
17 two witnesses adopt their testimony as sworn.
18 So, if we could do that before we go off the
19 record.

20 BY MS. ROSS:

21 Q Mr. Chung, --

22 CHAIRMAN HONIGBERG: I think Mr.
23 Chung did.

24 MS. ROSS: Oh, I'm sorry. Then, it's

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[WITNESS PANEL: Chung|Davids]

1 only Mr. Davids.

2 CHAIRMAN HONIGBERG: And I think the
3 Parties would stipulate that his testimony
4 comes in in full. Unless there are corrections
5 you need to make, Mr. Davids, are there?

6 MS. ROSS: Why don't we just give him
7 the opportunity to state that on the record
8 then.

9 BY MS. ROSS:

10 Q Would you state on the record that the
11 testimony that is marked on the exhibits as
12 your testimony, Exhibit 6, is your sworn
13 testimony and is true and accurate today as it
14 was when it was prepared?

15 A (Davids) I agree that that is my sworn
16 testimony, and is accurate as prepared.

17 Q Do you have any changes to make to that
18 testimony?

19 A (Davids) I do not.

20 MS. ROSS: Okay. Thank you.

21 CHAIRMAN HONIGBERG: All right.
22 We're going to take a ten-minute break and
23 discuss among ourselves. And we won't
24 discharge this witness panel until we come

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[WITNESS PANEL: Chung|Davids]

1 back. All right. Thank you.

2 (Recess taken at 10:40 a.m.
3 and the hearing resumed at
4 11:04 a.m.)

5 CHAIRMAN HONIGBERG: I'll start by
6 thanking you all for the hard work you did and
7 tell you that we will accept the stipulation of
8 the Parties this morning to resolve that last
9 language issue, and thereby allow Mr. Boldt and
10 the other municipal attorneys to waive their
11 clients' rights to appeal.

12 With that, Mr. Boldt, do you need to
13 ask any questions of the panel?

14 MR. BOLDT: In reliance upon that,
15 no, Your Honor.

16 CHAIRMAN HONIGBERG: All right. I
17 believe Commissioner Bailey has a couple of
18 questions she'd like to ask. I'm not sure
19 about Commissioner Giaimo.

20 CMSR. BAILEY: Thank you. Mr. Chung
21 my questions I think are for you -- well, they
22 are for you, about your testimony.

23 BY CMSR. BAILEY:

24 Q Can you look on Page 5? Sorry. Yes.

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[WITNESS PANEL: Chung|Davids]

1 A (Chung) I have Page 5 in front of me.

2 Q Okay. Oh, I'm not on Page 5. That's the
3 problem. Line 8 -- the paragraph that begins
4 at Line 18, you discuss an RFP that you issued
5 to help you plan for the post-divestiture
6 transition. And, on Line 22, you state who you
7 engaged. Can you look at that and tell me if
8 there's something missing?

9 A (Chung) No. It's just their name is
10 "Strategy&". So, that's their -- it's the
11 former Booz & Company, and they're now a
12 subsidiary of PwC.

13 Q Okay. Thank you. And do you have an order of
14 magnitude about -- for what you paid for that?
15 Is that included in your Attachment 3?

16 A (Chung) Let me just -- I'll look at
17 Attachment 3 just to refresh my memory.

18 So, I believe at the time this estimate on
19 Page 18 was developed, that would have been
20 part of the rounded estimate of other
21 divestiture costs. A more refined version of
22 that appears in my testimony in the
23 securitization docket.

24 Q And we can dig into those costs --

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1 A (Chung) Yes.

2 Q -- in the securitization docket?

3 A (Chung) That would be the right place for that.

4 Q Okay. Thank you. The other area that I just
5 wanted to clarify is about the environmental
6 liability. And I'm not sure I have a page
7 reference. Around Page 11 I think is where you
8 talk about that.

9 And can you just explain, in your own
10 words, the difference, and I'm specifically
11 interested in the environmental liability
12 around the Schiller boiler removal, and what
13 we've already agreed that should be done and
14 what this 25 additional -- whether the
15 \$25 million is additional to what, that kind of
16 thing?

17 A (Chung) Sure. So, the intent of the
18 "25 million" referred to in my testimony on
19 Page 11, and this is the a table --
20 Commissioner, we're talking about the table
21 that's titled "Key term of sale" and
22 "Description", is that correct?

23 Q Yes.

24 A (Chung) Okay. So, that is meant to cover costs

[WITNESS PANEL: Chung|Davids]

1 related to unknown issues, but were related to
2 issues that were while Eversource owned the
3 plant. So, these are things we don't know
4 about, and they're pertaining to the
5 environmental side. And that would not pertain
6 to things we know about related to the removal
7 of the retired mercury boilers, for which the
8 Commission has approved cost recovery of that
9 project separately.

10 However, if there are unknown issues
11 related to the boilers that simply weren't
12 anticipated or are not issues that arose in the
13 Phase 1s, then that would be covered under this
14 25 million.

15 The difference in the two rows is that we
16 agreed with the buyer that the start of the
17 clock for that coverage or that exposure would
18 be after the Schiller project is completed.
19 And we expect the Schiller project to be
20 complete after the close of the sale.

21 Q When do you expect the Schiller project to be
22 complete?

23 A (Chung) It's hard to say, but I believe, in the
24 latest Commission reports that we provide

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[WITNESS PANEL: Chung|Davids]

1 monthly updating the project, we are estimating
2 sometime in the middle of 2018. But that would
3 be well after when we'd expect the thermals to
4 close.

5 Q And you are removing the boilers, the mercury
6 boilers?

7 A (Chung) Yes.

8 Q So, if the mercury boilers are removed, what
9 else could there be left to worry about?
10 Mercury in the ground that you don't know
11 about? Because you looked at that, right?

12 A (Chung) Well, the Phase 1s are distinct from
13 the sort of analysis where the environmental
14 consultants would dig into the ground, versus
15 the standards on Phase 1, which I understand
16 are not related to some of that kind of
17 sampling. So, these would be issues that we
18 simply just don't know about. So, it's hard to
19 predict what we're worried about. But that's
20 the value of this insurance, is that it covers
21 customers from unknown issues that may arise in
22 the future, and we just don't know when that's
23 going to be.

24 What we were able to do with the buyer of

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[WITNESS PANEL: Chung|Davids]

1 the thermal assets was to put a time limit on
2 when these issues would have to be negotiated,
3 after which they're the buyer's responsibility.

4 Q Okay. So, let me see if I can sum it up, and
5 you tell me if I understand it correctly. You
6 have -- you're going to buy insurance that will
7 cover up to \$25 million for any environmental
8 liability that you don't know about today,
9 assuming the mercury boilers have been removed.
10 And if it has something to do with the boilers,
11 it's seven years from when they're finally
12 removed, and if it has something to do with
13 other than the boilers, it's seven years from
14 the date of closing?

15 A (Chung) I think that's broadly correct. I
16 didn't follow the middle part about the
17 Schiller boilers. But I will say that, you
18 know, we're -- when we went through the Phase 1
19 exercise, you know, we looked at what are the
20 major issues that could arise with the plant,
21 and, you know, we made the decision in
22 conjunction with the, you know, Commission
23 Staff, and as approved by the Commission, to
24 remove those boilers, and that was for the

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1 benefit of the auction process. And, as
2 Mr. Davids has testified, that we've had a good
3 result, so that feels like it was the right
4 thing to do.

5 But there could be things that come up
6 even post-removal, and this seems like the
7 prudent thing to do, to buy insurance that
8 covers that, but -- and also place a limit on
9 it with respect to the contract.

10 Q So, it's post-removal and post-closing?

11 A (Chung) Yes.

12 Q But it's a total of 25 million?

13 A (Chung) Yes.

14 Q And it's not for anything that you find while
15 you're removing --

16 A (Chung) That's right.

17 Q -- the boilers?

18 A (Chung) That's correct.

19 CMSR. BAILEY: All right. Thank you.

20 CHAIRMAN HONIGBERG: Commissioner

21 Giaimo.

22 CMSR. GIAIMO: I had put together a
23 bunch of questions. But, in light of the
24 stipulation, I'm fine. Thanks.

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1 BY CHAIRMAN HONIGBERG:

2 Q Mr. Chung, in your testimony at the end, on
3 Page 17, Line 12 to 15, you request separate
4 orders because of some of the issues we were
5 talking about earlier. And maybe this is a
6 question Mr. Bersak should answer. But, in
7 light of what's happened this morning, are you
8 now indifferent to getting two orders approving
9 both, as opposed to getting separate orders?
10 As long as that -- as long as the thermal PSA
11 is approved as quickly as possible, it doesn't
12 matter whether we do them in one or two, or
13 does it still matter?

14 A (Chung) I'd defer that question to Mr. Bersak.

15 MR. BERSAK: By the terms of the
16 stipulation that we've marked as "Exhibit 12",
17 I believe, that stipulation only applies to the
18 approval of the Hydro Purchase and Sale
19 Agreement. So, there will be some differences
20 related to the fossil sale versus the hydro
21 sale. That doesn't mean it couldn't be
22 incorporated into one order.

23 Given where we are and the procedural
24 status of the docket, I don't believe that

[WITNESS PANEL: Chung|Davids]

1 there would be a particular need for two
2 separate orders at this point.

3 CHAIRMAN HONIGBERG: All right.

4 MS. ROSS: Could I speak to that?

5 CHAIRMAN HONIGBERG: Sure.

6 MS. ROSS: Staff would still
7 recommend two separate orders. The parties in
8 the room may not be the universe of the parties
9 who might have some interest in the orders and
10 some reason to want to request rehearing or
11 appeal. And I think that separating the two
12 Purchase and Sale Agreements in separate orders
13 makes it possible to expedite the process
14 effectively.

15 CHAIRMAN HONIGBERG: Fair enough.
16 All right. We don't -- I don't think we have
17 any further questions for the panel.

18 Mr. Bersak, Ms. Ross, is there
19 anything you feel you need to do with the
20 witnesses beyond which you've already done?

21 MR. BERSAK: No, sir.

22 MS. ROSS: No.

23 CHAIRMAN HONIGBERG: All right. The
24 Parties have already, I think, stipulated to

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1 Exhibits 1 through 12 being full exhibits.

2 Is there anything else we need to do
3 before we take closings from the Parties?

4 *[No verbal response.]*

5 CHAIRMAN HONIGBERG: All right.

6 We'll start with the Municipal lawyers.

7 Mr. Boldt, will you be speaking for the group?

8 MR. BOLDT: We thank the Commission
9 for the time and the entry of the stipulation.

10 CHAIRMAN HONIGBERG: Thank you, Mr.
11 Boldt, Ms. Whitelaw, and Mr. Tanguay. I know
12 we made your lives more miserable than probably
13 you would have liked. But we at least got to a
14 result that you and your clients I think will
15 be satisfied with.

16 Mr. Irwin.

17 MR. IRWIN: I would just like to
18 reiterate our thanks to the Commission for
19 moving this forward.

20 Thank you.

21 CHAIRMAN HONIGBERG: Mr. Irwin, why
22 are you not on board with the agreement here?

23 MR. IRWIN: Our engagement in this
24 docket has really been focused on the thermal

1 assets, or the part of the Stipulation related
2 to the thermal assets. So, for that reason.
3 We certainly do not object.

4 CHAIRMAN HONIGBERG: Okay. Fair
5 enough.

6 Mr. Aslin.

7 MR. ASLIN: Thank you. Thank you,
8 Mr. Chairman. I would also reiterate the
9 thanks to the Board -- the Commission for their
10 review of this issue and the time-sensitive
11 nature. OSI is happy with the outcome of the
12 auction. We believe that this is in the best
13 interest of ratepayers and encourage approval
14 of the sales.

15 Thank you.

16 CHAIRMAN HONIGBERG: Mr. Kreis.

17 MR. KREIS: Thank you, Mr. Chairman.
18 As with the other parties, I want to thank the
19 Commission and the other parties, including the
20 Staff and the folks from J.P. Morgan, for all
21 of their excellent work and flexibility in
22 bringing these transactions before the
23 Commission for their approval.

24 Because the OCA has certain statutory

1 rights for access to information that is --
2 that are unique to the OCA, I think it's fair
3 to say that we had the most exhausting -- the
4 most plenary ability to scrutinize these
5 transactions. And we used that right and can
6 therefore state with a great degree of
7 confidence that these Purchase and Sale
8 Agreements reflect an optimal outcome, given
9 the nature of the auction process that J.P.
10 Morgan oversaw. And, so, we don't have any
11 hesitation in asking the Commission to approve
12 them.

13 And we strongly urge the Commission
14 to issue its approval on as expedited a
15 timeline as is humanly possible. And given
16 that I'm formerly employed by the Commission,
17 and used to be intimately involved in the order
18 production process, I know how difficult it is
19 to issue important orders like this on a
20 timely and expedited basis. So, I would be
21 really grateful, on behalf of the residential
22 utility customers that I represent, if the
23 Commission nevertheless found a way to do that,
24 given the high financial value of closing the

1 hydro [thermal?] divestiture by year's end.

2 And with that, I think that's all I
3 have to say, other than thanking everybody
4 again for their hard work in this process,
5 which, assuming it concludes, is the end of a
6 very, very, very long road.

7 CHAIRMAN HONIGBERG: Thank you, Mr.
8 Kreis. Ms. Ross.

9 MS. ROSS: Thank you. I will try to
10 be brief, but I did want to hit a few points.
11 Just to remind the Commission that this is
12 essentially the third step of a process that
13 began with the filing of the Settlement
14 Agreement in 2015. And to just observe that,
15 as you can see from the prefiled testimony, the
16 process of this auction was robust. It was
17 very commercially reasonable. And it showed a
18 tremendous amount of involvement by many, many
19 parties in the industry, and was run by a very
20 eminent bank, J.P. Morgan, and that the results
21 really do reflect a process that was
22 appropriate and was consistent with our auction
23 design.

24 And I want to commend the J.P. Morgan

1 group, as well as the Eversource group, the
2 amount of work that that process entailed is
3 hard to describe. There were easily ten to
4 fifteen people at the J.P. Morgan house, and an
5 equal number or more at the Eversource house,
6 in addition to four or five Staff members, who
7 participated in the process. And, as you may
8 recall, Staff was asked to oversee, which we
9 have done, including being present at all of
10 the management presentations, at each of the
11 site visits, and at every point of the way when
12 significant decisions were being made, Staff
13 was aware. And all of them appeared, from our
14 point of view, to be aimed at maximizing the
15 value of the assets being sold.

16 And therefore, and I also want to
17 remind the Commission, that J.P. Morgan's fee
18 is based partially on the sale results; the
19 higher the results, the more money they get.
20 So, the process was very much focused on
21 maximizing the transactional value.

22 I wanted to remind the Commission
23 that J.P. Morgan has given its opinion that
24 this is, in fact, a market-based determination

1 of stranded costs as required by the Settlement
2 Agreement. They are an expert in running this
3 process, and they have recently run a number of
4 similar processes, and this process looks very
5 consistent with other processes in the market,
6 as they have testified.

7 Finally, just a few housekeeping
8 items. The environmental insurance that's
9 requested, Staff views that as a good balance
10 of risks. It does cut off liability eventually
11 for the pre-closing unknown environmental
12 conditions. These sites are old industrial
13 sites. They have been operated as industrial
14 sites for many, many years. It is not unlikely
15 that there are issues on them that may be
16 discovered later, if people begin excavating or
17 doing other changes to the sites. And Staff
18 believes that cutting off the liability and
19 covering the unknown liability with insurance
20 policies was a good balance of the interests,
21 and would encourage the Commission to approve
22 those costs.

23 We also believe that the transitional
24 pension protections that the Union negotiated

1 as part of its new transition to the new
2 Collective Bargaining Agreement are reasonable
3 accommodations, and are consistent with the
4 statutory framework, and should also be
5 approved. The outside cost is in the 5 to
6 \$6 million range, although that's -- it
7 probably will be considerably less than that,
8 once employees either take other jobs within
9 Eversource or go to the acquirer.

10 And, so, in closing, I would just
11 recommend that the Commission approve the
12 sales. And I want to thank the Company, in
13 particular, for the amount of time and support
14 it's given, and also the Staff, who's devoted
15 substantial time to overseeing this process.

16 Thank you.

17 CHAIRMAN HONIGBERG: Thank you, Ms.
18 Ross. Mr. Bersak.

19 MR. BERSAK: Thank you, Mr. Chairman.
20 Before the hearing today began, Mr. Sansoucy
21 and I were reminiscing that, for some of us,
22 we're into the 21st year of this process. And
23 we've been around since the Legislature enacted
24 the restructuring law back in 1996. Both

1 Mr. Sansoucy and I, and a number of others in
2 this room participated in the Commission's
3 docket DR 96-150, the original restructuring
4 proceeding. The one that led to protracted
5 federal court litigation, which ultimately
6 changed the course of restructuring for several
7 decades in this state.

8 Throughout the years, the generation
9 fleet that PSNH has owned has done a great
10 service for our customers and for the state,
11 making sure the lights have stayed on. But now
12 it's time to implement various public policies
13 and resolve issues that have been around for
14 many, many years. Whether they're
15 environmental, related to the construction of
16 the Scrubber; whether they are protecting our
17 employees who have made sure those plants are
18 operable; customers, who benefited from and now
19 have to pay the remaining costs of the benefits
20 they have received from these plants. And, so,
21 it is a day we've been waiting for for a long
22 time.

23 We, like the Staff, appreciate very
24 much the direction that the Commission has

1 given us. That the cooperation we've received
2 not just from Staff and from J.P. Morgan, but
3 from the many buyers that were part of this
4 process, and the parties to this proceeding.

5 Earlier today, Mr. Boldt said that
6 the -- it was never the intention of the
7 municipal intervenors to delay solely for the
8 seek of delay. And I agree with their
9 observation and appreciate their willingness to
10 move this forward as quickly as we can under
11 the circumstances. I think today's result
12 demonstrates that this process has, in fact,
13 worked.

14 We thank the Commissioners for
15 finding time in your very extended schedule to
16 fit these hearings in today. And we are
17 striving to try to close on the fossil deal by
18 the end of the year and preserve the maximum
19 value for customers.

20 So, thank you very much.

21 CHAIRMAN HONIGBERG: Thank you, Mr.
22 Bersak.

23 If there's nothing else, then we will
24 adjourn the hearing, and issue an order

1 literally as quickly as we can.

2 **(Whereupon the hearing was**
3 **adjourned at 11:24 a.m.)**

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