

**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**

NOW COMES Intervener Town of New Hampton ("the town") in the captioned Docket and hereby submits its Comments on the Proposed Schedule and Auction Process as tendered by JP Morgan as the Auction Advisor ("JPM") and certain PUC Staff (primarily Attorney Anne Ross and Thomas Frantz and referenced herein as "Staff").

**BACKGROUND**

1. The Town of New Hampton is a host community to the Ayers Island hydroelectric facility ("Ayers Island") owned by Eversource. The facility is also located in the town of Bristol, which is an intervener in this matter, represented by Attorney Shawn Tanguay. Ayers Island includes flowage easements in several communities upstream from the dam which have not intervened herein.

2. The PUC and the parties to the Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement, dated June 10, 2015, as amended ("the Agreement") and approved pursuant to PUC Order No. 25,920 in the divestiture docket, DE 14-238, unambiguously provided host municipalities preferential status in the auction process. The town is concerned that the aggressive time frame established for completion of the auction process is antithetical to the PUC's goal that host municipalities be provided a full and fair opportunity to engage in the bidding process with a realistic opportunity to purchase its resident hydro facility. The proposed auction procedures raise

the following issues:

- A. that the town's rights as a municipal purchaser under RSA 38 may be compromised;
- B. that there is insufficient time to prepare for the statutorily required town meetings and the public education process that must occur prior to the town meetings;
- C. that necessary information will not be provided to the town in time to allow the selectmen to properly prepare for either the Phase I or Phase II bidding; and
- D. that the town is not provided an opportunity to meaningfully engage in the procedure by which the sale price of multiple facilities is allocated to Ayers Island.

The town offers the following specific comments.

**RSA 38**

3. RSA 38 provides procedures through which the town may purchase utilities such as Ayers Island, whether by agreement or through eminent domain. The town has not yet had the opportunity to thoroughly evaluate whether the proposed auction procedures are inconsistent with its rights under RSA 38. For example, the town has the right under RSA 38:9 to petition the PUC if the parties are unable to agree on a purchase price; it is unclear how this authority is integrated into the auction procedures. The town believes the interface of the proposed auction procedures and the provisions of RSA 38 should be evaluated by the parties and the PUC, and inconsistencies between the auction procedure and the statutory provisions be resolved prior to finalizing the auction procedures.

### **TOWN MEETINGS**

4. Pursuant to RSA 38:4, the town voters must, by a 2/3 vote, decide that it is “expedient” to purchase Ayers Island. While the selectmen may participate in DE 16-817 to monitor the procedures and gather information prior to the required town vote, they are not authorized to obligate the town in any way or to participate as a bidder in the auction process until the voters make the required decision; the selectmen are precluded from tendering a “soft bid” until that affirmative vote occurs. The proposed auction procedures provide that soft bids are to be submitted in late December 2016, which is impossible for the selectmen to do.

5. The town discussed at the prehearing conference held on September 19, 2016, that the town cannot present this issue to the voters at the March 14, 2017 annual town meeting, the first session of which will be held between February 4 and February 11, 2017. The agenda is already full and passage would be politically unlikely given the voters will have to address the general operating budget and numerous special spending articles. Further, detailed information about the proposal would have to be ready and available for the voters and information hearings held with the voters well prior to the first session, and this will not be possible. The selectmen will have to call a special town meeting.

6. New Hampton is an SB2 town, which means its town meeting consists of two sessions; the first is a deliberative session where the voters would discuss the proposed warrant article asking the voters whether it is expedient to purchase Ayers Island, and the second session where the article will be voted on by ballot. Various statutory provisions set out the requirements for town meetings: notice, public hearings by the selectmen for various purposes, required time periods between public hearings and the first session, and time frames between the first and second sessions. These requirements apply to

both the annual and special town meetings. As a result, the fastest possible track for a special town meeting in an SB2 town is two months. However, a special town meeting cannot be held closer than 60 days prior to the annual town meeting. This means that the latest the second, voting session of a special town meeting could be held in 2016 is early December, with the first session early November.<sup>1</sup> It is obvious, and unavoidable, that it is simply not possible for the selectmen to call a special town meeting until after the March 14, 2017 annual meeting, which means the earliest the town meeting could be held is April (deliberative) and June (ballot vote) of 2017.

7. The auction schedule calls for the Phase I soft bids to be submitted in late December, 2016, with the Phase II hard bids in late February, early March, 2017. This schedule completely shuts the town out of any meaningful participation as a potential bidder. Given the restraints on the town's ability to hold the required town meeting within the schedule set forth in the proposed auction procedures, the schedule should be amended, at least for those hydro facilities that are located within the interveners' communities, to allow for the municipalities' participation as bidders as intended by and provided for in the Agreement.

8. The town understands from both the Auction Design & Process proposal and from the discussion at the prehearing conference that the town is pre-qualified to participate in the Phase II bidding without having to first offer a soft bid. However, the town also understands that it would be beneficial if the town were to do so because J.P. Morgan could advise the town as to whether its soft bid price was within the same range as others. This in turn would provide a helpful factor for the selectmen to consider when determining whether to present the purchase of Ayers Island to the voters. The time frame

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<sup>1</sup> The warrant calling the special town meeting must be posted 14 days prior to the first session; information regarding the subject of the article to be considered must be available to the voters when the warrant is posted. See RSA 39:5.

needed for the town to fully participate in the auction process will be shortened if the selectmen decide it is not appropriate to continue through the process as a potential bidder. Unfortunately, as stated above, the selectmen are not authorized to submit a soft bid.

9. The town and the town of Bristol proposed a solution to this timing issue, and submitted a question to J.P. Morgan on September 21, 2016, as to whether the towns could submit a Request for Information instead of a soft bid, indicating a number they believe is a reasonable indication of the fair market value of Ayers Island. This would enable J.P. Morgan to inform the towns as to where their indicated value was in relation to the values indicated by the soft bidders, which would be an important consideration for the selectmen. It also has the potential to result in the proposed Phase II schedule remaining in place. For these reasons it would be in the best interests of the town, Eversource, and bidders if the municipalities were permitted to submit a Request for Information rather than a soft bid.

10. JP Morgan submitted a response on September 29, 2016, stating that it is amendable to the proposal, with the understanding that JP Morgan will not provide specific values or details of the soft bids, and further that the soft bids may not contain specific values for individual facilities, in which case the non-binding proposed value for Ayers Dam would not be known. The town appreciates the timely response and the willingness to notify the town where its indication of value is in relation to the soft bids. However, it is important to the town and critical to the auction procedure schedule that the town know whether the soft bids indicate that it is necessary to proceed to submission of a hard bid, which will not be possible if bidders do not identify the soft sale price attributable to Ayers Island.

11. JP Morgan has committed to informing potential bidders that there is a potential for municipalities to purchase assets in their communities; the bidders will be put on notice that special conditions may be imposed on the bidding. JP Morgan indicated in its response to the town's inquiry that it "will be difficult to compel" soft bidders to identify the price attributed to a particular hydro facility. The town respectfully disagrees. The RFP should *require* that soft bidders, whose bids consist of groupings which include the hydro facilities located in the intervener municipalities, designate the specific sale price or percentage of sale price designated to those facilities. As with the soft bid itself, the designation would not be binding, but it would provide both the municipalities and JP Morgan with a more comprehensive indication of what the Phase II hard bid may look like.

12. Pursuant to RSA 38:13, the town must hold a second town meeting (two sessions in New Hampton) after the final price is agreed to, to both approve the funding bond and to ratify the purchase. This second town meeting schedule is a few weeks longer than the first due to public hearing and notice requirements relating to the bond. The town's approval process is significantly longer than final approval by a non-municipal buyer would likely take. As the auction procedure does not establish a deadline for finalizing the purchase, this should not be problematic as long as all parties are aware of the requirement for the second vote.

#### **ADEQUATE TIME TO PROCESS INFORMATION**

13. The town appreciates that JP Morgan acknowledged in the proposed auction procedure that one or more of the host municipalities may not have experience in dealing with utility auctions, and specifically committed to work with them throughout the process. One area of concern for the town is that, while other bidders would presumably be quite familiar with owning/operating a hydro electric facility, the selectmen are not. The selectmen will need more time than a potential corporate purchaser to process the

information provided, involve appropriate town officials/staff in the review process, and then prepare information for the voters' consideration. The proposed auction procedures were amended to some extent at the prehearing conference in response to these concerns. Specifically, Eversource agreed to provide draft confidentiality agreements and JP Morgan agreed to provide a description and index to a CIM by September 23, 2016. Both were timely provided. The confidentiality agreement is far more restrictive than other confidentiality agreements the town has entered into with Eversource and will require changes; the town is confident it can negotiate appropriate changes and not have to seek the PUC's assistance.

14. In addition, JP Morgan committed to both arrange for distribution of the CIM as soon as possible with an early November target date, and also to ensure that all available information regarding the hydro facilities will be available in the virtual data room and accessible to the town by then. While this will provide the selectmen and the town's expert more time to evaluate the information before the current December soft bid deadline, it likely does not provide sufficient time for the town to request, obtain and evaluate additional information from Eversource or other sources, if necessary, prior to the hard bid deadline of late February, early March. However, given that the hard bid deadline must be extended for the municipalities, the town anticipates that with the extension it will have sufficient time to review the data provided, but reserves the right to seek an amendment of the auction procedures applicable to the town.

#### **MEANINGFUL PARTICIPATION IN THE ALLOCATION EVALUATION PROCESS**

15. The purpose of providing for host municipality participation in the auction process is not only to provide an opportunity to bid on the resident hydroelectric facility, but also the opportunity to participate, to the extent the municipalities deem appropriate, to ensure that the process is open and fair, and any allocation of the sales price to their



resident facility is consistent with assessing principles. While the town appreciates the function of secret bids in a competitive bid procedure, the town's right to participate in the allocation of the sales price where multiple facilities are purchased is critical to its ability to fully and fairly participate in the auction process. The town's main interest in participating in the auction process is to ensure that the sales price is indicative of what the town believes is fair market value. This involves two aspects: the sale price and, if Ayers Island is sold in a group, allocation of the sales price to Ayers Island. Two aspects of the proposed auction procedures cause particular concern.

16. Transparency and the town's interests are best served if the town is entitled to see what bids, involving Ayers Island, are rejected by JP Morgan, particularly if the successful bid does not result in a sale price consistent with the assessment. This is important to ensuring that the successful bid is the most appropriate for preserving the value of Ayers Island for *ad valorem* tax purposes. The proposed auction procedures should be amended to provide that opportunity.

17. Pursuant to the proposed procedures, asset portfolio groupings and the allocation of purchase price in groupings is scheduled to occur during final negotiations with the two-three final bidders. There is no procedure for the town to participate in that process *if it is not a bidder*, yet this is vital to the town. It simply makes more sense for the town to be involved in the allocation discussion during that negotiation phase rather than challenging the allocation during the adjudicated process in which the PUC reviews and approves final bids, including the allocations.

## **CONCLUSION**

18. The town offers the following recommendations, as discussed above:

- (1) The parties and the PUC should evaluate the interface of the municipalities' rights under SA 38 and the proposed auction procedures;



(2) The date for the municipalities' submission of hard bid should be extended to allow them time to hold the town meeting required under RSA 38:4;

(3) The RPF in Phase 1 should include that a soft bid involving a grouping which includes a resident hydro facility must identify the sale price or percentage of sales price attributed to the facility; and

(4) The municipalities, if not a bidder, should be provided information regarding the rejected bids involving the resident hydro facility.

19. The municipalities' involvement in the auction procedure mandates that the procedures be tailored to accommodate the reality that municipalities are subject to statutory requirements that potential non-municipal participants are not. The parties to the Agreement and the PUC were well aware of that when the municipalities were included in the divestiture auction procedures. The town has suggested several options which it believes provide the required accommodation while respecting the goal that the auction proceed as expeditiously as reasonably possible. The town reserves its right to raise further issues regarding the auction procedures.

Respectfully submitted,

**TOWN OF NEW HAMPTON**

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

Dated: 9/30/16

By:

  
Judith E. Whitelaw, #2730  
Walter L. Mitchell, #1778  
25 Beacon Street East  
Laconia, NH 02246  
(603) 524-3885  
[jae@mitchellmunigroup.com](mailto:jae@mitchellmunigroup.com)

**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 30th day of September, 2016.

By:

  
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Judith E. Whitelaw