

DE 16-817

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NHPUC 12SEP16PM4:22

September 12, 2016



Ms. Debra A. Howland  
Executive Director  
New Hampshire Public Utilities Commission  
21 Fruit Street, Suite 10  
Concord, NH 03301

Re: Public Service Company of New Hampshire d/b/a Eversource Energy  
Auction of Electric Generation Facilities  
Docket No. DE 16-817

Dear Director Howland:

Enclosed for filing in the above noted docket, pursuant to Puc 203.02, is an original and six copies of the recommendation of J.P. Morgan, the auction advisor to the Commission, concerning the auction design and process for the sale of the Eversource generation facilities. These documents will also be transmitted electronically to you and to the service list in the above noted docket, pursuant to Puc 203.03 and 203.11.

If you have any questions please do not hesitate to contact me at 271-6005.

Very truly yours,

A handwritten signature in blue ink, appearing to read "F. Anne Ross".

F. Anne Ross, Esq.  
General Counsel

Enclosure  
cc: Service Lists  
DE 16-817 and DE 14-238

LINKED

SEPTEMBER 12, 2016

NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

**Auction design & process**



J.P.Morgan

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## 1. Auction Design and Process

### A. Benefits and considerations of various Auction structures and approaches

No single Auction approach is “one size fits all” and the process must reflect the unique circumstances of the assets, market and Potential Bidders. Typically, however, building an auction structure and approach involves three main components: (1) determining the number of parties to include in the process, (2) identifying which particular parties to include in the process, and (3) selecting the highest / best bidder(s) out of these parties.

**(1) Number of parties to include:** a key choice the seller faces is the number of parties to include in the process. Typical considerations include value, speed, certainty, confidentiality, control over the process and potential business disruption:

- **Value:** maximizing value is a priority for any process, and broader auctions are typically viewed as maximizing value by involving the greatest number of parties and fostering the highest level of competition, potentially finding the “hidden buyer” that might be missed in a more limited process.
- **Speed:** moving efficiently and expeditiously to the conclusion of a sale process is always desired, but may not be the highest priority. Processes involving smaller numbers of buyers typically move faster than broader processes as it is typically easier to choose amongst bidders, and the seller will have to support fewer bidders’ due diligence.
- **Certainty:** limiting the number of parties in the process can increase the risk that the seller is not able to reach agreement with any buyer, while including a larger number of parties typically mitigates this risk.
- **Confidentiality:** the broader an auction becomes (and the greater the number of bidders and their advisors, consultants, financing sources, etc., that become involved), the harder it typically becomes to maintain confidentiality. So, where confidentiality (both around who is involved in the process as well as information about the business / assets) is a priority, a narrower process is more appropriate. However, where such strict concerns around confidentiality are less critical, it suggests a broader process may be warranted.
- **Control over the process:** while a seller and its advisors always maintain control over a process, a process with fewer parties is typically easier to manage effectively. So, where there are particular concerns around managing a large number of parties in a process or resource constraints at the seller, a smaller number of parties may be warranted. However, where these concerns do not exist, a broader process may be optimal.
- **Limited business disruption:** managing the sale of a business or assets can have a significant impact on the business / assets themselves, particularly with respect to employees and / or industry competitive dynamics. Larger process can magnify this impact as they typically require greater numbers of employees to be involved to ensure the process moves efficiently and bidders are provided the due diligence they need in an expeditious manner. However, where this is not a concern (for example, if the process is widely known or communicated to all employees, or if the organization has sufficient resources to allocate to the process), this suggests a broader process will not cause significant business disruption.

In the below diagram, we have laid out four typical process structures with some commentary on the particular considerations described above.

Overview of Auction structures

Approach	Overview
<b>Preemptive</b>	<ul style="list-style-type: none"> <li>Approach only one logical bidder</li> <li>Highly confidential process</li> <li>Tied to results of one negotiation</li> </ul>
<b>Targeted solicitation</b>	<ul style="list-style-type: none"> <li>High level approach to 2-10 selected Potential Bidders</li> <li>More confidential process</li> <li>Include parties most likely to be interested</li> </ul>
<b>Controlled auction</b>	<ul style="list-style-type: none"> <li>10 - 50 Potential Bidders contacted with strict guidelines on sale process</li> <li>Reasonably accurate test of market price</li> <li>Targets broader universe of potentially interested parties than targeted solicitation</li> </ul>
<b>Broad auction</b>	<ul style="list-style-type: none"> <li>Public disclosure made with J.P. Morgan also reaching out to selected potentially interested parties</li> <li>Preliminary materials sent to wide range of Potential Bidders</li> </ul>

Detailed considerations for Auction structures

Process strategy	Description	No. of Potential Bidders included	Advantages	Disadvantages	Circumstances
<b>Preemptive</b>	<ul style="list-style-type: none"> <li>Engage only with one party</li> <li>Response to that party's diligence requests only</li> <li>Bespoke sale process</li> <li>Process not made public</li> </ul>	1	<ul style="list-style-type: none"> <li>Efforts focused on single party</li> <li>Maximizes confidentiality</li> <li>Should increase speed of execution</li> <li>Minimizes business disruption</li> </ul>	<ul style="list-style-type: none"> <li>Unlikely to maximize value</li> <li>Lowest probably of reaching agreement</li> <li>Would not comply with applicable Auction rules</li> </ul>	<ul style="list-style-type: none"> <li>Have very clear sense of most logical bidder</li> <li>High risk of damage from business disruption from broader auction</li> <li>Have strong negotiating position</li> </ul>
<b>Targeted solicitation</b>	<ul style="list-style-type: none"> <li>High-level approach to select Potential Bidders</li> <li>Less formal process</li> <li>Process not made public</li> </ul>	2-10	<ul style="list-style-type: none"> <li>Include most likely interested parties</li> <li>Speed of execution</li> <li>Strong likelihood of maintaining confidentiality</li> <li>Limited business disruption</li> <li>Sense of competition can be enabled</li> </ul>	<ul style="list-style-type: none"> <li>Risks missing interested Potential Bidders</li> <li>May not maximize value</li> <li>Would not comply with applicable Auction rules</li> </ul>	<ul style="list-style-type: none"> <li>Have limited group of logical Potential Bidders</li> <li>Have key objectives of confidentiality and limiting any business disruption</li> </ul>
<b>Controlled auction</b>	<ul style="list-style-type: none"> <li>Limited but broader range of logical Potential Bidders contacted</li> <li>Requires formal guidelines on sale process</li> <li>Process not made public</li> </ul>	10-50	<ul style="list-style-type: none"> <li>Reasonably accurate test of market price</li> <li>Maintain control over process</li> <li>Creates strong sense of competition</li> </ul>	<ul style="list-style-type: none"> <li>Confidentiality strained</li> <li>Makes process more difficult for most logical Potential Bidders</li> <li>Greater potential for business disruption</li> </ul>	<ul style="list-style-type: none"> <li>Seek good balance between confidentiality and value</li> <li>Most logical buyers not obvious</li> </ul>
<b>Broad auction</b>	<ul style="list-style-type: none"> <li>Large number of parties included in process</li> <li>Inbounds received following public disclosure</li> <li>Requires formal guidelines on sale process</li> </ul>	200+	<ul style="list-style-type: none"> <li>Most likely to obtain highest offer</li> <li>Creates strong sense of competition</li> <li>Finds "hidden" Potential Bidders</li> </ul>	<ul style="list-style-type: none"> <li>Minimizes confidentiality</li> <li>Makes process more difficult for most logical Potential Bidders</li> <li>Business disruption risk</li> <li>Public scrutiny of process / expectation around results</li> <li>Risks including less serious Potential Bidders</li> </ul>	<ul style="list-style-type: none"> <li>Required to run broad, public auction</li> <li>Confidentiality of process not a concern</li> <li>Business is unlikely to be damaged by public process</li> <li>Have difficulty identifying universe of most likely Potential Bidders</li> </ul>

**(2) Which parties to include:** In addition to determining the number of parties, the seller must select which particular parties to include. The main criteria for determining whether to include a party are:

- Whether they have a history of operating the particular asset class

- Whether they have a track record of ownership in the particular asset class
- Whether they are likely and / or able to finance the transaction
- Whether they would be able to close on a transaction (e.g., are there regulatory or other government approvals that would prevent them from acquiring the business / assets)

Including parties in the process that do not meet these threshold criteria risks spending time and effort with parties that ultimately may not be likely and / or able to close a transaction successfully.

**(3) How to identify the best / highest bidder:** Once the parties to include in the process have been selected, the seller must then identify the highest / best bidder, but must do so in a timely and efficient manner.

Where a large number of parties are included in the process, the best way to handle this is by staging bidders' access to confidential information and using multiple "rounds" of bidding. The seller can use these rounds to narrow the field to ultimately focus on those parties that are willing to transact at the highest price.

The drawback of such an approach is that it takes time and significant effort, but the alternative (a single-round process in which a large number of parties are provided with full information about the business and asked to provide binding proposals based on such information) risks having the seller spend time with parties that are either not particularly interested (i.e., "tire kickers") or are unlikely to be the highest / best bidder.

## **B. Recommended Portfolio asset groupings**

Based on our experience in managing recent processes as well as our understanding of the Potential Bidder universe and interest in the Portfolio, our recommendation is to include all of the assets in the information that we market to the broader universe of Potential Bidders. Our expectation is that there will be a number of parties that will be interested in the entire Portfolio, and that there will be a number of parties that will be interested in select assets or subsets of assets.

Given this dynamic and to make sure we do not "miss" any parties, the optimal approach is to allow all potential bidders access to the "first round" information. We can then guide them in the first round bid instructions that they are permitted to bid on the whole Portfolio, subsets of assets (e.g., hydro only) or specific assets (e.g., Merrimack only).

We understand that any municipalities providing notice to the Commission of their desire to bid on the generating assets shall be automatically qualified to bid on any individual asset or asset package. However, we would also plan to actively reach out to the applicable municipalities to gauge their interest in participating.

Given the variety of asset types in the Portfolio, this approach will allow Potential Bidders to "self-select" which assets they would like to compete for. It will also potentially allow NHPUC to maximize value for the Portfolio to the extent a "sum-of-the-parts" approach (where the Portfolio is sold in parts to different Potential Bidders) yields a higher value for the Portfolio without adding prohibitive complexity.

Also, to the extent that any municipalities determine to participate in and / or are ultimately the highest bidder(s) for particular assets, this approach will allow them purchase particular assets while minimizing disruption to other bidders in the process.

We would expect to make clear to all bidders early in the process that there is a potential for particular assets to be sold to the municipalities in which they sit.

### **C. Preliminary recommendation for Schiller mercury boiler removal**

J.P. Morgan understands that there are two retired mercury boilers located at the Schiller facility that are no longer in operation, but that may contain residual amounts of mercury. The Commission has asked J.P. Morgan to provide its view on whether it is in the best interest of the auction process to undertake a removal of the mercury boilers and all associated equipment in advance of or in conjunction with the auction process. Based on the information it has available to it to date, J.P. Morgan's preliminary recommendation is to undertake removal of the mercury boilers and all associated equipment in conjunction with the process such that the removal can be either complete or substantially complete at the expected time of closing any transaction(s) at the conclusion of the auction process.

The basis for J.P. Morgan's preliminary recommendation is as follows:

- Based on its experience, J.P. Morgan believes that potential bidders, many of whom will not be familiar with this legacy technology, will view the presence of the mercury boilers very negatively and believes that the impact of this negative view would likely impact the auction process in one of two ways: (1) potential bidders will refrain from bidding on the Schiller facility, or (2) potential bidders will heavily discount the value they ascribe to the Schiller facility.
  - Under (1), this could mean that at least part of the Portfolio would not be sold.
  - With respect to (2), based on J.P. Morgan's experience, J.P. Morgan views it as highly likely that the value discount potential bidders would apply to the Schiller facility if no removal is undertaken is materially higher than the cost associated with removing the mercury boilers at this time. J.P. Morgan understands that Eversource's preliminary estimate of the cost to be in the range of \$20 million to \$30 million, based on information collected as part of a competitive Request for Proposals (RFP) process to select a qualified vendor to potentially perform the work.
- Based on its experience, J.P. Morgan believes that the form of transaction agreement, particularly those terms that relate to environmental liabilities, can be structured materially more favorably to Eversource and, ultimately, rate payers if the removal is undertaken in conjunction with the auction process as opposed to the mercury boilers remaining at the Schiller facility.
- Based on the information that has been provided to J.P. Morgan by the Commission and Eversource to date, J.P. Morgan understands that undertaking the removal in conjunction with undertaking the auction process will not impede the execution of the auction process. In particular, J.P. Morgan understands, based on conversations with the Commission and Eversource:
  - Eversource has conducted a competitive RFP process for the removal project and received at least two responses from reputable parties that it views as viable alternatives for the removal
  - Removal project will not interfere materially with the operations of the Schiller facility and that the Schiller facility will be able to operate in normal course during the removal project
  - Eversource estimates the removal project would take approximately nine to twelve months, meaning it would likely conclude on a similar time frame to the conclusion of the auction process if undertaken in the near term.
  - Removal project unlikely to interfere with parties ability to conduct due diligence on the Schiller facility and its operations

## D. Recommended Auction approach

J.P. Morgan has developed its recommendation for an auction design based on maximizing the overall value of the transaction and the likelihood of the successful sale of each asset. To that end, J.P. Morgan recommends that NHPUC design its process as follows:

### (1) Number of parties to include

- J.P. Morgan recommends that this be run as a broad public auction process

### (2) Which parties to include

- **Broad proactive outreach:** J.P. Morgan will work with the Commission and Eversource to develop a comprehensive list of Potential Bidders that we would recommend including in the process. We recommend including these parties because we have seen them express interest in the power generation sector through the auction processes we have led.
- **Municipalities:** J.P. Morgan will proactively contact all of the municipalities where the assets are located and will work with the Commission to identify municipal utilities that may not be familiar with a competitive Auction process. In particular, we would expect to include in the process all the New Hampshire municipalities where the generation assets are located and other large regional municipal utilities with generation ownership. These municipalities will be considered pre-qualified to participate.
- **Inbound interest:** At the appropriate time, a press release will be issued announcing the process. This press release will include J.P. Morgan's contact information for inquiries. Following the press release, J.P. Morgan expects a number of parties will make "inbound" calls to NHPUC and its advisors expressing interest in participating. J.P. Morgan would expect to include any parties in the process that make "inbound" calls and who are not already on the list of Potential Bidders developed by J.P. Morgan with NHPUC.
- **Request for qualifications ("RFQ"):** Once the universe of Potential Bidders is identified, J.P. Morgan would use a standard RFQ process to identify which parties to include. The RFQ would ask parties to provide information about themselves, including, among other items:
  - Assets they own and / or operate that are similar to the Portfolio
  - Assets they have owned and / or operated in the past that are similar to the Portfolio
  - Expected sources of financing
  - Information about their ownership structure, operations and stakeholders.
- J.P. Morgan would then work with the NHPUC to evaluate the RFQ responses to identify the parties to include in the marketing effort and provide with a form confidentiality agreement.

### (3) How to identify the best / highest bidder

- J.P. Morgan recommends structuring the process as a "two-stage" process to identify the eventual buyer(s) and the Portfolio of assets they are interested in purchasing.
- **Confidentiality agreement:** J.P. Morgan expects that a number of parties will satisfy the requirements of the RFQ. These parties will then be asked to sign a confidentiality agreement before they are permitted to continue to participate in the process and receive access to confidential information. J.P. Morgan will work with the Commission to negotiate the confidentiality agreements with Potential Bidders.
- **Phase I / "first round":** Parties who execute an appropriate confidentiality agreement would be provided with certain limited information about the assets (predominantly in the form of a "confidential information memorandum" or "CIM") that they can use to provide a preliminary, non-binding indication of interest.

These indications of interest would then be used to identify the Potential Bidders likely to transact on terms most favorable to the seller, and these bidders would then be provided with

access to more fulsome due diligence. To help select the parties to continue in the process, J.P. Morgan would prepare a presentation summarizing the proposals and review such presentation with NHPUC.

We would recommend allowing approximately six weeks for the "first round", starting from the launch date and ending when parties submit preliminary, non-binding proposals. This will allow parties enough time to negotiate and sign confidentiality agreements as well as review the CIM in depth and prepare their preliminary, non-binding proposals.

J.P. Morgan will also provide parties with instructions / requirements for submitting a preliminary, non-binding proposal.

- **Phase II / "second round":** Parties who continue in the process would be provided with access to full due diligence as well as a draft purchase and sale contract. We would recommend that Phase II include a presentation from management on the assets, site visits to the assets, additional follow-up discussions with management (on discrete topics as necessary / appropriate), access to a fulsome electronic data room containing additional detail on the assets, and the opportunity for detailed due diligence ("Q&A").

J.P. Morgan will also provide parties with instructions / requirements for submitting a final, binding proposal.

We would recommend that the "second round" last approximately 8 weeks to allow parties the time to conduct their due diligence and mark up the draft contract prior to submitting a final, binding proposal.

Following the submission of final, binding proposals, J.P. Morgan would prepare a presentation summarizing such proposals and review such presentation with NHPUC as appropriate.

- **Final negotiations:** Depending on the interest in the full Portfolio or individual assets, we would recommend that NHPUC select 1-2 parties per asset or group of assets for final negotiations following submissions of final, binding bids.

In particular, there are likely to be open items that remain with the contract that the parties will need to come to agreement on before either party can sign the agreement. Parties may also require final internal approval once the contract has been agreed upon.

Two phase process steps

	Key deliverables	Commentary
<b>Phase I ~6 weeks</b>	<ul style="list-style-type: none"> <li>■ Potential Bidders list                             <ul style="list-style-type: none"> <li>■ Municipal inclusion</li> </ul> </li> <li>■ Teaser</li> <li>■ Confidentiality agreement</li> <li>■ Confidential Information Memorandum ("CIM")</li> <li>■ Preliminary bid instruction letter</li> <li>■ Market consultant report</li> <li>■ Independent engineer report</li> </ul>	<ul style="list-style-type: none"> <li>■ Prescreening of Potential Bidders via RFQ process</li> <li>■ Potential Bidders sign confidentiality agreement and receive CIM and bid instruction letter</li> <li>■ First round bids / proposals received</li> </ul>
<i>First round bids received</i>		
<b>Phase II ~8 weeks</b>	<ul style="list-style-type: none"> <li>■ Bid summary presentation</li> <li>■ Management presentation</li> <li>■ Due diligence / data room and Q&amp;A</li> <li>■ Draft transaction agreement(s)</li> <li>■ Final bid instruction letter</li> </ul>	<ul style="list-style-type: none"> <li>■ Estimate 5-10 parties move through to Phase II, depending on the number and quality of preliminary, non-binding bids</li> <li>■ Number of bidders allowed into round driven by initial bids, consideration offered, and ability to move quickly</li> <li>■ Bidders commit significant time, effort and expense</li> </ul>
<i>Final round bids received</i>		
<b>Final negotiations</b>	<ul style="list-style-type: none"> <li>■ Bid summary presentation</li> <li>■ Finalizing transaction agreement(s)</li> <li>■ Final deal negotiations</li> </ul>	<ul style="list-style-type: none"> <li>■ 1-2 contracts negotiations                             <ul style="list-style-type: none"> <li>■ Continue to keep more than one bidder interested (whole and / or pieces) until signing of definitive agreement</li> </ul> </li> </ul>

## 2. Scope of work & proposed timing

### Preparation Phase

- Finalize marketing and communication strategy, including timeline / key dates **(September)**
- Develop and Finalize “teaser” document to be provided to Potential Bidders prior to signing a confidentiality agreement that provides high-level overview of assets **(September)**
- Finalize form confidentiality agreement **(September)**
- Hire power market consultant & independent engineer **(September)**
- Develop & finalize process announcement press release containing J.P. Morgan contact information **(September)**
- Develop list of Potential Bidders and detailed approach to bidder outreach **(September)**
- Prepare and finalize RFQ **(September – early October)**
- RFQ process **(October)**
- Prepare CIM, which will include, among other items, overview of assets, investment highlights, operational details, financial details, regulatory description and overview of the proposed transaction **(September – October)**
- Prepare RFP / bid instruction letter(s) **(September – October)**
- Power market consultant & independent engineer finalize reports **(October)**
- Assemble and prepare the virtual data room (“VDR”) in conjunction with work already completed by the NHPUC and Eversource **(September – December)**
- Launch process and negotiate confidentiality agreements with parties that meet our selection criteria and seek to participate **(October – early November)**

### First Round / Phase I

- Distribute CIM **(November)**
- Maintain an engaged and on-going dialogue (formal and/or informal) with participating qualified Bidders and report relevant feedback to the NHPUC and its advisors **(November – December)**
- Prepare management presentation **(November – December)**
- Finalize VDR **(December)**
- Receive indicative, non-binding offers and prepare summary presentation **(late December)**
- Analyze & discuss offers with NHPUC in consultation with Eversource **(late December – early January)**

### Second Round / Phase II

- Lead the preparation and management of a due diligence process **(January – March)**
- Assist Eversource and the NHPUC in the preparation and delivery of management presentations to qualified Bidders **(January – February)**
- Open VDR to Potential Bidders **(January)**
- Propose and manage a question and answer (“Q&A”) process for participating bidders **(January – March)**
- Receive final, binding offers and prepare summary presentation **(late February – early March)**

- Analyze & discuss offers with NHPUC in consultation with Eversource (**late February – early March**)

**Final negotiations / Approval**

- Negotiate final financial terms and conditions with the preferred bidder(s) (**early March – signing**)
- Recommend asset portfolio bid groupings and fairly allocate the purchase price of the transaction among the individual assets of the Portfolio when more than one asset is included in a single bid from a potential bidder (**March – signing**)
- Review of transaction documents, including the Purchase and Sale Agreement (“PSA”) as provided by the Commission and Eversource’s legal advisors (**March – signing**)
- Present, along with the other sale advisors, to regulatory, political, community, and labor bodies (as needed and appropriate) regarding the sales process, including the NHPUC, Eversource, Eversource’s Legal and Subject Matter consultants, and other Parties to Docket No. DE 16-817. Several of our proposed Project Leaders have experience providing testimony to similar regulatory and political groups and are therefore well prepared to manage this important aspect of a potential transaction (**March – close**)
- Build consensus amongst Commission Staff, Eversource, and other Parties to Docket No. DE 16-817 and any successor docket relating to the divestiture of Eversource’s generating assets regarding sales process, in order to eliminate or minimize the need for an adjudicative decision-making proceeding by the Commission (**Throughout**)

Date: September 12, 2016

**J.P. MORGAN SECURITIES LLC**

By: 

Name: Paul Dabbar

Title: Managing Director

**SERVICE LIST - EMAIL ADDRESSES- DOCKET RELATED**

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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 #: 16-817-1 Printed: September 12, 2016

**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.

pcramton@gmail.com  
pjaesd@comcast.net  
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## 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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### 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.

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