

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 16-817**

**EVERSOURCE ENERGY AUCTION OF GENERATION FACILITIES**

**Order Approving Auction Design**

**ORDER NO. 25,967**

**November 10, 2016**

In this order, the Commission approves the auction design and process recommended by the Commission's auction advisor, J.P. Morgan, with certain modifications to further accommodate participation by intervening cities and towns.

**I. PROCEDURAL HISTORY**

This docket was established to conduct the sale of the fossil and hydro electric generation facilities (Generation Facilities) owned by Eversource Energy (Public Service Company of New Hampshire) d/b/a Eversource Energy (Eversource) as ordered in Order No. 25,920 (July 1, 2016). Order No. 25,920 approved the 2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement filed with the Commission on June 10, 2015, (2015 Settlement) as amended by the Partial Litigation Settlement filed on January 26, 2016 (Litigation Settlement). Order No. 25,920 and the settlements approved in that order require the sale of the Generation Facilities to be conducted by an auction advisor selected by the Commission.

Following a competitive request for proposals (RFP), the Commission selected J.P. Morgan as its auction advisor (JPM or Auction Advisor). The contract with JPM to conduct the sale of the Generation Assets was approved by the Governor and the Executive Council on

September 7, 2016. On September 12, 2016, JPM filed a description of the proposed auction process with the Commission. On October 17, 2016, JPM filed a modification to the proposed auction process to facilitate municipal participation in the auction. On November 4, 2016, JPM filed additional comments on the auction design. The proposed auction process, together with all other filings in this docket, except for any information for which confidential treatment has been requested of or granted by the Commission, are posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2016/16-817.html>.

The Commission issued an order of notice on September 7, 2016, and held a prehearing conference on September 19. The Office of Consumer Advocate (OCA) filed its notice of participation on September 13, 2016, and the following parties sought intervention: the Towns of Gorham, Bristol and New Hampton, the Cities of Berlin and Concord, the Sierra Club, the Conservation Law Foundation (CLF), the Office of Energy and Planning (OEP), and the International Brotherhood of Electrical Workers Local 1837 (IBEW).

All parties present at the prehearing conference questioned JPM about the proposed auction process. Following the hearing, during a technical session, parties had further opportunity for questions and discussions with JPM. Commission Staff (Staff) filed a letter on September 21, 2016, summarizing the parties' discussions at the technical session. The Commission granted all intervention requests by Secretarial Letter on September 22, and required JPM to respond to follow-up questions from parties. The Town of New Hampton submitted a question to JPM on September 21, and JPM responded on September 29. The parties filed written comments on September 30, 2016, and additional comments on October 21, 2016. The Commission issued Order No. 25,954 (October 18, 2016) denying a motion to designate certain Commission Staff as staff advocates, and Order No. 25,956 (October 21, 2016)

requiring Eversource to remove two legacy mercury boilers and associated equipment from the Schiller generating station. This order will consider the remaining auction process and design issues raised by various parties in written comments and by JPM in its auction design, and its comments on auction design.

## **II. POSITIONS OF THE PARTIES**

### **A. J.P. Morgan**

#### **1. Initial Auction Design September 12, 2016**

In its proposed auction design filed on September 12, 2016, JPM described a broad two round auction process in which a wide range of potential bidders, after signing confidentiality agreements, would be given access to a confidential information memorandum (CIM) and certain third party engineering and market analyses of the Eversource portfolio of hydro and fossil Generation Facilities offered for sale. Such potential bidders would be allowed to submit non-binding indicative bids on single facilities or groups of facilities in Round 1 of the auction. A smaller group of qualified bidders in Round 1 would then be selected to participate in Round 2 in which those potential bidders would be given the opportunity to conduct detailed due diligence on the facilities. Round 2 bidders would be given access to an electronic data room containing information on each of the facilities and provided the opportunity to visit the facilities in person, including receiving a comprehensive business, operational, and financial presentation from management on those facilities. Round 2 bidders would then be invited to submit final binding bids at the end of Round 2. From the group of potential bidders that elected to submit such final binding bids, JPM would then select a winning bid, or combination of bids, and begin negotiating final terms of sale.

JPM indicated in the technical session on September 19, 2016, that municipalities would be allowed to submit final binding bids in Round 2 without non-binding proposals in Round 1. At the technical session JPM and Eversource also agreed to give the intervening municipalities a draft confidentiality agreement by September 23, 2016, and once signed, to allow municipalities access to the data room for their respective hydro facilities in November 2016. *See Staff Letter September 21, 2016.* Under the September 12, 2016, JPM auction design, Round 1 of the auction process would take place during November and December 2016 and Round 2 would start in January 2017. Final binding bids would be due in late February or early March.

## 2. Amended Auction Design October 17, 2016

After receiving the written comments from Berlin, Gorham, Bristol, and New Hampton (the Municipalities), which are described below, and conducting telephone conferences on October 6 and 13 with the Municipalities, JPM proposed a number of timing and design changes to facilitate the Municipalities' participation in the auction process. *See Staff Letter October 17, 2016, enclosing JPM amendments to its September 12, 2016, Auction Design.*

The amended proposed auction process would allow the Municipalities, once they have signed a confidentiality agreement, access to the electronic data room for their respective hydro facilities, in November 2016.<sup>1</sup> The Municipalities would also be given access to the independent market analysis and the independent engineering analysis for their respective hydro assets as soon as those reports become available, estimated to be in late November 2016.

Under the amended process, the auction schedule would be extended approximately two months. As a result, other interested bidders would be qualified to participate in Round 1 in mid-to late November, and would be given confidentiality agreements in mid-December. A CIM

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<sup>1</sup> The hydro facilities hosted by the Municipalities are, Smith Hydro in Berlin, Gorham Hydro in Gorham, and Ayers Island Hydro in Bristol and New Hampton.

would be circulated to all qualified Round 1 bidders and to the Municipalities in early January 2017. Preliminary non-binding bids would be due in mid- to late February from all bidders, except the Municipalities, which would not be required to submit preliminary non-binding bids, but would have the option of giving JPM their indication of value for their respective hosted local hydro facilities. The Municipalities electing to submit indications of value would then receive, on a confidential basis, information from JPM on how their values relate to the range of Round 1 bids on their hosted facilities. Final binding bids would be due from all bidders including the Municipalities in early to mid-May 2017. Further, in order to address municipal needs for specific price allocation to their respective hydro facilities, in its amended auction design JPM proposed to require all Round 1 and Round 2 bidders to allocate bid value among any hydro facilities included in their bids.

### 3. Comments on Auction Principles and Process Criteria November 4, 2016

On November 4, 2016, JPM filed comments describing the guiding principles for designing an auction process for the Generation Facilities that maximizes total transaction value. JPM observed that creating competition among bidders is a key driver of value. The rules of the auction process must be transparent and the process must be consistent with industry practice. JPM described the need to have fairness among bidders including equal access to information to evaluate the facilities. Finally, JPM stressed the need for process continuity and setting an appropriate pace for the auction, allowing enough time for data analysis while keeping bidders engaged.

JPM noted that the financing and power markets are supportive of a sale of the Generation Facilities at this time, but warned that further delay in the auction process creates a risk that these favorable conditions will lapse.

JPM described in more detail the criteria for selecting potential bidders for Round 2. Criteria include: bid price relative to other bidders, assets included in the bid, ability to finance, commitment to the transaction, reputation in the market, and ability to support Round 2 due diligence.

JPM stressed the need for final binding bids without financing contingencies at the end of Round 2. Round 2 bids need to be binding and financed so that the seller<sup>2</sup> knows that the bid is final and not subject to further contingencies. Without binding final bids, it is not possible for the seller to judge the best offer.

Regarding the addition of a third round of bidding following binding and fully financed bids in Round 2, JPM stated that such a structure would create uncertainty for bidders and is not commercially standard. An additional Round 3 would create a higher risk of a broken deal and would discourage bidders from expending the funds needed to complete due diligence and enter binding Round 2 bids. Based on JPM's experience, a Round 3 process would suppress bidder interest in the auction.

Finally, JPM explained that accommodations it has designed for the municipal bidders in its amended auction design are non-standard for commercial auctions. Nonetheless, it believes it can effectively manage any negative impact of the favorable treatment for that group of bidders.

## **B. City of Berlin and Towns of Gorham, Bristol and New Hampton**

### **1. September 30, 2016, Written Comments**

Berlin hosts the Smith Hydro facility, which has a nameplate capacity of 15.2 megawatts (MW) and a current city tax assessment of \$56.5 million. Gorham hosts the Gorham Hydro facility with a nameplate capacity of 2.1 MW and a current town tax assessed value of \$3.9

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<sup>2</sup> In this case, unlike conventional auction sales, the Commission and Auction Advisor will evaluate final bids to ensure highest total transaction value.

million. Bristol and New Hampton jointly host the Ayers Island Hydro facility, which has a nameplate capacity of 8.4 MW and a tax assessed value of \$6.7 million for the portion located in Bristol. Bristol described the purpose of its intervention to be:

a) to ensure that the Town's tax base is protected by this process which should be implemented in order to produce the highest sale price possible; and b) provide an opportunity for the residents of Bristol to participate in a possible purchase of Ayers Island if such sale is in the best interest of the Town.

Bristol Comments at 2. Similar to Bristol, New Hampton stated that its, "main interest in participating in the auction process is to ensure that the sales price is indicative of what the town believes is fair market value." New Hampton Comments at 8.

Berlin described its participation in the 2015 Settlement and the Litigation Settlement approved by the Commission in Order No. 25,920 and described the procedural steps leading to Berlin and Gorham's intervention in this docket. Berlin and Gorham claimed that the auction schedule proposed by JPM on September 12, 2016, was unworkable because it does not allow for participation by the Municipalities and is therefore inconsistent with the letter and spirit of the 2015 Settlement, Section IV. B. Bristol and New Hampton joined in Berlin and Gorham's comments and added further timing and process concerns in their comments.

Berlin and Gorham claimed that given the statutory notice requirements of RSA Ch. 38 to approve a municipal purchase of generation facilities, the Municipalities could not participate in an auction process like the one in JPM's initial proposal. Berlin Comments at 8. The Municipalities claimed that their decision to move forward would have to be made before they had adequate time to analyze data, educate citizens on the advantage of acquiring such facilities, and file the requisite notices of meetings. The Municipalities also asserted that there was not sufficient detail concerning how prices for individual assets will be allocated when assets are

grouped in bids. Finally, the Municipalities discussed the need to coordinate efforts among themselves potentially causing additional delay in reaching decisions on pursuing bids in the proposed auction.

According to Berlin, the City Council must approve the decision to acquire the generation facility by two thirds vote. Berlin Comments at 5-6. The City Council vote must be confirmed by a majority vote of the qualified voters at a regular or special election held within one year of the City Council vote. RSA 38:3, Berlin Comments at 6. A second vote by two thirds of the qualified voters at an election must occur within 90 days of the final determination of price for the assets, to authorize the purchase and bonding of the acquisition. RSA 33-B and RSA 38:13, Berlin Comments at 6.

Gorham and Bristol maintain a traditional form of town meeting. Gorham and Bristol's next annual town meeting is March 14, 2017. The last date for those towns to post the warrant and budget for the town annual meeting is February 27, 2017. Berlin Comments at 6. Thus, if Gorham or Bristol wishes to present a question of purchasing hydro facilities at the March 14, 2017, annual town meeting, the towns must analyze data, educate selectmen and citizens, and post a warrant before February 27, 2017. New Hampton, unlike Gorham and Bristol, has voted to conduct its town meeting over two-sessions. *See* RSA 40:13. The first is a deliberative session which, for the annual meeting in 2017, must be held between February 4 and February 11. New Hampton must post its warrant and budget for the first deliberative session of its annual meeting by January 30, 2017. The second session of the New Hampton annual town meeting, where articles are voted on, must be held on March 14, 2017. New Hampton Comments at 3.

Gorham, Bristol, and New Hampton asserted that due to a lack of administrative resources, the complexity of the issues concerning a bid on the hydro facilities, and an already full agenda for the annual meeting, they cannot present the auction questions to voters at the annual meeting. As a result, Gorham, Bristol, and New Hampton stated that they will have to hold a special meeting to deal with the decision on purchasing the hydro facilities. Berlin Comments at 7, and New Hampton Comments at 3. If Gorham, Bristol, or New Hampton wishes to hold a special meeting to consider whether to bid on the hydro generation assets, none of these towns can schedule such a meeting on biennial election-day (November 8, 2016) and they cannot schedule a special meeting within 60 days prior to an annual meeting. As a result, this year a special meeting must be held before January 13, 2017, for Gorham and Bristol and before December 5, 2016, for New Hampton, or else sometime after the annual meeting. Berlin Comments at 6.

Gorham or Bristol voters, by two thirds vote, at either an annual or special meeting, must vote that it is expedient to acquire the generation facility, and then within 90 days of the final price determination, the Gorham or Bristol voters by two thirds vote must approve the purchase and bonding of the acquisition. Berlin Comments at 6.

The Municipalities all voiced concerns with their ability to participate in a non-binding Round 1 bid process, but they accepted the alternative arrangement for Round 1, offered by JPM at the Municipalities' request. *See* JPM Response to New Hampton Question filed September 29, 2016. Under that alternative arrangement, at the conclusion of the Round 1 non-binding bids, the Municipalities would have the option of giving JPM their indication of value for their respective hosted local hydro facility. The Municipalities would then receive, on a

confidential basis, information from JPM on how their values relate to the range of Round 1 bids on their hosted facility.

The Municipalities expressed concerns over the failure to allocate prices to specific generation assets in both the Round 1 and Round 2 bids on groups of assets. If they are not bidders on the generation assets, the Municipalities also requested information on all final bid allocations on asset groupings at the end of Round 2 whether or not those allocations are winning bids.

The Municipalities acknowledged that JPM has committed to giving them access to the electronic data room for the hydro assets in early November to allow them to begin their analysis of facility value. They also confirmed receipt of confidentiality agreements from Eversource, which are currently under negotiation, and receipt of an index to a sample CIM on an electric generating asset.

The Municipalities asked that the Commission take administrative notice of testimony filed in Docket No. DE 14-238, by George E. Sansoucy dated July 16, 2015, on behalf of Berlin; Leszek Stachow dated September 18, 2015, and supplemented on January 26, 2016, on behalf of Non-Advocate Staff; and Dr. Peter Cramton dated September 18, 2015, and revised September 28, 2015, on behalf of Non-Advocate Staff. Berlin Comments September 30, 2016, at 9. Those three witnesses testified concerning an “ascending clock” auction process.<sup>3</sup> The Municipalities suggested that an ascending clock auction is a more transparent, fair, simple and efficient auction process than the process proposed by JPM. The Municipalities claimed that because, in the JPM process, bidders do not know the level of competing bids, it is not possible

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<sup>3</sup> Ascending clock auction refers to an auction in which a group of bidders begin simultaneously bidding up the price of an item offered for sale until no further bids are received. At that point the bidding is closed and the final highest bid is the winning bid.

for bidders to bid up assets and that some value may be lost due to the lack of transparency of other competing bids. *Id.* at 10-11.

The Municipalities requested that the fully populated electronic data room be made available to them by November 1, 2016. They asked that the auction be postponed to start at the conclusion of the on-going sale of TransCanada's 583 megawatt hydro facilities located on the Connecticut and Deerfield Rivers. Alternatively, they suggested that the auction process should be delayed seven months so that Round 1 would begin on May 1, 2017, or that the auction of the fossil generation facilities proceed on the schedule proposed by JPM, and that the auction of the hydro facilities be delayed until after the fossil auction is completed. As an additional option, the Municipalities proposed that they be allowed to participate in Round 2 without participating in Round 1 and that Round 2 be delayed so that it begins on May 1, 2017. Finally, the Municipalities proposed that the auction of the hydro facilities be run as a "reserve auction" with the reserve price set at the 2016 municipal tax assessed value of each of the hydro generating facilities.<sup>4</sup>

The Municipalities also requested further options for discovery, testimony and a hearing on the auction process proposed by JPM. The Municipalities argued that the current procedural schedule in this docket is too short to allow meaningful participation by them in the design of the auction process.

## 2. October 21, 2016, Written Comments

Berlin and Gorham filed additional comments on the amended auction design filed by JPM on October 17, 2016. They stated that the amended auction design did not address municipal concerns and that the additional two months of delay in the Round 1 and Round 2

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<sup>4</sup> A reserve auction refers to an auction in which there is a reserve price which serves as a minimum price. If no bid is received above the reserve price the item is not sold.

process still would not allow municipalities sufficient time to coordinate necessary educational sessions with voters, hold votes or negotiate agreements for operation, maintenance, and marketing of the multi-million dollar facilities. Berlin Comments at 5. They claimed, as a consequence, that they were effectively frozen out of the bidding process. *Id.* Berlin and Gorham were also concerned that the amended auction's emphasis on: having as little conditionality as possible, ability to consummate a transaction, and fully financed offers, in the selection of winning bids in Round 2, creates a presumption against municipal bids because the municipalities must wait for a bid to be accepted as a winning bid by JPM before taking it back to the voters for a second vote to bond the purchase pursuant to RSA 38:13. *Id.* at 5-6. Berlin and Gorham requested that the Commission expressly rule that the fact that "a municipality with the higher bid must go through the RSA 38 process is not grounds for rejection of that municipal bid" in Round 2. *Id.* at 6. They requested rights to review the full bidding process results as part of a final adjudicatory proceeding concerning the Commission's approval of the final bids and the allocations associated with the sale of the Eversource assets. *Id.*

As a solution to all of their concerns, Berlin and Gorham suggested the use of a third round of bidding after the Round 2 bidding, scheduled for mid-May 2017 in the amended auction design. If the highest Round 2 bid does not exceed the municipal bid, or some other lower benchmark chosen by the municipality, then the municipality could force a third round where the bidders could potentially "bid up" the price to acquire the asset. *Id.* at 6-7. Berlin and Gorham claimed that the responses in the JPM amended auction design to various municipal suggestions, including ascending clock auctions, the suggested delay until the conclusion of the TransCanada sale, the methods for selecting group bids, or the undesirability of separating the fossil and hydro assets into separate auctions, are not sufficiently detailed and require further discovery. *Id.*

at 7-8. Berlin and Gorham argues that the Commission should allow additional time for data requests, technical sessions, pre-filed written testimony from JPM, Staff and other parties, and hearings, to allow all of these issues to be adjudicated before the Commission. *Id.* at 8.

Bristol reiterated that its “primary purpose in participating in this case is to protect its tax base.” Bristol October 21, 2016, Comments at 1. Bristol claimed that JPM’s October amendments failed to ensure that the Municipalities would be able to protect their tax bases. *Id.* Although JPM offered the Municipalities the ability to test their facilities’ value against the indicative bids in Round 1, Bristol observed that there is no guarantee that final binding bids will come in as high as earlier indicative bids. *Id.* at 2. Therefore, according to Bristol, the Municipalities must bid in the second binding bid round in order to protect their tax base. Bristol asserted that even with the Round 2 bids due in mid-May rather than early March, there is not time for multiple board of selectmen meetings to analyze the burdens and benefits of a purchase of Ayers Island Hydro, and additional meetings with the public to educate residents prior to a vote. *Id.* at 3; RSA 38:4 and :13.

New Hampton stated that issues remain with the timing of release of confidential information, insufficient time to educate the public and hold required special town meetings, the Municipalities’ access to information regarding submitted bids so that municipal governing boards can timely determine whether it is necessary to submit a bid in order to protect the municipal tax base which requires bidder approval, and finally the need for municipal input on allocation of sales price to facilities located within the Municipalities. New Hampton October 21, 2016, Comments at 1.

New Hampton stated that a May 15, 2017, deadline for final bids proposed in JPM’s amended auction design would require notice of the special meeting by March 18, 2017, for a

deliberative session April 1, 2017, and a vote on May 2, 2017. New Hampton claimed that such a schedule would not allow sufficient time for meaningful opportunity to educate the voters regarding these multi-million dollar facilities. *Id.* at 4. New Hampton also asserted that the amended auction design does not provide the Municipalities with the CIM until January, which delays the Municipalities analysis of data until January which is a time when selectmen are busy getting ready for the annual town meeting. *Id.* at 4. New Hampton claimed that a New Hampton selectman will testify that New Hampton cannot hold the vote to authorize a purchase of the Ayers Island Hydro facility before the end of July 2017. *Id.* New Hampton asserted that JPM has provided no evidence that extending the bidding deadline or separating the fossil and hydro assets is unacceptable. *Id.* at 6. Finally, New Hampton asked that the Commission require JPM to accept bids by the Municipalities in the final round of bidding without regard to the fact that those bids will need to be ratified and bonding approved by the voters in a subsequent town meeting. According to New Hampton, the Municipalities are legally prohibited by RSA 38:13 from submitting bids with financing pre-approved. *Id.* at 7.

### **C. Testimony from Docket DE 14-238 Adopted by the Municipalities**

The Municipalities asked the Commission to take administrative notice of testimony by three witnesses in Docket No. DE 14-238, and the Municipalities relied on that earlier testimony on auction design by Mr. Sansoucy, Mr. Stachow, and Dr. Cramton in their written comments. Berlin and Gorham Comments September 30, 2016, at 9-11.

Mr. Sansoucy is an engineer and an appraiser who has provided services including “valuation of public utility infrastructure, energy projects, and complex industrial properties.” Sansoucy Testimony at 1. Mr. Sansoucy did not claim any direct experience with auction processes or any experience in managing auctions of electric generation facilities.

Mr. Sansoucy's testimony addressed the auction process proposed in the 2015 Settlement and emphasized the need for an open and public auction process supervised by the Commission to prevent the sale of the Generation Facilities at a "fire sale." *Id.* at 2. Mr. Sansoucy claimed that the 2015 Settlement Agreement at Section IV does not provide sufficient detail concerning the auction process or the accommodations needed to allow municipalities to participate in the auction. *Id.* at 5. Mr. Sansoucy asked that the auction be held after the 2016 town meetings to allow towns to authorize bids prior to the bidding in the auction. *Id.* at 6. Mr. Sansoucy also recommended that municipalities be allowed to bid on individual assets. Finally, Mr. Sansoucy recommended that all bids be evaluated in an open and public process with bidder identities kept private. *Id.* at 7.

Mr. Stachow is educated as an economist and has extensive experience in acquisitions and mergers in central Europe. Stachow Testimony Exhibit 1. Mr. Stachow's testimony summarized testimony by other staff members and also discussed the auction process. Mr. Stachow suggested a 6 step process in which the first 4 steps mirror the broad Round 1 and the due diligence portion of Round 2 in the JPM auction design. Mr. Stachow departed from the JPM design at step 5 in which an ascending clock auction would be conducted with the Commission selecting winning bidders in step 6. Stachow Testimony at 16-20.

Dr. Cramton is a professor of economics with extensive research on auction theory and practice. Cramton Testimony at 1. Dr. Cramton recommended the same 6 step auction process described in Mr. Stachow's testimony. Dr. Cramton described the simultaneous ascending clock auction as an auction where all bidders have real time access to competing bid amounts on assets or groups of assets without knowing the identity of the other bidders. Bidding continues until the highest bids are established on individual assets or groups of assets. *Id.* at 3-5. Dr. Cramton

gave examples of how the ascending clock auction design has been used in electricity-related contexts. *Id.* at 6. The examples included numerous sales of purchase power agreements for electricity in Canada, Netherlands, Denmark, Spain, Portugal and Germany. *Id.* According to Dr. Cramton, a similar process has been used to procure default service electricity supply in New Jersey and Pennsylvania and also to procure electricity capacity on an annual basis in the ISO-NE, Midwest ISO, and Texas PUC forward capacity auctions. *Id.* at 7.

#### **D. Conservation Law Foundation**

CLF supported the broad and open auction process recommended by JPM. CLF Comments at 1. CLF stressed the need to complete the sale of the Eversource generation portfolio quickly and to establish a competitive market. *Id.* at 2. CLF noted that the JPM auction design does not describe a separate process in the event a facility does not sell at the end of the auction. CLF cited the Failed Auction section of the 2015 Settlement, Section IV. G, which provides that in the event that a facility does not sell at auction, it be offered for sale in a second auction or retired. *Id.* at 1. CLF argued that if bidders know that there is likely to be a second offering of a facility, they may refrain from bidding in the initial auction. *Id.* at 2. To remedy this concern, CLF suggested that the “Commission should consider making clear, at the outset, that it will proceed directly to the retirement option in the event of a failed auction ....” *Id.* Otherwise, according to CLF, the process leaves open the possibility that there will be a second auction of unsold assets, and increases the likelihood of one or more assets remaining unsold, as well as the likelihood that bidders might approach the upcoming auction strategically, anticipating a potential second auction for unsold assets. *Id.* Further, CLF recommended that the Commission and the Auction Advisor obtain information regarding the cost of retirement of individual facilities for use in analyzing bids on the portfolio. Finally, CLF pointed to the 2015

Settlement's goal of achieving the divestiture of the Eversource Generation Facilities expeditiously, and asked that the Commission and the Auction Advisor avoid process changes that create any delay in the divestiture. *Id.*

### **E. Sierra Club**

The Sierra Club objected to two aspects of JPM's proposed auction design. First, the Sierra Club asserted that there was a lack of criteria for JPM to use in selecting the Round 1 bidders to participate in Round 2. Sierra Club Comments at 3. Second, the Sierra Club disagreed with JPM's recommendation that Eversource remove the two legacy mercury boilers from Schiller station. The issues surrounding the removal of the two boilers were decided in Order No. 25,956 (October 21, 2016). With regard to selection criteria for bidders moving into Round 2 the Sierra Club stated:

Phase II would consist of '[p]arties who continue in the process,' but does not indicate whether or not that population would be self-selected (i.e., whether or not the parties bidding in Phase II would consist of the parties from Phase I less those that decided to drop out). Instead the proposal contemplates '5-10 parties' participating in Phase II, 'depending on the number and quality of preliminary, non-binding bids' and notes that the 'bidders allowed into' Phase II would be 'driven by initial bids, consideration offered, and the ability to move quickly.' This appears to indicate that there would be an element of judgment on the part of the auction manager in determining who gets into the Phase II process and who is excluded, yet the proposal does not identify with any specificity what criteria would be used for such determinations.

Sierra Club Comments at 3.

The Sierra Club argued that this lack of clarity regarding the criteria for selection to proceed to Round 2 bids would cause uncertainty and result in fewer and lower quality bids and would depress sale results. *Id.* at 4. Further, the Sierra Club asserted that allowing JPM too much discretion would undermine the purposes of the auction. Without specific rules spelled out

ahead of time, the Sierra Club maintained that the sale would look less like an auction and more like a brokered sale. *Id.*

### **III. COMMISSION ANALYSIS**

#### **A. Analytical Framework for Auction Design**

The framework for our analysis of the auction design proposed by JPM is provided by the 2015 Settlement, the Litigation Settlement, and RSA 369-B:3a. Those settlements, as well as the enabling legislation, direct our supervision of the sale of the Generation Facilities. A key element of the 2015 Settlement is the “[e]xpeditious pursuit of the divestiture of PSNH’s generating plants after a final decision by the Commission approving the settlement set forth in this Agreement.” 2015 Settlement, I at 2. The 2015 Settlement also describes clearly the objective of the auction and the Auction Advisor’s role in designing the auction.

The fossil and hydro auction processes will be conducted by a qualified auction advisor whose primary objective will be to maximize the realized value of the fossil and hydro generation assets. A secondary objective of the auction processes, to the extent not inconsistent with the primary objective, will be to accommodate the participation of the municipalities that host generation assets and to fairly allocate among individual assets the sale price of any assets that are sold as a group ....

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. This expedited adjudicative proceeding shall include the design and approval of the auction process, the selection of any asset grouping, the approval of any final bids for the generation assets, and any other issues deemed appropriate by the Commission. Any municipalities providing notice to the Commission of their desire to bid on generating assets shall automatically be qualified to bid on any individual asset or asset package. Prior to any binding bidding phases, the auction advisor shall disclose any agreed-upon asset groupings for bidding, and qualified bidders will be given the opportunity to conduct detailed due diligence, ask detailed questions, visit the sites and submit bids in accordance with the process established for the auction as determined by the auction advisor and approved by the Commission.

2015 Settlement IV. B. As the Commission held in Order No. 25,920:

We have reviewed the technical aspects of the 2015 Settlement Agreement and the 2016 Litigation Settlement and find that their provisions properly address the need to manage the divestiture process in an efficient and reasonable manner. We believe that it is wise to defer the questions related to the auction design to a separate proceeding, as informed by the advice to be provided by the Auction Advisor....Furthermore, we find that the manner of retaining an Auction Advisor contemplated by the 2016 Litigation Settlement will ensure a fair, transparent, and effective process.

Order No. 25,920 at 69.

Thus, we defer to our Auction Advisor, JPM, regarding the optimal design and process for the conduct of the sale of the Eversource Generation Facilities. The settlements clearly anticipated that the Auction Advisor would control the process and that the Commission would oversee it to the extent it deems necessary. We will not substitute our judgment as to whether various alternative auction processes would produce better results, because we have selected an Auction Advisor with the experience and judgment to advise us on those issues.

#### **B. Selection of Auction Advisor**

The Litigation Settlement approved in Order 25,920 described the process for selecting an Auction Advisor:

19. The Settling Parties and Staff agree that it is premature to establish a specific auction design prior to the Commission's retention of an auction advisor.

20. The Settling Parties and Staff agree that selection of an expert auction advisor by the Commission should be accomplished through a competitive request for proposals ("RFP") process conducted by the Commission with appropriate input from other parties to this proceeding.

Litigation Settlement at 5. Consistent with the settlements and Order No. 25,920, the Commission conducted a public, transparent and competitive selection process and chose JPM as

its Auction Advisor. The selection of JPM and the contract with JPM were approved by the Governor and Executive Council on September 7, 2016.

The Commission selected JPM because the firm has extensive experience marketing and selling a variety of electric generation assets owned by both regulated and private businesses. That experience, spanning a period of more than 20 years, qualifies JPM to design and conduct a successful sale of the Eversource Generation Assets and gives the Commission a basis for deferring to JPM's expertise, over the expertise of other parties and experts in this docket, with regard to the design and conduct of the auction.

### **C. Role of Auction Advisor and Auction Design**

Pursuant to the 2015 Settlement and Litigation Settlement, the role of the Auction Advisor is to design and conduct the auction of the Generation Facilities with Commission oversight. Although the settlements provide for the settling parties to have input on issues such as design of the auction process, asset groupings and approval of final bids, those issues are to be resolved in expedited adjudicatory proceedings, with the Commission retaining such control as it deems necessary. 2015 Settlement, IV, B. As provided in the settlements, having selected JPM to serve as Auction Advisor, the Commission has asked JPM to recommend an auction design and process for the sale of the Generation Facilities which meets the goals of the settlement agreements.

JPM has described a number of principles that will guide a successful auction of electric generation facilities and will maximize the value received from bidders. The auction process should be transparent with clear rules and procedures. JPM Comments November 4, 2016, at 3. The transaction should foster a sense of competition among the bidders, while maintaining confidentiality with respect to whether and how much other bidders may have bid, to incentivize

each bidder to offer their highest value for the asset or group of assets. *Id.* The auction should be governed by rules that are consistent with industry standards for similar sales so that the rules are familiar to competitive bidders. *Id.* There should be fairness among the bidders so that they are treated equally and judged on consistent standards. *Id.* at 3-4. There should be continuity to the process without changes in the middle of the auction. *Id.* at 4. The pace of the process should be appropriate to allow enough time for due diligence but expeditious enough to maintain market interest. *Id.* Finally, the right amount of data should be available to bidders to allow them to conduct their analysis and submit meaningful bids. *Id.*

Consistent with those guidelines, JPM has provided its advice on the auction design through written comments filed with the Commission on September 12, October 17, and November 4, 2016. JPM has structured the auction process in two rounds, with Round 1 reaching a broad group of potential bidders and Round 2 involving a smaller number of selected bidders who appear to be the best prospects after Round 1. JPM plans to reach out to a broad universe of potential buyers in advance of Round 1 to alert them to the process and allow them to submit their qualifications to participate in the process. JPM September 12, 2016 Comments at 7.

The schedule of the auction as a result of the amended design is as follows. The request for qualification process for Round 1 bidders will begin in mid- to late November 2016. Criteria for selection into Round 1 include ownership and operation of similar facilities, expected sources of financing to purchase the facilities, ownership, governance structure, and operations of the bidder. JPM Comments September 12, 2016, at 7.

Confidentiality agreements will be circulated to qualified Round, 1 bidders and finalized in mid-December 2016 to early January 2017. JPM Comments October 17, 2016 at 1. A CIM

will be circulated to, Round 1 bidders in early January 2017. Preliminary non-binding offers for the facilities will be due in mid- to late February, 2017.

Round 2 bidders will be selected in early to mid-March, allowed access to detailed due diligence material on the facilities through an electronic data room, and given facility tours and meetings with existing Eversource management. Selection criteria for Round 2 bidders include: the bid price, the assets bid on, demonstrated commitment to the transaction, ability to get financing, past market behavior or reputation, and their experience owning and operating similar facilities JPM Comments November 4, 2017 at 4-5.

Round 2 is expected to last approximately 8 weeks, which should allow the bidders time to complete due diligence and to mark up the draft purchase agreement prior to submitting their final binding bids. JPM Comments September 12, 2016, at 8-9. JPM will then prepare a presentation summarizing such proposals and review the results of the auction with the Commission, prior to beginning final negotiations. Depending on the nature of the final proposals received, JPM is likely to recommend that the Commission select more than one party for final negotiations of the transaction contract. This is typical in competitive auction processes as it fosters competition among the final parties and can potentially lead one of them to improve their bid (in terms of price or terms) above what they included in their final proposal. This process also helps to ensure that agreement is reached with one party in the event the other party withdraws or ceases to participate in final negotiations.

#### **D. Ascending Clock Auction Design**

Pursuant to N. H. Code of Admin. R. Puc 203.27 (a)(2), we will grant the request by Berlin and Gorham to take administrative notice of the following pre-filed written testimony in Docket No. DE 14-238: (1) George E. Sansoucy dated July 16, 2015, on behalf of Berlin and

Gorham, (2) Leszek Stachow dated September 18, 2015, and supplemented on January 26, 2016, on behalf of Non-Advocate Staff, and (3) Dr. Peter Cramton dated September 18, 2015, and revised September 28, 2015, on behalf of Non-Advocate Staff.

Our expert, JPM, with experience selling similar generation portfolios, has recommended a broad two round auction process to generate robust interest in the power industry market for the Generation Assets. JPM has indicated that it knows of no sales of similar electric generation portfolios that have been conducted using the ascending clock auction recommended by the Municipalities, and by Mr. Sansoucy, Mr. Stachow, and Dr. Cramton. JPM Comments October 17, 2016, at 3. Although in theory an ascending clock auction can create transparency and fairness, none of the three witnesses filing testimony in DE 14-238 can point to its use in selling assets such as electric generation facilities. Electric generation facilities are highly complex industrial facilities whose value is derived primarily from their ability to generate cash flow in the future. Purchasing such complex assets requires buyers to conduct extensive due diligence on the assets, including operational, financial, economic, environmental, and regulatory due diligence. This due diligence takes significant effort and cost on the part of potential buyers before reaching a point where they can submit a binding proposal. JPM Comments November 4, 2016, at 3.

All of Dr. Cramton's examples of ascending clock auctions are for commodities, electric power or capacity, not for the ownership and operation of generating plants. Commodities are typically uniform, standard, broadly available assets whose price is relatively knowable and thus require minimal buyer due diligence. On the other hand, JPM has given us numerous examples of sales of electric generation plants using the bid process it proposes for the sale of Eversource's

generation facilities. In fact, the Seabrook Nuclear Power Station was successfully sold in 2002 in a similar two round auction process conducted by JPM.

We have reviewed the written testimony and recommendations of the various experts. In examining this evidence, we rely on the experience of each expert and the specific results that each expert can identify with regard to use of the recommended auction design for the sale of electric generating facilities. On that basis, we find that the use of an ascending clock auction in a sale of this type would be without significant, relevant precedent. We take seriously the importance of maximizing the potential value of the Generation Facilities and do not wish to try an experimental approach to this auction design. It is apparent that the broad two round process recommended by JPM is the appropriate auction design for Generation Facilities and we reject the suggestion that we have JPM conduct an ascending clock auction.

#### **E. Third Round of Bidding**

The Municipalities also recommend a third round of bidding after the conclusion of JPM's Round 2 binding bids in which the Municipalities would have an opportunity to bid up specific assets against the highest Round 2 bidders. Alternatively, the Municipalities suggest that if they do not bid, they be allowed to see winning and losing bids at the end of Round 2 so that they can be involved in negotiating the allocation of bid prices among assets. JPM states that creating a third bidding round would add uncertainty and confusion for bidders which would very likely negatively impact the ability of the process to maximize transaction value. JPM Comments October 17, 2016, at 3. Further, according to JPM, allowing the Municipalities access to confidential bidding information would not be consistent with standard practice and would discourage bidding. *Id.* at 3-4. Based on the advice of our Auction Advisor that such activity would likely reduce total transaction value, we reject the suggestion that there be a third

bidding round, or that the Municipalities participate in negotiations with final Round 2 bidders over allocation of value to various assets.

#### **F. Reserve Price**

The Municipalities suggest that the Eversource hydro assets be auctioned with a reserve price set at the level of the 2016 municipal tax assessments of the facilities. Setting a reserve price for this auction is contrary to the terms of the 2015 Settlement, which directs that all assets be sold. If a reserve price for an asset is set above market value, it will increase the likelihood that the asset will not sell. We have no indication of how the municipal tax assessed values of the hydro assets compare to the market values. In fact, the auction will establish the market value of the assets. Further, JPM recommends against setting a reserve price for this auction, because in JPM's experience setting reserve prices is unlikely to help maximize the value of the assets sold. JPM Comments October 17, 2016, at 3. Therefore, we reject the suggestion that the hydro facilities be auctioned with a reserve price.

#### **G. Asset Groupings for Bidding**

The Municipalities request that they be allowed to bid on individual hydro facilities. JPM has designed an auction process which allows the Municipalities and any other bidders to bid on individual assets, therefore the auction design fulfills this request. The Municipalities also suggest that the hydro assets be sold as a separate portfolio. JPM does not recommend selling the hydro facilities separate from the fossil units because JPM does not believe that this approach will maximize value for the portfolio. *Id.* JPM's experience is that certain bidders may find purchasing the portfolio has more value than buying part of the portfolio. JPM's auction design does not force any groupings of assets and instead allows bidders flexibility to bid on all or some of the assets. The winning bidder (or bidders) can then be selected based on whatever

combination of proposed transactions maximizes value. We believe that JPM's recommendation regarding asset groupings is market based and reasonable.

#### **H. Allocation of Purchase Price to Specific Facilities**

The 2015 Settlement Agreement requires that we "fairly allocate among individual assets the sale price of any assets that are sold as a group." 2015 Settlement IV. B. The Municipalities have requested that value be allocated to specific hydro facilities. JPM has provided in its amended auction process that all Round 1 and Round 2 bidders must allocate bid prices to hydro facilities in order to participate in the auction. JPM Comments October 17, 2016, at 2. This auction process accommodates the Municipalities' request and is consistent with the settlement requirements.

#### **I. Lack of Criteria for Bidder Entry into Second Round**

Sierra Club argues that there is a lack of specificity concerning the criteria used by JPM in selecting Round 1 bidders to enter into Round 2. Sierra Club claims that this lack of clarity will depress bidder participation and result in lower sale results. JPM indicated in its final comments that criteria for entry into Round 2 include: the bid price, the assets bid on, demonstrated commitment to the transaction, ability to get financing, past market behavior or reputation, and their experience owning and operating similar facilities. JPM Comments November 4, 2017 at 4-5. We find such criteria sufficiently detailed to give bidders notice of the factors considered by JPM in allowing entry into Round 2.

#### **J. Failed Auction**

CLF asks that the Commission eliminate the option of re-auctioning an asset that doesn't sell at auction and instead require retirement of that asset. CLF claims that if bidders know that

an asset will be re-offered if it doesn't sell they are not likely to bid on it in the first auction, or they are likely to bid lower. The 2015 Settlement provides,

Should generation assets be left unsold as a result of the auction process or as a result of the Commission not approving a sale, the Commission in consultation with the auction advisor shall initiate a new divestiture process for such unsold assets no later than ninety days from the date of the Commission's order approving the sale of the other generating assets or direct PSNH to pursue retirement of such unsold asset in an economic manner ....

2015 Settlement IV G. We will follow the settling parties' directive and will determine, in consultation with JPM, what course to pursue and what information we will require from Eversource, if and when we encounter a failed auction. At this time, we are focused on approving an auction design and process that will maximize the value of the portfolio and result in a sale of all the Eversource generation facilities.

#### **K. Delay of Sale**

The Municipalities suggest a number of later dates for beginning various stages of the auction. They argue that the auction should not start until after the sale of generation assets owned by TransCanada is completed. We note that TransCanada has announced the sale in the trade press and so that request is already met. Further, the Municipalities request that Round 1 of the sale not start until after May 1, 2017, or alternatively that Round 2 not start until May 1, 2017. Finally, the Municipalities suggest that the sale be further delayed so that the final binding bids are due in July 2017. All of those requests for delay are based on the Municipalities' claim that the issues of approving a bid for one of the hydro facilities are too complex to be part of the annual town meeting, to be held on March 14, 2017, for the three towns involved. As a result, all three towns assert that they must hold special meetings and that the votes on bidding on the acquisition of a generation asset cannot occur before July 2017.

Under the amended auction process, in order to accommodate the Municipalities' participation, JPM has extended the process so that final binding bids are due in early to mid-May 2017. JPM has advised us that the current financing environment is favorable for asset sales like the sale of the Generation Assets. JPM Comments November 4, 2016, at 4. JPM has further advised us that once we move the sale date out beyond May 2017, the risk of the financial environment changing increases, and for that reason JPM does not recommend further delay if we are to maximize total portfolio value for these assets. *Id.* To the extent we must balance the risk of delay and diminution in overall transaction value against the particular needs of the Municipalities, the 2015 Settlement is clear that maximizing value must be our primary objective. Therefore, we will not require additional delay of the auction process, beyond the two months proposed by JPM under the amended auction process, to further accommodate the Municipalities' requests for more time.

#### **L. Firm Bids and Municipal Bids**

The Municipalities request that we rule that their bids, if they are the highest but come without any financing commitment, be selected as winning bids even though the Municipalities will then have to take the bid amount to the voters, a process which will take two to three months. The Municipalities take the position that RSA 38:13 prevents them from offering a binding bid with financing because they cannot know the price to be paid for the plant until their bid is accepted as the final winning bid.

RSA 38:13 provides in part:

Within 90 days of *the final determination of the price to be paid* for the plant and property to be acquired ..., the municipality shall decide whether or not to acquire the plant and property at such price by a vote to issue bonds and notes pursuant to RSA 33-B as may be necessary and expedient for the purpose of defraying the

cost of purchasing or taking the plant, property, or facilities of the utility which the municipality may thus acquire. (emphasis added)

While we understand that RSA 38 is designed for a slightly different process where the municipality and the utility may reach an agreement on price, or alternatively the Commission may determine a price for the taking, the auction process requires a different interpretation of the final price language in RSA 38:13. An alternative reasonable interpretation of that language in an auction process requiring a fully financed bid, is that the bid amount is the final determination of the price to be paid. That final price is subject to the condition that it be the highest bid, but that does not negate the fact that when the bid is submitted the price is final. In this auction, if the municipal bid in Round 2 is accepted, the municipality will be obligated to purchase at the price it bid. Given this interpretation, the governing body of a municipality can approve a final bid amount pursuant to RSA 38:8 and then the citizens may vote on financing that bid, pursuant to RSA 38:13 and RSA 33-B, prior to submitting the bid as a binding bid in the auction.

JPM has explained the reasons for requiring financed and binding bids in Round 2 of the auction. JPM Comments November 4, 2016, at 5. It is important that the process end promptly and that winners be selected so that parties expending substantial resources on due diligence have some reasonable chance of being selected as the final winning bid. *Id.* Requiring all bidders to submit final binding bids with as little contingency as possible is more likely to maximize the price paid for the assets and treats all final bidders equally. *Id.* at 6.

Moreover, given the importance of final binding bids not being subject to financing contingencies in any auction, it is difficult to understand how any of the various alternative auction processes proposed by the Municipalities would work if they are not able to submit bids with financing approval. Even if the Commission were to direct an ascending clock auction, as

suggested by the Municipalities, the bidders would need to be similarly situated so that the winning bid could be accepted and the transaction closed. We cannot design an auction process that accomplishes fairness and transparency but allows one group of bidders to bid with a significant contingency to displace other qualified non-contingent bids. JPM has advised us that such an arrangement would be very unusual, would create uncertainty around the process, and would therefore discourage bidders from participation, which in turn would not be conducive to maximizing value. *Id.* at 3 and 6.

#### **M. Timing Issues for the Municipalities**

The Municipalities argue that they cannot make a decision to bid in the auction in the time frame provided, even under the amended schedule contained in the JPM October 17, 2016, comments. The Municipalities argue that they do not have sufficient resources to analyze data, educate selectmen, and educate citizens in time to present the acquisition of the Eversource facilities for a vote at this year's annual meeting to be held on March 14, 2017.<sup>5</sup> Even if we assume that these arguments are correct, the Towns are not prevented from hiring outside experts and consultants to assist in the process leading up to annual meeting. Further, they have not asserted that it is legally impossible for the issue of purchasing the generation facilities to be presented at their respective annual meetings.

JPM has made several changes to the auction process to assist the Municipalities. First JPM agreed to give the Municipalities early access to the electronic data room relating to the hydro assets they host, in November 2016, as soon as confidentiality agreements are signed. JPM also agreed to provide the Municipalities the independent engineering report and the

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<sup>5</sup> The City of Berlin does not claim that it has timing problems regarding an annual meeting because it is a City with more flexibility in making decisions. These arguments are made by the Towns of Bristol, Gorham and New Hampton.

independent market report as soon as those reports are available, estimated to be in November 2016. Other bidders will not have access to the electronic data room until mid-March and will not have access to the independent engineering and market reports until early January 2017 when the CIM is distributed. According to JPM, this early access to data and reports, although treating the Municipalities differently from other bidders, will not materially interfere with the auction process. JPM Comments November 4, 2016, at 6.

We will require a revision to the proposed auction process to further accommodate the Municipalities. We direct JPM and Eversource to make the portions of the CIM relating to the hydro assets that the Municipalities host, available in November 2016 when the independent engineering and market reports are available. This early access to data on the generating facilities will allow the Municipalities the months of December and January to analyze the data and to determine whether they wish to proceed with a bid in the upcoming auction. New Hampton must post a warrant for this year's annual meeting by January 30, 2017, Gorham and Bristol must post their warrant by February 27, 2017. Berlin Comments September 30, 2016, at 6.

One additional accommodation that JPM has made for the Municipalities is to exempt them from any requirement to make an indicative bid in Round 1 in the mid- to late February time frame. JPM has offered to let the Municipalities give an indication of value in Round 1 and has agreed to give the Municipalities feedback, on a confidential basis, concerning how their value relates to the other indicative bids. JPM has stated that this accommodation may be made to the Municipalities without negatively impacting the auction process. JPM Comments November 4, 2016, at 6.

Given these accommodations, we believe that the Municipalities have sufficient time to give the legal notice they are required in order to vote to bid on their respective assets, and to vote to finance the bid with a municipal bond under RSA 33-C. While the Towns of Gorham, Bristol, and New Hampton have claimed that they are not able to approve bids in the time offered, based on our understanding of the comments filed and the statutes cited, we believe it is legally possible for all three towns, to go through the process to approve a fully financed bid by mid-May 2017. In order to meet this schedule, the Towns may need to do more in preparation for their annual meetings than they had anticipated, so that they can present the decision to acquire the hydro assets to their voters at their annual meetings in March 2017.

#### **N. Process Required by Settlement for Auction Design**

The Municipalities ask that we provide for additional data requests, technical sessions, testimony, and hearings, to determine what auction design will work best to maximize the value of the Eversource portfolio. We decline to have the parties in this proceeding engage in further process for several reasons. We have a record in this docket sufficient to decide the important issues of auction design. Based on the advice of our Auction Advisor, JPM, we need to have this auction process continue at a commercially reasonable pace in order to generate and maintain market interest and to maximize the total transaction value. Finally, we are required by the terms of the settlements to expedite the adjudicated issues concerning the auction design.

Our process thus far conforms to the requirements of RSA 541-A:31 and all parties have had an opportunity to present two rounds of comments on auction design, to adopt prior written testimony on auction design, and to ask questions of JPM, both at the prehearing conference and in writing following the pre-hearing conference. Parties have presented their positions and concerns to the Commission, both orally at the prehearing conference and in writing. We believe

this process is fair and adequate in order for the Commission to rule on an appropriate auction design. We have afforded notice and an opportunity to be heard on issues of auction design and we note that administrative agencies are granted some flexibility in fashioning appropriate procedures for adjudications. *See Mathews v. Eldridge*, 424 U.S. 319, 334 (1976).

**O. Subsequent Issues Arising During Auction Process**

The auction design suggested by JPM moves the process from today's date through the conclusion of the second round bids without any specific Commission approval required. Given JPM's expertise in conducting similar auctions, and the clear criteria that JPM will apply to its decision as to which bidders enter Round 1 and which bidders will move from Round 1 to Round 2, we believe that it is appropriate to allow the process to proceed without further Commission approval. We direct Staff to stay involved with the process and to let us know of any problems that may emerge and need our attention.

During the auction process, we ask the parties and Staff to begin discussions with JPM about the process needed for our review and approval of final bids at the end of the process in May 2017. The final review should be designed to allow expedited consideration and approval of bids with participation of intervenors, and with minimal disturbance to the final acceptance of bids and closing on the purchases. If the parties are unable to agree on and recommend a process, we will open a proceeding as Round 2 gets underway to establish an appropriate process for our approval in the May 2017 timeframe.

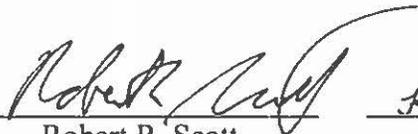
**Based upon the foregoing, it is hereby**

**ORDERED**, that the auction design recommended by JPM as described and modified herein is **APPROVED**.

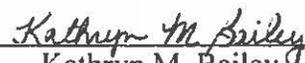
By order of the Public Utilities Commission of New Hampshire this tenth day of  
November, 2016.



Martin P. Honigberg  
Chairman

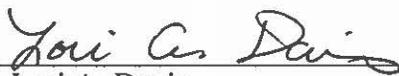


Robert R. Scott  
Commissioner

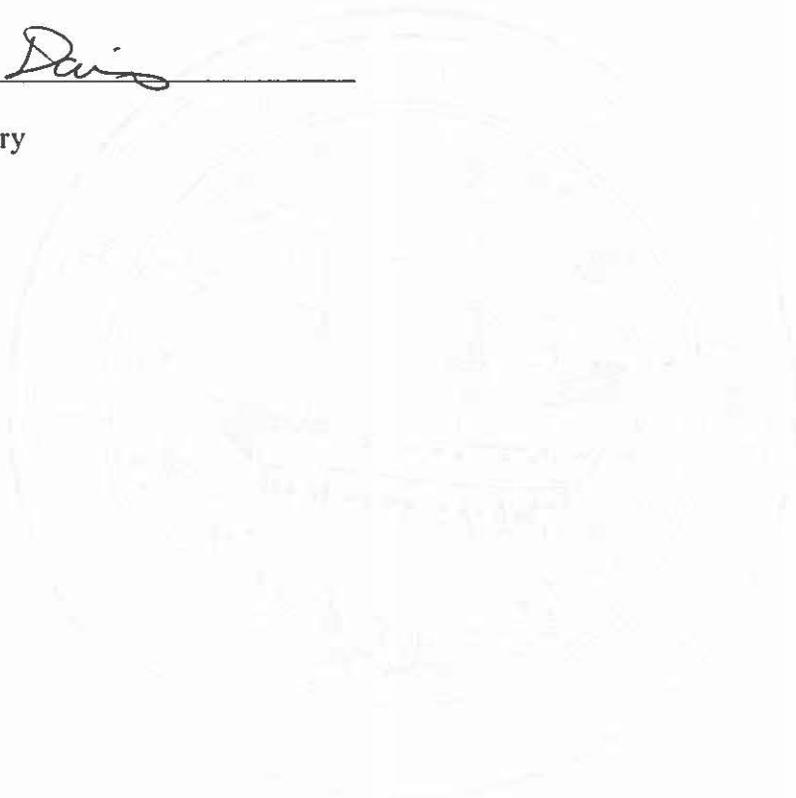


Kathryn M. Bailey  
Commissioner

Attested by:



Lori A. Davis  
Assistant Secretary



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Docket #: 16-817-1 Printed: November 10, 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  
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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.