THE STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

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

Auction of Electric Generation Facilities
Docket No. DE 16-817

OBJECTION OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE d/b/a EVERSOURCE ENERGY TO THE MUNICIPAL INTERVENORS' JOINT MOTION FOR RECONSIDERATION AND STAY OF ORDER NO. 25,967

December 15, 2016

Pursuant to Rule Puc 203.07(f), Public Service Company of New Hampshire d/b/a Eversource Energy ("PSNH," "Eversource," or the "Company") hereby objects to the "Joint Motion for Reconsideration and Stay" (the "Motion") filed on December 9, 2016 in the instant docket by the City of Berlin, the Town of Gorham, and the Town of New Hampton (collectively, the "Municipal Intervenors"). The Motion is primarily a reassertion of prior arguments of the Municipal Intervenors that were considered by the Commission, and the arguments made therein that the Commission failed to properly address those matters both factually and procedurally is simply incorrect.

In support of its objection Eversource states as follows:

1. On November 10, 2016, the Commission issued Order No. 25,967, "Order Approving Auction Design" (the "Order") in this proceeding. That 34-page Order was issued pursuant to the Commission's approval in Docket No. DE 14-238 of the "2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement"

(the "2015 PSNH Settlement") as amended by the January 26, 2016 Amendment thereto and the accompanying "Litigation Settlement" also dated January 26, 2016 (collectively, the "2015 Settlements").

2. The Municipal Intervenors' 26-page Motion may be reduced to three primary complaints: i. the auction schedule established by the Order restricts the Municipal Intervenors' ability to reasonably participate in the auction; ii. the auction process established by the Order fails to ensure that prices bid for the generation assets will be maximized; and, iii. the Commission failed to conduct an adjudicatory proceeding prior to issuing the Order. None of these complaints has merit.

i. The allegation that the auction schedule established by the Order restricts the Municipal Intervenors' ability to reasonably participate in the auction

3. The Municipal Intervenors' main complaint regarding the auction schedule centers on the need for the two towns, Gorham and New Hampton, to have Town Meeting approvals prior to participating as bidders in the divestiture process. As an initial matter, the Municipal Intervenors' complaint is that it is now too late for the two towns to include the possibility of participating in the divestiture process on the agenda for their upcoming Town Meetings. If indeed it is now too late for the upcoming Town Meetings, as alleged in the Motion, that situation is due primarily to the two towns' failure to act in a timely manner.

4. The Commission approved the Settlements by its Order No. 25,920 on July 1, 2016 in Docket No. DE 14-238. Both Berlin and Gorham were party-intervenors in that proceeding. Thus, as of July 1, it has been clear that there would be a "near-term … process for the divestiture of PSNH s fossil and hydro generating assets… ." 2015 PSNH

Settlement at lines 24-25. That 2015 PSNH Settlement also describes the divestiture process as "expeditious" (line 33) and that it shall be "expeditiously pursued" (line 430). Moreover, the Commission issued its order of notice in this proceeding on September 7, 2016 and noted therein certain dates and deadlines for the process relating to the auction design, a process in which the Municipal Intervenors have participated.

5. Not only have the Towns known since July 1 that the divestiture process is imminent, they have also known that their Town Meetings would be held in early 2017 or that special Town Meetings may be necessary. Despite that knowledge, it appears that the Towns have taken no action to seek the approvals they deem necessary under RSA Chapter 38. Despite the urgency of the situation alleged by the Towns in their pleadings before this Commission related to what they regard as the acquisition of "major portions of the tax bases of the Municipal Intervenors" (Motion at ¶3), they do not appear to have prioritized the scheduling of town meeting items over arguably more routine items such as "the acquisition of fire trucks, police cars, and other pieces of municipal equipment" (Motion at ¶61).
6. The Towns' failure to act now forms the basis for their Motion. They seek to delay the expedited divestiture process in order to allow them to take actions they could have, and should have, taken months ago.
7. The 2015 PSNH Settlement makes it clear that the "primary objective will be to maximize the realized value of the fossil and hydro generation assets." (Lines 459-460). That 2015 PSNH Settlement also makes it clear that, "A ***secondary objective*** of the auction processes, ***to the extent not inconsistent with the primary objective***, will be to accommodate the participation of municipalities that host generation assets… ." (Lines

460-462, emphases added). The Municipal Intervenors' desire to stay the Order and delay the divestiture process is patently inconsistent with the approved Settlements and elevates the secondary objective above the primary objective.

8. In their Motion, the Municipal Intervenors speculate that delay of the auction "could" increase the assets' value due to "the new federal administration coming into power." (Motion at ¶75). That may, or may not, be true – and there is no way to know now what may happen. Indeed, delay "might" decrease the value of the assets. For example, intervenor Sierra Club has recently filed suit against the U.S. Environmental Protection Agency ("EPA") seeking a Writ of Mandamus from the U.S. Court of Appeals for the First Circuit ordering the EPA to issue new NPDES permits for Eversource's Merrimack and Schiller Stations by June, 2017. If Sierra Club is successful, the timing of the new NPDES permits could disrupt the auction process, as new permits would be issued within days of when final bids are expected (in May, 2017).

9. The Municipal Intervenors' allege that "concerns over rising interest rates have not materially occurred." *Id.* This statement is factually wrong. "Concerns" that interest rates may rise have existed since the initial settlement talks – and those concerns still exist. When Order No. 25,920 approving the Settlements was issued on July 1, the interest rates 10- and 20-year Treasury bonds were 1.46% and 1.81% respectively. (U.S. Department of the Treasury Resource Center). As of the date of the Motion, those rates were 2.47% and 2.87% -- increases of nearly 70% and 60%, respectively. The Settlements call for the issuance of Triple-A rated securitization bonds to recover all stranded costs that remain following the divestiture process. As Triple-A securities bear interest rates reflective of the underlying Treasury bond rates, increases in the T-bond

rates will increase the cost of securitization. Recall that in Mr. Chung's testimony in Docket DE 14-238, he estimated that over $1/2 Billion of Rate Reduction Bonds will be necessary. If such bonds were issued today, the interest increases that have already occurred will have increased the cost of the RRBs by millions of dollars a year above that previously contemplated. And, "concerns" regarding further interest rate increases appear to be warranted; consider headlines such as "*Why the Fed Is About to Raise Interest Rates*" that appeared in the New York Times on December 2 predicting that the Federal Reserve would increase interest rates at its December meeting – yesterday, on December 14, ***it did***, with further rate hikes projected during the upcoming year.

10. Not only have the Municipal Intervenors failed to act diligently to be in a position to participate in the divestiture auction process, they also have rejected an alternative statutory method available to them that would eliminate the problems caused by the need for multiple Town Meeting approvals. RSA 38:32 provides an exemption from the provisions of RSA Chapter 32 for the development by a municipality of any small scale power facility, as defined in RSA 374-D:1, IV. RSA 374-D:1, IV defines a small scale power facility to be

> a facility which produces electrical energy solely by the use, as a primary energy source, of biomass, waste, geothermal energy, renewable resources including but not limited to the flow of water, or any combination thereof and which has a rated capacity of not more than 80 megawatts. Such facility shall include all other equipment and structures designed to generate, distribute, and transmit electrical energy either to or from such facility.

Every one of Eversource's hydro generating assets fits the definition of "small scale power facility" as each is a renewable resource with rated capacities of less than 80 megawatts. RSA Chapter 374-D prescribes a process available to municipalities to

acquire small scale power facilities outside of the RSA Chapter 38 process, necessitating only one vote for bonding authorization.

11. The Municipal Intervenors claim that the exemption contained in RSA 38:32, and the process contained in RSA Chapter 374-D "is not applicable under these circumstances because the Municipal Intervenors would not be designing, developing, acquiring, or constructing a small sale power facility 'at sites owned or leased by [the Municipal Intervenors] or otherwise made available to [the Municipal Intervenors] for a period at least equal to the term of financing to be acquired under RSA chapter 374-D,'" quoting from RSA 374-D:2. Motion at fn 7. The Municipal Intervenors are wrong.

12. Under Chapter 374-D:2 (the provision quoted by the Municipal Intervenors), "Municipalities may … acquire … small scale power facilities at sites … made available to them for a period at least equal to the term of any financing undertaken under this chapter." No initial Town Meeting or city council vote is necessary to implement this procedure. RSA Chapter 38 is not applicable under the exemption set forth in RSA 38:32. The Municipal Intervenors state that Chapter 374-D is not applicable in the case of a utility generation divestiture because that Chapter does not apply to "the acquisition of a pre-existing, privately-owned, electric generation facility which is being offered for Sale." The Municipal Intervenors provide no citation to support their position.

13. Contrary to the Municipal Intervenors' interpretation of Chapter 374-D, this Commission has already stated that, "The Legislature has explicitly determined that 'the development by a municipality of any small scale power facility, as defined in RSA 374-D:1, IV shall not be subject to the provisions of [Chapter 38].'" Order No. 23,350, November 22, 1999, Docket No. DE 99-135. That docket dealt with the City of Manchester's interest in

acquiring Eversource's Amoskeag Hydro Station – one of the generating assets that will be divested via the upcoming auction process. RSA Chapter 374-D has not been changed since the issuance of Order No. 23,350. The process that the Commission found was available then to the City of Manchester remains available to the Municipal Intervenors today.

14. Not only has the Commission indicated that RSA Chapter 374-D is an option available to municipalities seeking to acquire Eversource's hydroelectric generating stations, contrary to its present position in the Motion the City of Berlin itself previously agreed that Chapter 374-D applies to the instant situation. Agreeing with the Commission's view on RSA Chapter 374-D set forth in Order No. 23,350, in its "Memorandum of the City of Berlin Regarding the Effect of House Bill 489 Upon RSA Ch. 38 Valuation Proceedings" filed in Docket Nos. DE 00-210 and DE 00-211 on June 1, 2001, the City of Berlin stated:

> **III. THE NEW HAMPSHIRE LEGISLATURE ENCOURAGED MUNICIPAL INVOLVEMENT WITH SMALL SCALE POWER GENERATION.**
>
> The New Hampshire legislature has not only granted municipal right [sic] to acquire utility plants, it has initiated a policy of encouraging municipal involvement with small scale power generation by enacting RSA Ch. 374-D. A small scale power facility includes a facility which produces electrical energy solely by use of renewable resources, including the flow of water, and which has the capacity of not more than eighty (80) megawatts. There is no dispute that the Smith and Amoskeag facilities are small scale power facilities. The New Hampshire legislature has provided that a municipality may acquire small scale power facility and operate, or enter into contract for the operation of, such facilities. RSA 374-D:2. The power produced by these facilities may be transmitted and distributed by the municipality to any power user or public utility at such prices determined by the governing board. RSA 374-D:2.
>
> In addition to authorizing the acquisition of small scale power facilities, the legislature also authorized municipalities to issue bonds and notes and prescribed terms and conditions under which those bonds and notes may be issued to facilitate the acquisition of these facilities. RSA 374-D:3 *et seq*. The legislature also determined that "the development by a municipality of any small scale power facility, as defined in RSA 374-D:1, IV shall not be subject to the provisions of [chapter 38]". RSA 38:32. As the Commission explicitly

> found in its Order dated November 22, 1999, the "legislature intended to streamline and thus to encourage the process of municipalities becoming newly involved in small scale power production, ... " (Order No. 23, 350 at 3). In other words, the New Hampshire legislature has found that it is in the public interest for Cities, such as Berlin, to become involved with renewable energy facilities, such as the Smith Hydro Station.

15. Consistent with both the Commission's and the City of Berlin's interpretations of RSA Chapter 374-D, per RSA 38:32, "Nothing in this section shall be construed as exempting municipalities from the provisions of this chapter with respect to the acquisition of a utility plant and equipment if there exists a dispute between the municipality and the utility." This sentence of the exemption statute makes it clear that the RSA 38:32 exemption does indeed apply to the acquisition of utility plant and equipment from a utility, as long as there is no dispute between the municipality and the utility. In the instant case, there is and will be no dispute. Any acquisition made as a result of being the winning bidder under the auction will be done via bilateral contract, with the terms agreed upon between the winning bidder and Eversource, subject to the oversight and administration of the auction by the Commission.

16. Furthermore, when the exemption at RSA 38:32 was first being considered by the Legislature (then RSA 38:3-a, prior to the 1997 overall revision of Chapter 38 in 1997 N.H. Laws, Chapter 206) the issue of the applicability of the exemption to "existing operating utility sites" was discussed. A version of the exemption was considered which eliminated "existing operating utility hydroelectric facilities" from the assets a municipality may acquire pursuant to RSA Chapter 374-D. *See* Letter dated April 3, 1981 from the Governor's Council on Energy attached hereto as Attachment A. The statute as enacted by the Legislature did not contain the language removing "existing operating utility hydroelectric facilities" from the RSA Chapter 38 exemption provision.

The Municipal Intervenors read the statute to include words that the Legislature decided not to incorporate.

17. The 1981 letter from the Governor's Council on Energy also refutes the Municipal Intervenors' contention that RSA Chapter 374-D only applies to new development. The inclusion of a provision restricting the exemption only to "new" developments was discussed in that 1981 letter and rejected. Nowhere in the statute as enacted has the Legislature limited a municipality's ability to use RSA Chapter 374-D to "new" developments.

18. For the reasons stated above, the Municipal Intervenors' complaint in the Motion that their ability to participate in the generation asset auction has been effectively prevented by the Order is incorrect.

ii. The allegation that the auction process established by the Order fails to ensure that prices bid for the generation assets will be maximized

19. The Municipal Intervenors' second basis for rehearing is that the auction process established by the Order fails to ensure that prices bid for the generation assets will be maximized. This allegation is contrary to the expert opinion of the Commission's auction advisor, J.P. Morgan as provided to the Commission via sworn testimony on September 19, 2016, as well as J.P. Morgan's other submissions to the Commission dated September 12, 2016; September 29, 2016; October 17, 2016; and, November 3, 2016.

20. The auction process adopted by the Commission in the Order was not only recommended by J.P. Morgan, but it is also the same process recommended by Eversource expert John J. Reed in his testimony in Docket No. DE 14-238 and is the same process used for every utility divestiture to date (other than adjustments made to accommodate the Municpal

Intervenors). (Mr. Reed was engaged by Eversource pursuant to the provision of the 2015 PSNH Settlement requiring that, "PSNH shall engage an expert consultant regarding typical divestiture processes and submit testimony from that expert as part of the Commission's proceeding to review this Agreement." 2015 PSNH Settlement, lines 452-454).

21. The Municipal Intervenors' claim that a new, untested auction process would better maximize the bids submitted for Eversource's generation assets cannot be proven.[1] Opinions that a different, untested process might increase the value only amounts to speculation in the absence of any demonstrated uses of such a new process. Bidders understand the process that J.P. Morgan and Mr. Reed recommended – a process that the majority of potential bidders have participated in previously. The Commission's decision to adopt the recommendation of J.P. Morgan was informed and well-founded. The Municipal Intervenors are by no means experts in generating asset auctions, and the suggestion that the Commission defer to their recommendations over that of J.P. Morgan and Mr. Reed is absurd. Hence, the Municipal Intervenors' request for rehearing should be denied.

iii. The allegation that the Commission failed to conduct an adjudicatory proceeding prior to issuing the Order.

[1] The Municipal Intervenors rest their claim that other auction designs may be appropriate, in part, on the existence of testimony from George Sanscoucy, Leszek Stachow, and Dr. Peter Cramton. *See* Motion at 12. In Order No. 25,967, at the urging of the Municipal Intervenors the Commission took administrative notice of that testimony and then analyzed and rejected the proposals contained therein. Order No. 25,967 at 22-24. Nonetheless, the Municipal Intervenors now argue that the mere existence of that testimony requires the Commission to grant rehearing here. Such unfounded assertions are simply restatements of prior contentions, and they neither undermine the conclusions reached by the Commission, nor demonstrate that reconsideration is warranted.

22. The third complaint of the Municipal Intervenors in their Motion is that the Commission failed to conduct an adjudicatory proceeding. The 2015 PSNH Settlement approved by the Commission in Docket No. DE 14-238, as amended, stated, "The structure and details of the auction process(es) shall be established by the auction advisor, under the oversight and administration of the Commission and subject to the additional expedited adjudicatory proceedings requested in Section X below, with the Commission retaining such direction and control as it deems necessary." Section X of the 2015 PSNH Settlement states:

> The Settling parties request that following closure of Docket No. DE 14-238, the Commission open a docket with appropriate ongoing proceedings to address the administration of the divestiture auction, issuance of a finance order implementing RRBs, and calculation and reconciliation of the stranded costs recovery charge.

23. The expedited adjudicatory process described in the Settlements was one subject to the Commission's "direction and control as it deems necessary." In the Order, the Commission discussed how the process it used conformed to the Administrative Procedure Act, Chapter 541-A. The Order was issued using an expedited process, under the Commission's direction and control as it deemed necessary to fulfill the primary objective of the auction process – maximization of the total transaction value.[2] This proceeding has some unique attributes because the longer the auction takes to be

[2] Were the Commission to issue an order on Monday, December 19 granting the Municipal Intervenors' Motion and adopting a schedule in line with the minimum days requested in their proposed schedule on page 24 of the Motion, a hearing in this matter would not occur until May, 2017 at the earliest. Even if that clearly unreasonable schedule was implemented, and even if the Commission could issue an order promptly following that hearing, it would mean that an auction design would not be approved, and that the actual auction could not begin, until sometime after June or July 2017. Such an outcome is clearly contrary to the expedited process contemplated by the 2015 Settlements. Furthermore, under the Municipal Intervenors' analysis, municipal participation in any process that may be approved may be significantly delayed for months into the early part of 2018. A delay of that magnitude, a delay caused by the failure of the municipalities to act in 2016, would undoubtedly hamper the auction process for other assets, and undermine the primary purpose of this divestiture.

completed, the greater the erosion of benefits to customers and risks that may impact auction results. Until the auction is completed and any remaining stranded costs are taken off Eversource's books when the proceeds from the securitization financing are received, customers will continue to be responsible for paying Eversource rates that include a return of and a return on its book investment. The return of and on rate Eversource's generation rate base amounts to tens of millions of dollars per year. Until the auction is completed and the sale transaction finalized, Eversource will continue to operate the generating assets in the marketplace subjecting customers to the risk of repair or diminished value. As noted earlier, until the securitization financing is completed, there remains the concern and reality of increasing interest rates, which have a "double-whammy" – not only will increasing interest rates create higher securitization financing costs that customers will bear, but higher interest rates also impact bidders' financing costs resulting in lower values for generating assets when those higher financing costs are included in discounted cash flow and other valuation methodologies.

24. The Commission complied with the terms of the Settlements by expediting its Order and by exercising the agreed-upon provision of the Settlements that it retains "such direction and control as it deems necessary" to achieve the express primary goal of the Settlements – maximization of TTV. The Order need not by stayed not should the Commission grant rehearing.

WHEREFORE, Eversource urges the Commission to deny the Municipal Intervenors' Joint Motion for Reconsideration and Stay of Order No. 25,967, and order such further relief as may be just and equitable.

Respectfully submitted,

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

December 15, 2016
Date

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CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached pleading to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

December 15, 2016
Date

By: 
Robert A. Bersak