

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 17-124

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

Sale of Generating Facilities

Order Approving Sale of Hydroelectric Generation Facilities

ORDER NO. 26,080

November 29, 2017

APPEARANCES: Robert A. Bersak, Esq., on behalf of Public Service Company of New Hampshire d/b/a Eversource Energy; Paul J. Corey, Esq., of West Group Law PLLC, on behalf of J.P. Morgan Securities LLC; Christopher L. Boldt, Esq., of Donahue, Tucker & Ciandella, PLLC, on behalf of the City of Berlin; Judith E. Whitelaw, Esq., of Mitchell Municipal Group, PA, on behalf of the Town of New Hampton; Shawn M. Tanguay, Esq., Gardner, Fulton & Waugh PLLC, on behalf of the Town of Bristol; Thomas F. Irwin, Esq., on behalf of Conservation Law Foundation; the New Hampshire Department of Justice, Office of the Attorney General, by Christopher G. Aslin, Esq., for the Office of Strategic Initiatives; D. Maurice Kreis, Esq., Consumer Advocate, on behalf of residential ratepayers; and F. Anne Ross, Esq., and Alexander Speidel, Esq., on behalf of Commission Staff.

In this order, the Commission approves the sale of the Eversource hydroelectric generating facilities, which include 9 generating plants located on the Connecticut, Pemigewasset, Androscoggin, and Merrimack Rivers, to HSE Hydro NH AC LLC for \$83.3 million subject to certain adjustments. The purchase and sale agreement is the result of a competitive auction process administered by an independent auction advisor and overseen by Commission Staff. When completed, this sale and the sale of Eversource's thermal generating facilities will finish the two-decade process of restructuring of New Hampshire's electric industry.

I. PROCEDURAL HISTORY

This docket is the result of the Commission's earlier Order No. 25,920 (July 1, 2016) (Divestiture Order) in which the Commission approved the 2015 Settlement Agreement,¹ found that the sale by Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource) of its generation facilities was in the public interest, and ordered Eversource to divest those facilities through an auction process as provided in the 2015 Settlement Agreement. The Commission selected an Auction Advisor, J.P. Morgan Securities LLC (J.P. Morgan), through a competitive solicitation.² Following selection of the Auction Advisor, the Commission held a proceeding to consider the auction design recommended by the Auction Advisor for the sale of the generating facilities. At the conclusion of that proceeding, the Commission issued orders approving the auction design. *See* Order Nos. 25,967 (November 10, 2016) and 25,973 (December 23, 2016) (Auction Design Order).

On August 3, 2017, the Commission issued an order of notice opening this proceeding to consider the results of the sale of the Eversource generation facilities following the auction. On that same date, the Office of the Consumer Advocate (OCA) indicated that it would participate pursuant to RSA 363:28. At the prehearing conference held on August 18, 2017, the Commission granted intervenor status to the City of Berlin, the Towns of Gorham and New Hampton, the Conservation Law Foundation (CLF), and the Office of Strategic Initiatives (OSI). The Town of Gorham subsequently withdrew from the proceeding and the Town of Bristol filed a late intervention request, which was granted.

¹ References to the 2015 Settlement Agreement in this Order will include the 2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement filed with the Commission on June 10, 2015, the Amendment dated January 26, 2016, and the Partial Litigation Settlement filed with the Commission on January 26, 2016, which amended the earlier Settlement.

² The contract with J.P. Morgan to serve as the Commission's Auction Advisor was approved by Governor and Executive Council on September 7, 2016.

At the prehearing conference, and in written comments following the prehearing conference, the parties commented on the Commission's proposed treatment of confidential auction data. The Commission issued an order clarifying the treatment of confidential auction data, Order No. 26,057 (September 19, 2017), and Berlin, New Hampton, and Bristol (collectively the Municipal Intervenors) filed a motion for rehearing of the order. The Commission subsequently issued an order denying the rehearing request, but clarifying how certain confidential information would be handled in this proceeding. *See* Order No. 26,063 (October 11, 2017).

Separately, in Docket No. DE 17-105, the Commission approved Eversource's sale of its 3.1433 percent interest in the W.F. Wyman Station – Unit 4 located in Yarmouth, Maine, to FPL Energy Wyman IV LLC. The sale was conducted outside the auction process as provided by the 2015 Settlement Agreement. The sale proceeds of approximately \$1.6 million will be applied first to reimburse Eversource for the book value of the facility and expenses of sale. The balance will be used to reduce stranded costs. *See* Order No. 26,060 (September 27, 2017).

On October 12, 2017, Eversource filed an application with the Commission for approval of two purchase and sale agreements resulting from the auction. In its application, Eversource requested Commission approval to sell its thermal generation facilities to a joint venture known as Granite Shore Power LLC for \$175 million (Thermal PSA). Eversource also requested approval to sell its hydroelectric generation facilities to HSE Hydro NH AC LLC for \$83.3 million (Hydro PSA). On the same date, J.P. Morgan filed an Auction Report and direct testimony of Neil Davids, describing the auction process and recommending approval of the sales to the two winning bidders. On October 13, 2017, the Commission scheduled a technical

session on October 23, followed by discovery, a subsequent technical session, testimony by intervenors, and final hearing dates on November 30, December 1, and December 4, 2017.

On November 8, 2017, Eversource filed a stipulation, signed by all parties except the Municipal Intervenors, indicating support for approval of the Thermal PSA and requesting that the Commission approve the Thermal PSA and make related findings on the existing record without further process or hearings. On the same date, the Municipal Intervenors filed a joint statement indicating that they did not object to the stipulation regarding the Thermal PSA, but reserving their rights to assert any arguments against the Hydro PSA in this docket, or in any other proceeding. On November 9, 2017, the Commission declined to decide the Thermal PSA without a hearing, but moved the hearing dates up slightly to November 27, 28, and 29, 2017, to help resolve the docket in a timely and efficient manner.

On November 15, 2017, the Municipal Intervenors filed the testimony of a panel of three witnesses, George E. Sansoucy, P.E., Andrea Curtis, and Brian Fogg. On the same date, Eversource filed a request for findings of fact and conclusions of law in support of obtaining Exempt Wholesale Generator status from the Federal Energy Regulatory Commission (FERC) for each of the thermal and hydro facilities.

On November 20, 2017, the Municipal Intervenors filed a motion for rehearing of the Commission's decision to move the hearing dates from November 30, December 1, and December 4 to November 27-29. The Municipal Intervenors claimed that the loss of three days of hearing preparation would adversely affect their procedural due process rights.

At hearing on November 27, the parties presented a stipulation that resolved all contested issues in the proceeding.

II. POSITIONS OF THE PARTIES AND STAFF

A. J.P. Morgan

1. Assets Offered and Resulting Sale Price

In its Auction Report, Exhibit 7, J.P. Morgan described the generation assets being offered for sale in the auction. The portfolio of assets included in the auction consist of approximately 1,200 megawatts (MW) of energy production capacity, primarily located in New Hampshire, including coal-fired, oil- and natural gas-fired, and biomass-fired generation assets (the Thermal Assets) as well as hydroelectric generation assets (the Hydro Assets). The Thermal Assets total 1,130.1 MW of capacity and the Hydro Assets consist of 68.2 MW of capacity for an overall total of 1,198.3 MW of capacity included in the auction.

The Thermal Assets include Newington, Merrimack, and Schiller Stations, as well as the Lost Nation and White Lake combustion turbines. Newington Station is located on approximately 69.2 acres along the western bank of the Piscataqua River in Newington, New Hampshire. The facility has a total capacity of 400 MW and contains one utility boiler, two auxiliary boilers, and one emergency generator. Newington burns both oil and natural gas and is the largest single unit in the PSNH fleet.

Merrimack Station is located on approximately 340 acres along the Merrimack River in Bow, New Hampshire. Merrimack has two coal-fired steam units and two kerosene-fueled combustion turbine units with a cumulative capacity of 482 MW. The two coal-fired units serve intermediate load and the two combustion turbine units mainly serve a peaking role, operating during periods of winter and summer peak demand or when generation is needed quickly to maintain electrical system stability.

Schiller Station is located on approximately 81 acres along the western banks of the Piscataqua River in Portsmouth, New Hampshire, adjacent to the Newington Station. Schiller's four generating units combine for a total output of 156 MW. The units have the capability of starting up and shutting down daily if needed, except for Unit 5, the biomass boiler, which operates whenever it is available.

The Lost Nation combustion turbine is located on approximately 11.5 acres in Northumberland, New Hampshire. It has a nameplate capacity of 18 MW. The White Lake combustion turbine is located in Tamworth, New Hampshire, on approximately half an acre. It has a nameplate capacity of 22.4 MW. Lost Nation and White Lake serve primarily as peaking units, operating during the periods of highest seasonal peak demand. In addition, the two units are called upon when a quick response is needed for additional generation.

The Hydro Assets are conventional run-of-river units located on the Merrimack, Connecticut, Pemigewasset, and Androscoggin Rivers and total 68.2 MW of capacity. The hydroelectric facilities are managed by a single organization with field offices in Berlin, Bristol, and Manchester, New Hampshire. The Hydro Assets are grouped geographically. The Canaan, Gorham, and Smith Stations make up the Upper Hydro Group. The Ayers Island and Eastman Falls Stations make up the Central Hydro Group. The Amoskeag, Garvins Falls, Hooksett, and Jackman Stations make up the Lower Hydro Group. All of the hydroelectric facilities are monitored and controlled remotely by Eversource.

J.P. Morgan's principal objectives as Auction Advisor³ were to ensure that the auction: (1) was conducted in accordance with the Auction Design Order, (2) maximized the total

³ For more information about the Auction Advisor's role, see Order Nos. 25,967 (November 10, 2016) and 25,973 (December 23, 2016) (approving the auction design).

transaction value, (3) resulted in the sale of the entire portfolio, and (4) was consistent with the 2015 Settlement Agreement.

The auction resulted in two transactions, which together account for the sale of the entire portfolio of Eversource's generation facilities. Atlas FRM LLC d/b/a Atlas Holding LLC (Atlas) and CCI Power Asset Holding LLC (CCI PAH) agreed to purchase the Thermal Assets through a newly formed joint venture entity, Granite Shore Power LLC (Granite Shore Power), for \$175 million, subject to certain adjustments pursuant to the terms of the Thermal PSA. HSE Hydro NH AC LLC (HSE Hydro) agreed to purchase the Hydro Assets for \$83.3 million, subject to certain adjustments pursuant to the terms of the Hydro PSA. The combined sale price for the Eversource portfolio of generating facilities resulting from the Thermal and Hydro PSAs is \$258.3 million subject to certain adjustments pursuant to the terms of the two PSAs.

2. Auction Process

According to J.P. Morgan, it conducted the auction process in conformance with the Commission's Auction Design Order. The auction was conducted in two stages, referred to as round 1 and round 2. Round 1 was for indications of value. Round 2 was for final bids. The auction began with an Eversource public announcement of the pending sale to be led by J.P. Morgan. The initial outreach by J.P. Morgan encompassed a broad array of public and private companies in the energy industry, including existing fossil and hydro plant operators and generating companies. J.P. Morgan contacted 182 potential buyers as part of its outreach process for the auction. With Eversource's assistance, J.P. Morgan prepared a confidential information memorandum (CIM), which described the generating facilities in detail including key operating and financial data. J.P. Morgan also contracted for preparation by independent experts of confidential market and engineering analyses concerning the portfolio.

To participate in the auction process and to receive access to confidential materials, potential bidders were required to submit qualifications that demonstrated their ability to purchase and operate the generating facilities, and then to sign a confidentiality agreement prepared by Eversource. From the 182 potential bidders that were contacted by J.P. Morgan, 40 submitted qualifications and 38 executed confidentiality agreements. In those agreements, potential bidders agreed to direct all communications concerning the portfolio or the auction to J.P. Morgan.

At the beginning of round 1, J.P. Morgan provided the CIM and market and engineering analyses to potential qualified bidders and interested municipalities that executed non-disclosure agreements. J.P. Morgan also distributed indicative bid instructions to qualified potential bidders. The bid instructions allowed bidders to submit non-binding bids on single facilities or groups of facilities.

J.P. Morgan received 25 bids in round 1. There were 11 bids for the total portfolio and 14 bids for one or more assets. J.P. Morgan conducted an analysis of the indicative bids and consulted with Eversource to determine which round 1 bidders should advance to round 2. Based on a number of criteria, including indicative bid amount and ability to conduct due diligence, J.P. Morgan recommended, and Eversource agreed, to move 16 potential bidders into round 2.

The 16 bidders selected for round 2 received access to the electronic data room containing documents compiled for the auction process, including detailed operational, financial, and due diligence information for each of the generation facilities. Round 2 bidders were invited to visit each of the facilities in person, accompanied by Eversource and J.P. Morgan with an observer from Commission Staff (Staff). Round 2 bidders also received a comprehensive

business, operational, and financial presentation from Eversource management and were invited to submit written questions regarding the facilities to be answered in writing by Eversource.

Round 2 bidders submitted more than 2,000 due diligence questions, each of which was logged and answered by Eversource, with J.P. Morgan managing and documenting the process.

Round 2 bidders also received a draft purchase and sale agreement (PSA) with various schedules developed by Eversource and its outside counsel, Balch & Bingham LLP. At the end of round 2, J.P. Morgan distributed final bid instructions requiring: cash purchase price for the portfolio or specific assets; allocation of bid value among the assets; a detailed description of the bidder's financial and operational qualifications to purchase and operate the assets; confirmation there was no financing contingency; evidence of the availability of funds to pay the aggregate purchase price in cash; evidence the bidder had obtained all necessary internal corporate approvals to enter into and consummate the sale; and acceptance of the employee protection obligations as specified in the draft PSA.

J.P. Morgan received 7 final bids, 3 for the entire portfolio and 4 for one or more assets. After receiving final bids, J.P. Morgan promptly sought clarification from all bidders submitting final proposals and PSA mark-ups to make sure all terms and conditions of bids were understood and to clarify bidder flexibility to accept a subset of the portfolio. J.P. Morgan reviewed and evaluated the bids according to the criteria set out in the Auction Design Order to determine which bids would maximize the total transaction value of the portfolio while, if possible, avoiding a failed auction scenario where one or more of the assets remained unsold.

J.P. Morgan analyzed and prepared a summary of the final bids. Based on the summary, and in consultation with Eversource, J.P. Morgan identified the combination of leading bids that would maximize total transaction value. J.P. Morgan then commenced post-bid negotiations

with five bidders. As part of these negotiations, J.P. Morgan provided feedback to each of the five bidders on their respective proposals and afforded each an opportunity to update their proposals.

Following post-bid negotiations and based on the criteria discussed above, J.P. Morgan recommended moving forward with two offers, a thermal-only bid and a hydro-only bid. The two selected bids exceeded both that of any other combination of individual thermal and hydro bids, as well as any final bid received for the full portfolio. Once winning bids were selected, J.P. Morgan, Eversource, and Eversource's counsel commenced detailed negotiations with the two selected bidders on legal terms and revisions to the draft PSAs to improve the terms for Eversource and limit risk for Eversource and its customers. The final negotiations resulted in two transactions, the Thermal PSA and the Hydro PSA, which together accounted for the sale of Eversource's entire generation facility portfolio for a combined sale price of \$258.3 million, subject to certain adjustments pursuant to the terms of the PSAs.

3. Accommodations To Facilitate Municipal Participation

J.P. Morgan proposed certain provisions to facilitate the participation in the auction by municipalities that host generation facilities. Under those provisions, host municipalities were allowed to submit final bids in round 2 of the auction without submitting non-binding bids in round 1. J.P. Morgan allowed municipalities signing non-disclosure agreements access to the electronic data room for their respective hosted generation facilities. J.P. Morgan also gave them access to the CIM, and to the engineering and marketing analyses for their respective hosted generation facilities, as soon as those reports were available. Each of the Municipal Intervenors executed a non-disclosure agreement. Municipalities could elect to submit indications of value in round 1 and receive feedback from J.P. Morgan regarding how their indicated value related to

other round 1 bids. Further, in response to the Intervening Municipalities' requests, J.P. Morgan requested that all round 1 and round 2 bidders allocate bid amounts among any hydro facilities included in their bids.

4. Purchaser and Terms of Hydro PSA

HSE Hydro agreed to purchase the Hydro Assets for \$83.3 million subject to certain adjustments pursuant to the terms of the Hydro PSA. HSE Hydro is a subsidiary of HSE Hydro NH Co-Invest Fund, LP, and an affiliate of Hull Street Energy, LLC (collectively, Hull Street Energy). Hull Street Energy is a private equity firm that acquires, optimizes, and grows middle-market power businesses through the application of industry-leading risk management, efficiency enhancements, and commodity contract structuring. Hull Street Energy was established by a team with extensive, long-standing expertise in the power industry. Headquartered in Bethesda, Maryland, the team leverages decades of experience and knowledge of North American electricity infrastructure, including fuel inputs, generation assets, transmission and distribution systems, and electricity demand-side businesses, to build investor value.

The Hydro PSA provides for the transfer by Eversource of its Hydro Assets, as well as applicable contracts, leases, and permits relating to the operation of the Hydro generation facilities. Closing under the Hydro PSA is not subject to any financing contingencies. HSE Hydro agreed to assume costs related to all post-closing liabilities. Eversource agreed to assume costs related to pre-closing liabilities up to \$8.3 million for five years from the closing date. HSE Hydro also agreed to operate the Hydro Assets for a minimum of eighteen months from the closing date and accepted the employee protections, as required by both New Hampshire law and the Settlement Agreement.

5. Compliance with Auction Design Order

J.P. Morgan stated that it conducted the auction process in close consultation with Staff in order to maximize total transaction value. It did so by creating competition among buyers, by conducting a fair and transparent auction process consistent with industry practice, and by providing continuity and setting an appropriate pace for the auction. According to J.P. Morgan, the auction process “resulted in a fair, equitable, and transparent process consistent with the Commission’s Auction Order.” Neil Davids Testimony at 15. Bidders in the auction were given complete and non-discriminatory access to data and information. The auction was structured to obtain the best possible result by identifying willing buyers who offered the highest price for the assets and the best overall terms and conditions of sale.

J.P. Morgan also stated that it selected the combination of two bids for the Thermal and Hydro Assets that maximized the total transaction value for the entire portfolio. The total transaction value of the two bids selected exceeded both that of any other combination of individual thermal and hydro bids, as well as any final bid received for the full portfolio. *Id.* at 16. The bidders involved in the process are leading power generation owners and operators with significant power sector expertise. J.P. Morgan indicated that it had engagement and competition throughout all phases of the process among the bidders. J.P. Morgan concluded that it selected the bids giving maximum transaction value and that the auction results are reasonable. At hearing, J.P. Morgan testified that the auction resulted in a market-based determination of asset value.

B. Eversource

1. Application for Approval of Sale

With the application for approval, Eversource included the testimony of Eric H. Chung and an agreement with IBEW, Local 1837 (IBEW). That agreement clarifies certain transitional matters involving employee protections in connection with the sale of the generation facilities.

Eversource argued that the sale of its generation facilities was agreed to in the 2015 Settlement Agreement and that the proposed Thermal and Hydro PSAs conform to all applicable laws, including RSA Chapter 369-B, and specifically RSA 369-B:3-a, and RSA 374:30. Further, Eversource asserted that the agreement with the IBEW and the terms of the PSAs conform to the employee protections contained in the 2015 Settlement Agreement as well as in RSA 369-B:3-b. Eversource explained that during the two-year delay in the auction, a new collective bargaining agreement (CBA) was executed resulting in the need for additional clarification of employee protections associated with the new CBA.

Eversource urged the Commission to find the Thermal and Hydro PSAs in the public interest and approve the two sales. Eversource relied in part on a stipulation in the 2016 Litigation Settlement (Exhibit C in Docket No. DE 14-238), which stated that “in light of the economic benefits reasonably expected from divestiture, the prompt divestiture of PSNH’s generation assets is in the economic interest of retail customers of PSNH.” In addition, Eversource noted that the Commission previously found that “the 2015 Settlement Agreement and 2016 Litigation Settlement serve the public interest as defined by the Legislature in SB 221 (2015), Chapter 374-F, and related statutes.” *See* Order No. 25,920 at 67 (July 1, 2016) (approval and implementation of the settlements serve public interest).

Eversource requested approval of insurance premiums to cover certain unknown environmental risks it had retained as part of the Thermal and Hydro PSAs. Eversource argued that the allocation of environmental risks between it and each of the two buyers served to maximize overall transaction value.

In its request for findings and rulings, Eversource asked the Commission to make findings in support of the purchasers' efforts to obtain Exempt Wholesale Generator (EWG) status with the Federal Energy Regulatory Commission (FERC) for the Thermal and Hydro facilities. The parties to the 2015 Settlement Agreement committed to assisting the purchaser in obtaining EWG status for the generation facilities.⁴ Under FERC regulation 18 CFR 366.7, which incorporates section 32(c) of the Public Utility Holding Company Act of 1935 (PUHCA) (codified as 15 U.S.C. 79z-5a (2004)), the Commission must determine that granting Exempt Wholesale Generator status: (1) will benefit consumers, (2) is in the public interest, and (3) does not violate state law.

2. Eversource Support of Auction Process

In his testimony, Mr. Chung described Eversource's efforts to prepare for the sale process, including planning activities, and competitive procurement of outside legal experts and other sale advisors. He also described the company's generation management team's efforts in gathering information needed for the CIM and assisting J.P. Morgan in developing and finalizing the CIM. Eversource generation management was deeply involved in preparation of a comprehensive virtual data room containing thousands of documents describing the generation portfolio as well as the individual facilities. Further, Mr. Chung described the company's support in providing management presentations and site visits to all round 2 bidders, as well as

⁴ The parties to this docket are signatories of the 2015 Settlement, including the City of Berlin, but excluding the towns of New Hampton and Bristol.

responding in writing to approximately 2,000 written due diligence questions from round 2 bidders. Topics of due diligence included plant operations, fuel use, fuel contracting, permits, environmental matters, real estate, labor issues, financials, taxes, and regional market and planning issues.

Mr. Chung testified that, in his view, the auction process was fair and that the result maximized the total transaction value of the sale. Mr. Chung testified further that he believed the auction result was consistent with the Commission's prior orders and with the 2015 Settlement Agreement.

3. Hydro PSA

Eversource testified that, based on the advice of its legal counsel and J.P. Morgan, Eversource believes that the collective set of terms in the Hydro PSA, and each term generally, are consistent with the range of market standards for similar transactions. Eversource noted that the buyer, HSE Hydro, recently completed the acquisition from Carlyle Power Partners of five FERC-jurisdictional hydroelectric plants totaling approximately 18 MW of capacity (formerly owned by Western Massachusetts Electric Company⁵) located in Massachusetts. The assets being purchased from Eversource by HSE Hydro include real property, personal property, and associated licenses and permits related to Smith Station, Gorham Station, Canaan Station, Ayers Island Station, Eastman Falls Station, Amoskeag Station, Hooksett Station, Garvins Falls Station, Jackman Station, and PSNH's ownership share of the Androscoggin Reservoir Company, as specifically set forth in the Hydro PSA, for an overall purchase price of \$83.3 million (subject to certain adjustments at closing), with \$83 million attributed to the generating facilities and \$300,000 attributed to inventory. As part of the transaction, HSE Hydro will assume liabilities

⁵ Western Massachusetts Electric Company is also a subsidiary of Eversource Energy.

listed in Section 2.3 of the Hydro PSA. Other liabilities will remain with Eversource, as set forth in Section 2.4 of the Hydro PSA.

According to Eversource, HSE Hydro has allocated its overall purchase price among the various assets it is purchasing, as required by the auction process. Eversource explained that these allocated prices may be subject to certain adjustments at closing, as set forth in the Hydro PSA. Both buyer and seller will be required to agree on an allocation among the acquired assets consistent with Section 1060 of the Internal Revenue Code. In addition, appropriate allocations of the sales proceeds must be made by the parties for purposes of the New Hampshire real estate transfer tax.

Eversource indicated that the parties to the Hydro Asset sale are targeting a closing as soon as possible following receipt of all necessary regulatory approvals and expiration of applicable appeal periods. In addition to the approval sought from this Commission, approvals for this transaction are required from FERC under § 8, § 203, and § 205 of the Federal Power Act. Approval is also necessary from the Vermont Public Utility Commission relating to the sale of Canaan Station, which straddles the New Hampshire-Vermont border on the Connecticut River.

4. Environmental Liabilities

Eversource argued that the PSAs represent a thoughtful and carefully negotiated balancing of responsibility for potential environmental liabilities that may arise at any of the generating assets. In consultation with J.P. Morgan and Staff, Eversource weighed the retention of responsibility for certain unknown environmental liabilities with the impact on the sale price. Eversource decided to purchase insurance to protect against a portion of the potential cost of any future claims of environmental liability, believing that the purchase of insurance would

maximize the total transaction value. Eversource claims that the recovery of the cost of such insurance is a reasonable stranded cost resulting from the divestiture of its generation assets, and should be recoverable via the securitization process per RSA 369-B:1, XVI.

5. Employee Protections

Eversource explained that due to delays in the auction process, the prior CBA between the IBEW and Eversource expired on May 31, 2017, and was replaced by a new CBA. As a result, certain provisions in the employee protections as set forth in the 2015 Settlement Agreement were ambiguous and uncertain. Due to the requirement in RSA 369-B:3-b for the provision of employee protections consistent with those contained in the CBA in effect as of the date of any divestiture, Eversource and the IBEW entered into a clarifying agreement dated September 7, 2017. The effectiveness of the agreement is conditioned on Commission approval. Eversource asserts that pursuant to RSA 374-F:2, IV(e), all costs incurred as a result of fulfilling employee protection obligations pursuant to RSA 369-B:3-b should be recoverable as stranded costs.

6. Estimated Stranded Costs and Customer Benefits

Eversource stated that the sale of the generating assets is a prelude to the securitized financing of remaining stranded costs. According to Eversource, the combination of the two sales and the issuance of rate reduction bonds will produce benefits to customers. Eversource prepared estimates of the financial effects of the two sales assuming a closing date of December 31, 2017. Eversource estimated the net book value of all assets, including facilities and inventory, will be \$746.4 million as of that date. Eversource also estimated that, before closing adjustments and if the transaction closed on December 31, 2017, the net sale proceeds

will be approximately \$258.3 million. Given this level of sales proceeds, Eversource expects to ask the Commission to securitize approximately \$600 million.⁶

According to Eversource, those projected financials are within a reasonable range of the forecasted figures contained in Eversource testimony filed in Docket No. DE 14-238.⁷ Final securitization amounts and related costs will only be known after closing. Pursuant to the terms of the two PSAs, final prices at closing will be adjusted to reflect allocations of certain matters, including the level of fuel inventories, taxes, and price adjustments due to delayed closing, if applicable. In addition, the extent of prudently-incurred divestiture-related costs can be quantified only after the closings have occurred.

Finally, Eversource concluded that the two transactions will result in real customer savings by recovering the maximum value of the assets from the sales process and by refinancing the remaining costs of the plant investment from Eversource's 9.81% generation return on equity to a Triple A-rated bond interest rate, currently in the 3-4% range. In addition, the transaction structure will limit customer exposure to potential future costs. Eversource was able to negotiate with the buyers the sharing of unknown environmental liabilities. According to Eversource, the two buyers' assumption of liabilities greatly mitigates the future financial risk borne by Eversource customers.

C. Stipulation on Thermal PSA

On November 8, 2017, Eversource, OSI, OCA, CLF, and Staff (collectively the Stipulating Parties) filed a Stipulation in which they requested that the Commission approve the Thermal PSA without further hearings or discovery. The Stipulating Parties include all parties to

⁶ Eric Chung Testimony, EHC Exhibit 1 line 18 shows an estimate of \$589 million in stranded costs following a December 31, 2017, closing. At hearing, Mr. Chung referenced updated securitization costs presented in Docket No. DE 17-096.

⁷ DE 14-238 Eric Chung Testimony, Exhibit G-a at 4 (estimating stranded cost amount to be securitized at \$507 million as of January 1, 2017).

the docket except the Municipal Intervenors. The Stipulating Parties indicated that, as a result of discovery responses and discussion at the initial technical session, they were satisfied that the Thermal PSA conformed to all legal requirements and should be approved expeditiously.

Consistent with the 2015 Settlement Agreement, Section VIII, the Stipulating Parties⁸ supported the purchasers' efforts to obtain Exempt Wholesale Generator (EWG) status with FERC. The Stipulating Parties asked the Commission to make findings in support of the facilities qualifying for EWG status with FERC. Under FERC regulation 18 CFR 366.7, which incorporates section 32(c) of the Public Utility Holding Company Act of 1935 (PUHCA) (codified as 15 U.S.C. 79z-5a (2004)), the Commission must determine that granting EWG status: (1) will benefit consumers, (2) is in the public interest, and (3) does not violate state law. The Stipulating Parties also asked the Commission to approve Eversource's purchase of environmental liability insurance, as well as the terms of the agreement with the IBEW.

D. Office of the Consumer Advocate

The OCA stated at hearing that the PSAs reflect an optimal outcome. In addition, the OCA said it did not have any hesitation recommending approval of the sales as expeditiously as possible because approval will benefit residential ratepayers.

E. Commission Staff

At hearing, Staff supported approval of the auction process and the resulting sales. Among other things, Staff noted the auction process was robust and commercially reasonable and the result of the auction reflects a process consistent with the auction design.

F. Municipal Intervenor Joint Statement

On November 8, 2017, the three Municipal Intervenors filed a Joint Statement regarding the Stipulation on the Thermal PSA. The Municipal Intervenors stated that they did "not object

⁸ The Stipulating Parties as well as the City of Berlin are signatories to the 2015 Settlement Agreement.

to the Commission's separate approval of the Granite Shore PSA [Thermal PSA] in this Docket so long as the Municipal Intervenors are allowed to make any argument and to take any position before the Commission in this Docket's consideration of the sale of PSNH's hydroelectric assets, or in Docket DE 17-096, or in any other docket before any other agency."

G. Stipulation at Hearing

At hearing, all parties except CLF stipulated to the approval of the Hydro PSA.⁹ The Municipal Intervenors entered into the stipulation on the condition that the Commission insert a finding in its order approving the Hydro PSA that:

Notwithstanding anything to the contrary contained in this Order approving the Hydro PSA, the Commission finds and holds that, due to the circumstances of the sales being approved by this Order, including but not limited to the underlying Legislative requirement for the sales, the implementation of various public policies including significant employee benefits, the requirement that the new owner have the plants available for dispatch for a period of 18 months after closing, and the minimization of long-term liabilities that ratepayers may otherwise face, and the nature of the auction process involved, the total sales price and any allocated prices for the generation facilities contained in the Hydro PSA being approved by this Order is not a statement of fair market value of those facilities for any state and/or local property tax purposes, including but not limited to NH RSA 72:6, RSA 72:8 and RSA 83-F.

The Commission approved the requested finding at hearing. Based on that approval, the Municipal Intervenors did not present evidence and expressly waived their rehearing and appeal rights with respect to the Commission's approval of both the Thermal PSA and the Hydro PSA.

III. COMMISSION ANALYSIS

In this Order, we consider whether to approve the Hydro PSA between Eversource and HSE Hydro for the purchase of Eversource's hydroelectric generating facilities for a price of \$83.3 million, subject to certain adjustments pursuant to the terms of the Hydro PSA. We have

⁹ CLF did not oppose the stipulation, stating it had no interest in the Hydro PSA and pointing out that it had stipulated to the approval of the Thermal PSA.

considered the Thermal PSA between Eversource and Granite Shore Power in a separate order. *See* Order No. 26,078 (November 28, 2017).

We have received two stipulations in this docket. The first was a stipulation by all of the parties except the Municipal Intervenors, requesting our approval of the Thermal PSA. The Municipal Intervenors did not oppose that stipulation, but they reserved their rights to litigate issues concerning the Hydro PSA. We received the second stipulation assenting to approval of the Hydro PSA at the hearing on November 27, 2017. It was supported by all parties to this docket except CLF, which took no position. The Municipal Intervenors affirmatively waived all their rehearing and appeal rights with respect to the Commission's approval of both the Thermal PSA and the Hydro PSA provided that the Commission make the findings set forth above, which relate only to approval of the Hydro PSA.

The two stipulations constitute a settlement among the parties to this docket regarding all contested issues. Even in the case of a settlement, however, we must consider whether the underlying legal requirements for our approval have been met and whether the settlement is in the public interest. We encourage parties to settle issues through negotiation and compromise because it is an opportunity for creative problem solving, allows the parties to reach a result in line with their expectations, and is often a better alternative to litigation. *Granite State Electric Co.*, Order No. 23,966 at 10 (May 8, 2002); *see* RSA 541-A:31, V(a). Even when all parties join a settlement, however, we must independently determine that the result comports with “applicable standards.” *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 24,942 at 48 (May 29, 2009).

Framework for Decision

Our decisions in this docket represent the third step in a regulatory process that was set in motion by the 2015 Settlement and the related legislation SB 221 (2015). The first step was the Divestiture Order, in which the Commission approved the 2015 Settlement, found that the 2015 Settlement was in the public interest, and ordered the sale of Eversource's generating facilities by auction.¹⁰ The second step of the process was the selection of an Auction Advisor and the approval of an auction design. That second step was completed with the Auction Design Order.¹¹ The Auction Design Order was appealed to the New Hampshire Supreme Court, which summarily affirmed.¹² We have now arrived at the third step, which is to review the results of the auction. In the sections below, we determine whether the auction conducted by J.P. Morgan conformed to the Auction Design Order and whether the bidding activity for the purchase of the Hydro Assets was sufficiently competitive to maximize the total transaction value. We will also consider whether the auction produced "a market-based determination" of stranded costs as required by the 2015 Settlement.¹³ Finally, we will determine whether the terms of the Hydro PSA are consistent with the 2015 Settlement, and whether the transfer of the Hydro Assets is consistent with RSA 374:30, RSA Chapter 369-B and RSA Chapter 374-F.

Auction Process

Based on the Auction Report prepared by J.P. Morgan, as well as testimony by J.P. Morgan witness Neil Davids and Eversource witness Eric H. Chung, we find that the auction was conducted in a manner consistent with our Auction Order. The broad outreach to 182 potential bidders evidenced a thorough effort to enlist commercial interest. With

¹⁰ Order No. 25,920 at 67-70 (July 1, 2016) in dockets DE 11-250 and DE 14-238.

¹¹ Order Nos. 25,967 (November 10, 2016) and 25,973 (December 23, 2016).

¹² New Hampshire Supreme Court, Case No. 2017-0018, Appeal of City of Berlin & a (February 10, 2017).

¹³ 2015 Settlement at 16 lines 436-437.

38 prospective bidders signing non-disclosure agreements and 25 indicative bids, as described in J.P. Morgan's indicative bid summary, it is apparent that the round 1 bid process generated substantial bidder interest.

The 16 bidders brought into round 2 appear to have been appropriate, as a group, to carry forward into the due diligence phase of the auction. J.P. Morgan's and Eversource's description of the round 2 due diligence demonstrates that multiple parties expended significant time and resources to explore this purchase opportunity. Based on the management presentations, site visits, and the approximately 2,000 due diligence questions asked and answered, we find that J.P. Morgan and Eversource conducted round 2 in a manner that was competitive, open, and designed to maximize interest in the assets being sold.

Of the 7 final bids received, 3 were for the entire portfolio and 4 included a subset of the assets. This number of bids indicates sufficient competition for the assets. We have seen no evidence of collusion or unequal treatment of any bidder, and based on the record before us, we conclude the auction process was conducted in a fair and open manner. Further, based on J.P. Morgan's testimony, we find that the auction process was consistent with other similar commercial auctions conducted by J.P. Morgan and represents a competitive process.

Total Transaction Value

J.P. Morgan demonstrated that the bidding process for the Hydro Assets was competitive, with full engagement of multiple parties conducting extensive due diligence. Based on J.P. Morgan's analysis of the 7 final bids, we find that the selected bidder for the Hydro Assets reflected the highest price offered for those assets, and that the selected hydro bid in combination with the selected thermal bid represented the highest overall transaction value for the sale of the

Eversource generation portfolio. Thus, we find that the auction maximized the total transaction value for the Eversource generation portfolio.

Market-Based Determination of Stranded Costs; Finding Regarding “Fair Market Value” Per the Parties’ Stipulation

In light of both the pre-filed written testimony and the testimony at hearing of J.P. Morgan witness Neil Davids, and given the recommendations of the Stipulating Parties, we find that the auction results for the Hydro Assets reflect a market determination of the value of those assets as a fleet, offered for sale under the terms of the 2015 Settlement and the Commission’s prior Divestiture Order. As noted elsewhere in this order, the final determination of stranded costs will be made in Docket No. DE 17-096.

Under the terms of the 2015 Settlement we are to ensure that the auction maximizes the total transaction value within the terms of that settlement. Those terms include requirements: that the generation assets be sold expeditiously, that the employees be protected with regard to various benefits, that all of the assets be sold, and that the plants be kept in service for 18 months following closing. The 2015 Settlement does not require us to make a fair market value determination on an individual asset basis; in fact the phrase the Settlement uses is a “market-based determination.”

Notwithstanding anything to the contrary contained in this Order approving the Hydro PSA, the Commission finds and holds that, due to the circumstances of the sales being approved by this Order, including but not limited to the underlying Legislative requirement for the sales, the implementation of various public policies including significant employee benefits, the requirement that the new owner have the plants available for dispatch for a period of 18 months after closing, and the minimization of long-term liabilities that ratepayers may otherwise face, and the nature of the auction process involved, the total sales price and any allocated prices for

the generation facilities contained in the Hydro PSA being approved by this Order is not a statement of fair market value of those facilities for any state and/or local property tax purposes, including but not limited to RSA 72:6, RSA 72:8 and RSA 83-F.

Hydro PSA Satisfies Employee and Operational Obligations

The Hydro PSA requires HSE Hydro to provide to all Eversource employees it retains benefits comparable to those they are currently receiving from Eversource. That fulfills the statutory requirements of RSA 369-B:3-b, as well as the terms of the employee protections contained in the 2015 Settlement Agreement. The Hydro PSA also requires HSE Hydro to operate the plants for 18 months after the closing date as required by the 2015 Settlement Agreement.

Hydro PSA Satisfies Restructuring and Asset Transfer Statutes

Eversource's sale of its Hydro Assets is consistent with the objectives of the New Hampshire restructuring statute, which requires that electric distribution companies unbundle distribution rates from generation rates and allow generation services to be subject to market competition and minimal economic regulation. RSA 374-F:3, III. The Hydro PSA is also consistent with the Legislature's finding in RSA 369-B:3-a that the divestiture of Eversource's generation assets is in the public interest, subject to the Commission's approval of the 2015 Settlement. Based on the Commission's prior public interest findings in the Divestiture Order and the Legislature's public interest finding in RSA 369-B:3-a, as well as our review of the Hydro PSA and the record in this docket, we find that the sale of the Hydro Assets under the terms of the Hydro PSA is for the public good, pursuant to RSA 374:30.

Sale Proceeds and Estimate of Stranded Costs

Eversource has estimated the sale proceeds of the Thermal PSA and the Hydro PSA as well as various transactional costs in order to arrive at an approximate stranded cost following the closing date. The purpose of this docket is not to establish a final stranded cost amount or to approve recovery of such costs. Instead, this docket considers only whether the sales and the resulting sale proceeds are a market-based result for a sale of the Eversource generation portfolio. The Divestiture Order recognized the uncertainty of predicting future stranded costs or exact sales results. “While this analysis is not a guarantee that divestiture of Eversource’s assets will provide economic savings to Eversource energy customers, it nonetheless provides a directional indication from economic experts that such savings are likely.” Divestiture Order at 68. We are concerned about the Company’s stranded cost estimates, but we will consider the amount and recovery of any resulting stranded costs in the pending docket on securitization, Docket No. DE 17-096, following the closings of the two sales.

Findings to Support Exempt Wholesale Generator Status

According to Eversource, the buyers of the Thermal and Hydro Assets have each requested assistance in qualifying for EWG status with FERC.¹⁴ The buyers believe EWG status will enable them to more efficiently participate in the wholesale marketplace as merchant generators. *Id.* We find that allowing HSE Hydro to obtain EWG status with FERC will benefit consumers because it will facilitate the Hydro Assets’ sale of power in the region. We further find that EWG status for HSE Hydro is in the public interest because it will allow the facilities to participate in the competitive market as provided by RSA Chapter 374-F, and we find that granting EWG status to HSE Hydro does not violate state law and is consistent with the directives of RSA 369-B:3-a and RSA Chapter 374-F. We note that the Commission has made

¹⁴ Eversource Request for Findings of Fact and Conclusions of Law, Affidavit of Eric Chung at 7.

similar EWG findings in prior orders on divestiture of generation assets by regulated utilities as part of electric restructuring.¹⁵

Environmental Insurance

The Hydro PSA requires Eversource to remain liable to HSE Hydro for most pre-closing environmental liability, for 5 years from the closing date. Those retained pre-closing environmental liabilities are subject to an aggregate \$8.3 million cap. We find that balance of risks reasonable and rely on J.P. Morgan's testimony that the environmental liability risk allocation represents a commercially reasonable contractual term. Eversource plans to purchase insurance to cover its retained liability for most unknown environmental conditions related to the Hydro Assets at an estimated cost of \$160,000. Eversource claims that obtaining insurance protects ratepayers from the risks of its retention of up to \$10 million in potential liability going forward. We agree that such insurance will afford more certainty for ratepayers and we approve the cost of obtaining insurance, as a prudently incurred cost.

Agreement with the IBEW

The agreement with the IBEW clarifies certain annual increases in pension benefits that employees who are transferred to HSE Hydro will receive from Eversource. The terms of the agreement appear to be a reasonable accommodation to transitioning employees and Eversource has estimated the cost of these additional pension benefit protections to all Eversource transferred employees to be a maximum of \$5-6 million. We find the additional pension protections reasonable and consistent with RSA 369-B:3-b and will approve the agreement.

¹⁵ See *North Atlantic Energy Corp.*, Order No. 24,050 (September 12, 2002); *Public Service Co. of N.H., et al.*, Order No. 23,629 (January 29, 2001).

IV. CONCLUSION

For the reasons set out in our analysis, we approve the proposed sale by Eversource of the Hydro Assets to HSE Hydro pursuant to the terms of the Hydro PSA. We find that the auction process leading to the sale of the Hydro Assets was commercially reasonable, competitive, and consistent in all respects with our prior Auction Design Order. We find the sale of the Hydro Assets under the proposed Hydro PSA is consistent with our prior Divestiture Order and with the 2015 Settlement. We also find that the transfer of the Hydro Assets to HSE Hydro under the terms of the PSA is consistent with RSA Chapter 374-F, RSA 369-B:3-a, and RSA 374:30. This will be the final order issued in this docket with respect to the Hydro PSA.

Based upon the foregoing, it is hereby


ORDERED, that the sale of the hydroelectric assets of Eversource to HSE Hydro NH AC LLC, pursuant to the terms of the Hydro PSA and the findings contained herein, is **APPROVED**; and it is

FURTHER ORDERED, that purchase of insurance by Eversource to cover environmental liabilities as described in this Order is **APPROVED**; and it is

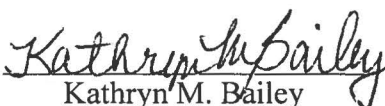
FURTHER ORDERED, that granting HSE Hydro exempt wholesale generator status will benefit consumers, is in the public interest, and does not violate state law, thus the findings on exempt wholesale generator status under the Public Utility Holding Company Act of 1935 described in the body of this Order are hereby made; and it is

FURTHER ORDERED, that the terms of the agreement between Eversource and the IBEW, Local 1837 are **APPROVED**.


By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of
November, 2017.



Martin P. Honigberg
Chairman

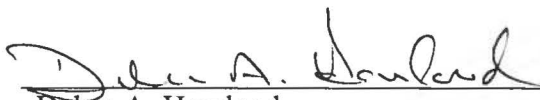


Kathryn M. Bailey
Commissioner



Michael S. Giaimo
Commissioner

Attested by:



Debra A. Howland
Executive Director

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

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

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Docket #: 17-124-1 Printed: November 29, 2017

FILING INSTRUCTIONS:

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