

THE STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

DE 17-124

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

Auction of Electric Generation Facilities

MUNICIPAL INTERVENORS' JOINT MOTION
FOR REHEARING AND STAY

NOW COME the City of Berlin ("**Berlin**"), the Town of New Hampton ("**New Hampton**"), and the Town of Bristol ("**Bristol**") (collectively referenced herein as "**Municipal Intervenors**"), intervenors in the above-captioned Docket ("**the Auction Review Docket**"), and file this Joint Motion for Rehearing and Stay with regard to this Commission's Order on Confidential Treatment of Auction Data, No. 26,057 ("**Order**"), concerning bidder information, related documents, and J.P. Morgan Securities, LLC ("**JPM**")'s analysis thereof. The Municipal Intervenors further request that this Commission stay its Order pending the Commission's decision on this Motion for Rehearing and any appeals to the New Hampshire Supreme Court therefrom. In support hereof the Municipal Intervenors state as follows:

I. HISTORY AND INTRODUCTION

1. Municipal Intervenors Berlin and New Hampton were granted full intervenor status in the Auction Review Docket at the Commission's Pre-Hearing Conference held on August 18, 2017. Bristol was given full intervenor status by the Order.

2. This Auction Review Docket springs from the Commission's prior Docket DE 14-238 ("**the Divestiture Docket**")¹, which concerned whether PSNH should divest its

¹ Berlin was granted intervenor status in the Divestiture Docket.

generation assets, and Docket DE 16-817 ("**the Auction Docket**")², which concerned the auction procedures used to effectuate the required divestiture. This Auction Review Docket was opened to establish the procedures for the review and possible approval of a final bid, to include the treatment of Confidential Documents in this Docket. See Order of Notice, DE 17-124.

3. In opening the Divestiture Docket, the Commission identified one of the issues as "the status of the 1999 restructuring settlement agreement with PSNH in Docket No. DE 99-099, and its application to issues in this docket." The settlement agreement from Docket No. DE 99-099 contains, among other things, a preference for those municipalities in which PSNH hydro-electric generating facilities were located ("Host Communities"), to include the Municipal Intervenors, with respect to the acquisition of PSNH's hydro-electric generating facilities. This preference was based in part on the acknowledgement that the Host Communities have a special interest in the preservation of the value of the hydro-electric generating facilities for tax base purposes.

4. During the Divestiture Docket, Berlin actively participated in the negotiations that resulted in the 2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement dated June 10, 2015 ("**the 2015 Agreement**"). Berlin also actively participated in the negotiations resulting in the Amendment to the 2015 Agreement dated January 26, 2016 ("**the 2016 Amendment**") and the Partial Litigation Settlement also dated January 26, 2016 (the three agreements collectively referenced as "**the Divestiture Agreements**").³

5. The Commission approved the Settlement Agreement in the Divestiture Docket on July 1, 2016 through its Order No. 25920.

² Each of the Municipal Intervenors was granted intervenor status in the Auction Docket.

³ New Hampton and Bristol were not signatories to the 2015 Agreement and were thus not considered a "Settling Party" under the 2016 Amendment or Partial Litigation Settlement.

6. Pursuant to Section IV(B) of the 2015 Agreement, as amended by the 2016 Amendment, “the selection of any asset groups, the approval of any final bids for the generation assets, and any other issues deemed appropriate by the Commission” were to be subject to an “expedited adjudicatory proceeding.” See also Section X of the 2015 Settlement Agreement (requesting that “the Commission open a docket with appropriate ongoing proceedings to address the administration of the divestiture auction”).

7. The Commission opened this Auction Review Docket in accordance with the 2015 Settlement Agreement, the purpose of which is to conduct an adjudicatory proceeding to review the auction and approve JPM’s recommended bid(s).

8. On September 19, 2017, without a motion from any party,⁴ this Commission issued the Order which determined that the following information will be subject to confidential treatment: (a) the Confidential Information Memorandum; (b) all JPM and bidder communications; (c) bidder offers; and (d) bidder identities. Order at 7-10. The Commission justified the confidential treatment of this information by conducting a cursory analysis of the public’s interest in disclosure and noting such “privacy interests” as JPM’s future business dealings in subsequent auctions, Eversource’s interest in maintaining confidentiality of information related to its facilities, the need for robust auction participation, and the risks of exposing business strategies of losing bidders. Consequently, the Commission’s Order states that the Municipal Intervenors must sign a non-disclosure agreement, which will allow them access to redacted copies of documents containing confidential information but not the ability to retain copies of these documents for use during technical sessions, cross-examination,

⁴ The Parties were given an opportunity to comment on Commission’s protective, confidential treatment of undisclosed documents, and Berlin and New Hampshire submitted comments in objection. Berlin and New Hampton’s comments are hereby incorporated by reference as if fully set forth herein.

preparation of pre-filed testimony, use as exhibits in any adjudicatory hearings, or submission of pleadings. Order at 7-11.

9. For the reasons set forth in detail below, the Municipal Intervenors request rehearing on the Order with regard to the Commission's rulings that: (a) the identities, bid amounts, and allocations of losing bidders should be treated as confidential information subject to a Non-Disclosure Agreement; (b) the identities of losing bidders will be redacted and not ascertainable even upon execution of a Non-Disclosure Agreement; and (c) the Municipal Intervenors cannot copy confidential documents or use copies of the confidential documents during technical sessions, preparation of pre-filed testimony, hearings on the merits, or other portions of this adjudicatory hearing. The Municipal Intervenors further request a rehearing with regard to the absence of any sunset provision concerning the applicability of the Order or any non-disclosure agreement.

II. STANDARD OF REVIEW

10. Pursuant to RSA 541:4, a motion for rehearing must "set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable." "Pursuant to RSA 541:3, the Commission may grant a rehearing when the motion states good reason for such relief." See In re Public Service Company of New Hampshire, 2009 N.H. PUC LEXIS 52, *11-12 (Order No. 24,982) (June 25, 2009). "Good reason may be shown by identifying specific matters that were either overlooked or mistakenly conceived by the deciding tribunal." Id.

11. "Upon the filing of such motion for rehearing, the [C]ommission shall within ten days either grant or deny the same, or suspend the order or decision complained of pending

further consideration, and any order of suspension may be upon such terms and conditions as the commission may prescribe.” RSA 541:5 (2007).

III. ARGUMENT

12. The Commission’s Order is unlawful and unreasonable because the Commission misapplied RSA 91-A when the Commission determined that the purported privacy interests invoked by JPM was sufficiently compelling to outweigh the significant public interest in the disclosure of various bidder information.

13. Further, the Commission’s Order is unlawful and unreasonable because it is contrary to Part I, Article 8 of the New Hampshire Constitution, requiring openness of government records, which necessarily includes records involved in administrative adjudications.

14. The Commission’s Order is also unlawful and unreasonable because the limitations that the Commission has placed on the confidential information, specifically precluding the Municipal Intervenors from copying confidential information (even after signing a non-disclosure agreement) or using those copies during the adjudicatory process detrimentally interferes with the Municipal Intervenors’ ability to participate in this Auction Review Docket, and, thereby violates the Municipal Intervenors’ due process rights and the spirit and intent of the approved Divestiture Agreements.

a. The Commission Failed to Undertake an Adequate Analysis in the Commission’s Determination that Losing Bidder Information is Exempt from Public Disclosure Pursuant to RSA 91-A.

15. The Commission’s application of RSA 91-A:5 with regard to the determination of confidential information that is exempt from disclosure is unjust and unreasonable and fails to afford the proper weight toward disclosure of information that has been mandated by the

Supreme Court. Further, the Commission's application of RSA 91-A:5 gives credence to privacy interests that are speculative, irrelevant, and otherwise non-compelling.

16. Pursuant to Rule Puc 203.08, the Commission "shall issue a protective order providing for the confidential treatment of one or more documents upon a finding that the document or documents are entitled to such treatment pursuant to RSA 91-A:5, or other applicable law." RSA 91-A:5 exempts from disclosure:

Records pertaining to internal personnel practices; confidential, commercial, or financial information; test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examinations; and personnel, medical, welfare, library user, videotape sale or rental, and other files whose disclosure would constitute invasion of privacy. Without otherwise compromising the confidentiality of the files, nothing in this paragraph shall prohibit a public body or agency from releasing information relative to health or safety from investigative files on a limited basis to persons whose health or safety may be affected.

17. When the Legislature enacted the Right-to-Know Law it stated that "[o]penness in the conduct of public business is essential to democratic society" and that the purpose of the Law was "to ensure both the greatest possible public access to the actions, discussion, and records of all public bodies and their accountability to the people." Union Leader Corp. v. City of Nashua, 141 N.H. 473, 476 (1996). Thus, "[w]hen a public entity seeks to avoid disclosure of material under the Right-to-Know Law, that entity bears the heavy burden to shift the balance toward non-disclosure." Id. (emphasis added). The Supreme Court mandates that the Right-to-Know Law be applied "in order to best effect the statutory and constitutional objective of facilitating access to all public documents" and, therefore, the law is to be broadly construed favoring disclosure with exemptions to disclosure construed restrictively. See Union Leader Corp. v. Nashua Hous. Fin. Auth., 142 N.H. 540, 546 (1997).

18. In determining whether information should not be disclosed, the Supreme Court has set forth a three part test:

First, we evaluate whether there is a privacy interest at stake that would be invaded by the disclosure. If no privacy interest is at stake, the Right-to-Know Law mandates disclosure.

Next, we assess the public's interest in disclosure. Disclosure of the requested information should inform the public about the conduct and activities of their government. Finally, we balance the public interest in disclosure against the government interest in nondisclosure and the individual's privacy interest in nondisclosure.

See Union Leader Corp. v. N.H. Retirement Sys., 162 N.H. 673, 679 (2011).

- i. The Commission's Determination of Privacy Interests is Unlawful and Unreasonable.

19. Turning to the first step in the analysis, the PUC identified four privacy interests at stake in this Auction Review Docket: (1) the need for robust auction participation; (2) JPM's future business dealings in subsequent auctions in undesignated jurisdictions; (3) Eversource's interest in maintaining confidentiality of information related to its facilities; and (4) the risks of exposing business strategies of losing bidders. None of these interests are sufficiently compelling to justify the extreme protections instituted by the Commission in this Auction Review Docket.

20. First, with regard to the purported privacy interest implicated by the need to maximize bids for these assets, the notion that confidentiality is paramount for a proper and healthy bidding environment is directly contradicted by the timing of the bid process and the production of this Order. The final bid submissions associated with this sale were complete prior to the Commission issuing its Order, meaning that bidders participated and provided this purportedly sensitive information without any representations from this Commission that public access to such information would be restricted. Certainly if this information were of such a

sensitive nature, JPM would have sought, and/or bidders would have required, a protective order from this Commission prior to tendering final bid submissions. To say that the absence of a confidentiality order will somehow impact auction participation now, after final, binding bids have been submitted, is without logic or reason.

21. The Commission stated that the absence of a protective order prior to submission of a bid is not determinative here because of JPM's representation that such information is "customarily" treated as confidential. This argument, even if true, ignores that, under RSA Chapter 91-A, "the emphasis should be placed on the potential harm that will result from disclosure, rather than simply promises of confidentiality, or whether the information has customarily been regarded as confidential." See Union Leader Corp. v. New Hampshire Hous. Fin. Auth., 142 N.H. at 554. That bidders did not require a non-disclosure agreement and that JPM did not seek confidential treatment until after bids were tendered is telling that there is no potential harm associated with this information.

22. Turning to the Commissions assertions that JPM's privacy interests favor non-disclosure, there is no basis in the law for consideration of JPM's future business prospects (presumably as an auction advisor in other jurisdictions) as a basis for withholding information from the public. JPM was hired to assist a governmental body with regard to the legislatively mandated divestiture of a public utility's assets pursuant to a public proceeding subject to that governmental body's rules of procedure; and for that service, JPM is to be paid a multi-million dollar fee. Consequently, it is difficult to see how such a vendor has any privacy concerns in such a proceeding. Assuming arguendo that a vendor maintains a privacy concern when brought into such a proceeding, the reasons stated by same do not rise to the level of "a sufficiently compelling interest." When this process began, all parties were well aware that the subject

matter of this sale involved generation assets of a publicly regulated company and that said auction was being conducted under the supervision and control of the New Hampshire Public Utilities Commission. Therefore, JPM accepted this assignment as auction advisor knowing that some or all of this process may be subject to public disclosure. If JPM truly had such concerns then, this matter should have been addressed at the beginning of the process rather than, making this an issue at nearly the end of the process.

23. Moreover, the concerns raised by the Commission are capable of being addressed by JPM without limiting disclosure. If bidders are so concerned about the disclosure of information, then those bidders can require JPM and others to execute a non-disclosure agreement prior to bid submission. To say that disclosure of this information in this limited proceeding sufficiently invokes JPM's future business interests going forward, particularly when JPM can address treatment of information in those undesignated future projects in other undisclosed jurisdictions, is so speculative as to fall well short of the interests sufficient to avoid disclosure. In short, JPM's concerns are tenuous at best and not the proper subject of consideration in an RSA 91-A analysis.

24. The Commission also cites to the privacy interest of Eversource, finding that "Eversource has an interest in protecting the business details of its generation fleet, because it must, until that fleet is sold, operate those facilities in a competitive electricity market." The statement is made without any background or supporting information as to why, how or what exactly could befall Eversource if such information were made publicly available. As noted in the Order, Eversource is selling all its generation assets and will have no further involvement in that aspect of the electricity market (at least, for the foreseeable future). The potential harm to Eversource is difficult to ascertain given the limited exposure that Eversource will have given

that the sale of Eversource's assets is anticipated to occur within a relatively short timeframe from the Commission's approval of said sale.

25. Further, the Municipal Intervenors have previously executed Confidentiality Agreements and have had access to confidential documents in the Virtual Data Room and have been able to review and print this information for analytical purposes since before the first round of bidding, without any complaint or allegation of mishandling. The Municipal Intervenors have no objection to signing a Confidentiality Agreement or to destroying copies of confidential documents at the conclusion of this auction approval process. However, inexplicably, the Commission's order effectively states that the Municipal Intervenors now cannot be trusted with copies of confidential documents and, instead, must review these documents at the Commission's office, during limited hours, under the oversight and supervision of the Commission.

26. Lastly, the Commission alludes to the interests of potential purchasers and the revelation of business strategies. At this point, there are no identifiable parties from which there can be a plausible assessment of their interests in maintaining confidentiality. As such, the reference to these undetermined parties is so theoretical that there is no place for such speculation within this evaluation. Moreover, to preclude the Municipal Intervenors from fully accessing the confidential information for this purpose ignores that the Municipal Intervenors are not competitors; the Municipal Intervenors have no means by which to exploit any business advantage that could possibly be gleaned from bidder identities, bids, or allocations. The Municipal Intervenors have been involved in numerous regulatory matters involving public utilities, all involving purportedly sensitive or proprietary information, and the Municipal Intervenors have frequently signed non-disclosure agreements to safeguard that information,

obtained copies of information, used those documents for proper purposes, and maintained confidentiality. It is baffling that the Municipal Intervenors, all of whom are extensions of the State itself, cannot be trusted with this information.

27. In short, the Commission's determination of privacy interests is unsupported by the law, the facts, the timeline of this matter, or reality.

- ii. The Commission's Determination of the Public's Interest in Disclosure is Unlawful and Unreasonable.

28. The Commission next erred with regard to the Commission's determination of the public's interests in disclosure because the Commission provides only a cursory analysis of the public's interests.

29. The next step in this process of evaluating if documents are to be kept confidential is to determine the level of public interest in said governmental records. See Union Leader Corp. v. N.H. Retirement Sys., 162 N.H. at 679. Here, to fully analyze the public's interest in disclosure of this information, it is important to understand the circumstances that bring rise to this proceeding. The sale of Eversource's generation assets is a result of an agreement between the State of New Hampshire and Eversource to address the overruns associated with the installation of the "Scrubber" at the Merrimack Station in Bow. The agreement is premised upon Eversource attempting to recover said costs by and through the sale of its generation assets before being allowed to include the costs of the Scrubber as a stranded cost to be paid by the rate payers of New Hampshire. The results and approval of the sale of Eversource's assets will carry a major impact on electrical rates and the burden to be carried by rate payers, which is likely to reach into the hundreds of millions of dollars. The sale of these assets will further impact the tax bases of various Host Communities, which will have a direct impact on the tax rates for many of these Host Communities. The fact that this sale impacts essentially every rate payer serviced by

Eversource (the State's largest utility company) and taxpayers in several communities, including the Municipal Intervenors, invariably amounts to a substantial public interest in the process and outcome. Despite this, the Commission chose to only dedicate three sentences of its order to this prong of the test and ultimately determined that "the public has some interest in disclosure of the information."

30. The Commission has only engaged in a superficial public interests analysis, one that cannot withstand any scrutiny and acts as a disservice to the ratepayers and citizens of the State of New Hampshire.

iii. The Commission's Balancing Test Unlawfully and Unreasonably Applies RSA 91-A.

31. The Commission's RSA 91-A analysis is further unlawful and unreasonable because the Commission has completely skewed the balancing of private and public interests. See Union Leader Corp. v. N.H. Retirement Sys., 162 N.H. at 679. The Commission has ignored that the starting presumption in any 91-A analysis is in favor of disclosure and that to withhold any information, there must be a compelling interest for each piece of information.

32. Here, the Commission's balancing test does not strike the proper balance and does not pursue the least restrictive means available to protect the purported privacy interests. For one, the restrictions on access and use of information, specifically, limiting the ability to copy documents, does not protect this purportedly sensitive information; after all, the confidential information is still being disclosed. Rather, it only serves to hobble the Municipal Intervenors' full and fair participation in this adjudicatory proceeding. Additionally, the absence of any sunset provision with regard to this Commission's Order or the Non-Disclosure Agreement will protect this information for far longer than the privacy interests at stake will be invoked. See Union Leader Corp. v. New Hampshire Hous. Fin. Auth., 142 N.H. at 555 (declining to exempt

document from disclosure when “negative competitive impact of disclosing market information . . . is blunted by time”); cf. State v. Kibby, ___ N.H. ___ at *10 (decided August 15, 2017) (noting that records will remain sealed only so long as privacy interests actually outweigh public’s right to disclosure); cf. also RSA 91-A:4, III (stating that sealed minutes of non-public sessions of governmental bodies will remain sealed until circumstances giving rise to sealing of minutes no longer apply).

33. The Commission’s 91-A analysis places too great an emphasis on speculative and unsupported privacy interests, gives very limited consideration to the public interests applicable in this case, misapplies the balancing act to be performed, and imposes restrictions upon the confidential information that goes far beyond what is necessary to serve the purported privacy interests. The Commission should reconsider its position and allow the Municipal Intervenors to have full access to all bidder names, bid numbers, and bid allocations, allow copies to be made and used during the adjudicatory proceedings, and limit the applicability of the non-disclosure agreement and the Commission’s order to a set date, or, alternatively, permit the Municipal Intervenors to seek to have the records unsealed at a later point in time.

b. The Commission’s Order is Contrary to Part I, Article 8 of the New Hampshire Constitution.

34. The Commission’s analysis is defective because it fails to appreciate that the Commission is acting in a quasi-judicial capacity, and, as such, public availability of information is constitutionally guaranteed.

35. Part I, Article 8 of the State Constitution provides:

All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable and responsive. To that end, the public’s right of access to governmental proceedings and records shall not be unreasonably restricted.

Part I Article 8 of the State Constitution in “unequivocal language provides for the openness, accessibility, accountability, and responsiveness of government.” See In re Keene Sentinel, 136 N.H. 121, 128 (1992). As this Supreme Court has said in the context of judicial proceedings, “[t]he right to open courtrooms and access to court records related to court proceedings is firmly supported by New Hampshire practice and common law principles, Part I Article 8 and 22 of our State Constitution and [the Supreme Court’s] guidelines for public access.” In re Union Leader Corp., 147 N.H. 603, 604 (2002).

36. When a party seeks to seal a proceeding and the court records associated with a judicial proceeding, the adjudicator, like under RSA 91-A, must balance the interests of the party seeking restricting access with the public’s right to access. Cf. In re Keene Sentinel, 136 N.H. at 129; Kibby, ___ N.H. ___ at *10. To prevail in preventing the public from accessing a court proceeding, the court must weigh those privacy interests that are “articulated [by the party seeking non-disclosure] with specificity.” Cf. id. Before ordering a proceeding or a document sealed, the adjudicator should determine that no reasonable alternative to nondisclosure exists, and the court must use the least restrictive means available to accomplish the purpose to be achieved. See id. At all times, the burden is upon the party seeking non-disclosure to justify sealing the proceedings and a presumption exists against impoundment. Id.

37. As is stated above, the Commission did not properly weigh the private and public interests associated with the disclosure of this information and, further, imposed restrictions that are beyond what is necessary to safeguard that information. The Commission must grant rehearing on its Order.

c. The Municipal Intervenors Cannot Fully and Fairly Exercise their Right to Participate in the Adjudicatory Process due to the Commission's Order

38. The Commissioner's Order is unlawful and unreasonable because the Order will prohibit the Municipal Intervenors from meaningfully participating in the adjudicatory process for the review and approval of JPM's selected bid. The Commission's Order will preclude the Municipal Intervenors' meaningful participation because it will significantly hamper their ability to cross-examine witnesses or prepare pre-filed testimony and puts the Municipal Intervenors at a considerable disadvantage with regard to pertinent information to be used during this adjudicatory process.

39. As stated above, the 2015 Agreement, as amended by the 2016 Amendment, this Auction Review Docket is to be "subject to the additional expedited adjudicatory proceedings requested in Section X" of the 2015 Agreement. The Municipal Intervenors, having full intervenor status, are entitled to full participation in an adjudicatory proceeding concerning the approval of the bidder chosen by JPM as the winning bidder.

40. The requirements of an adjudicative proceeding are set forth in Part 203 of the Administrative Rules of the Commission, which include the ability to propound discovery, to present and rebut evidence and arguments, and to cross-examine witnesses, as well as the requirement that the Commission's decisions be based on findings of fact grounded on evidence submitted upon oath and affirmation. See N.H. CODE OF ADMIN. R. Puc. 203.09, 203.23, 203.24; see also RSA 541:31; RSA 541-A:33.

41. The Commission ordered that the confidential information regarding non-winning bidders and non-winning bids be available to the Municipal Intervenors for review only. Order at 11. The review is only available if the Municipal Intervenors agree to the terms of and sign a non-disclosure agreement which prohibits the disclosure of and limits the use of the confidential

information contained in the documents. The four page, single spaced non-disclosure agreement, which is attached to the Order, is extremely comprehensive, restricting the use of confidential information to the evaluation of the auction in the proceedings in this Docket, and, at the request of PSNH, JPM or the Commission, requiring the return or destruction of all confidential documents or any documents prepared from those documents. Non-Disclosure Agreement at 2. Therefore, even if the Municipal Intervenors were to sign this comprehensive and restrictive non-disclosure agreement, the Municipal Intervenors are still prohibited from having copies of confidential documents to both prepare for and participate in the adjudicatory procedures, thereby severely restricting the Municipal Intervenors' ability to meaningfully exercise their right to participate.

42. The Order further prohibits the Municipal Intervenors from using copies of the confidential documents while examining witnesses. While the Commission, JPM and Eversource will have copies of the documents, the Municipal Intervenors will not. Further, JPM's and PSNH's witnesses are allowed to have copies of the confidential documents during cross examination; the Municipal Intervenors are prohibited from having copies of confidential documents during cross-examination, and their witness also are prohibited from having copies. Order at 11. Therefore, an attorney for a Municipal Intervenor may ask a question based on notes taken of the confidential documents, JPM's and PSNH's witnesses may respond by reference to a specific portion of a confidential document, which was not relevant to the issues presented at the time the attorney's notes were taken, and the attorney will be unable to effectively follow-up because the referenced confidential document will not be available to him.

43. In short, the tribunal and one side will have access to and the use of specified and relevant documents and the other side will not. This result is the equivalent of a trial court

ordering that plaintiffs may copy and make full use at trial of documents that are entered into evidence, to include providing their own witnesses with copies of the evidence, but the defendants may only take notes of the evidence, may not refer to the actual evidence during cross examination, and may not provide their witnesses copies of the evidence. No court would countenance this disparate treatment of litigants, and this system is detrimental to the rights and interests of the Municipal Intervenors and their citizens who are both taxpayers and frequently ratepayers of Eversource.

44. Moreover, the Order requires the Municipal Intervenors to make a decision, at the time the confidential documents are reviewed, as to what information contained in the documents is necessary, or may become necessary, for preparation for and participation in the adjudicatory process, and the scope of detail in the notes that is or may become required. This places an unreasonable and completely unnecessary burden on the Municipal Intervenors in both their preparation for and participation in the process to which they are entitled to full and fair participation. While attorneys often rely on notes in preparing for and participating in trial, they do not rely on their notes alone without having actual documents at hand. The attorneys and any experts for the Municipal Intervenors will have signed a non-disclosure agreement so that the confidential information is protected from disclosure. There are likely to be hundreds, if not thousands, of documents with very detailed information. There is no basis for prohibiting the attorneys from copying the documents and having full use of them at trial, when millions of dollars of tax base in multiple municipalities is at stake. Most importantly, the adverse parties, JPM and Eversource, have unrestricted access and use of the confidential documents, and there is absolutely no reason for the Municipal Intervenors to be treated differently.

45. The Commission should reconsider its Order, both with regard to its ruling that the Municipal Intervenors may not make copies of confidential documents for use in preparing for and participating in the adjudicatory process, and its ruling that the Municipal Intervenors are prohibited from using the actual documents, via copies thereof, during the preparation of pre-filed testimony or cross-examination.

46. The Commission's reliance on the Commission's treatment of confidential documents in the Seabrook Station Docket, DE 02-075, is misplaced. In that case, JPM had sought to limit the disclosure of certain confidential documents to only the Commission, the Office of the Consumer Advocate ("OCA"), and the selling owners. It also urged that the confidential documents not be copied. The only objection to JPM's request was from the Campaign for Ratepayers' Rights ("CRR"), which only sought to view the confidential documents, not to copy or use them during adjudicatory procedures. Unlike the parties in the Seabrook Station Docket, in this Auction Review Docket, the Municipal Intervenors are objecting to the prohibition on both copying and utilizing of confidential documents during the adjudicatory process. Most importantly, the Municipal Intervenors have preferred status in this docket pursuant to the Agreements; CRR did not have such status in the Seabrook auction proceedings.

47. The only reason for prohibiting the Municipal Intervenors from making copies of the confidential documents is the apparent belief that the Municipal Intervenors will not abide by the terms of the non-disclosure agreement. There is no evidence in the record and no facts cited in the Order from which the Commission, JPM, PSNH, or anyone could conclude that the Municipal Intervenors will impermissibly release copies of any confidential information. Further, the Municipal Intervenors executed non-disclosure agreements in the Auction Docket,

and neither JPM nor PSNH objected or asserted a concern that the Municipal Intervenors have not complied. There simply is no factual basis for prohibiting the Municipal Intervenors from copying the confidential documents and using those copies during the proceedings in this matter.

48. There is also no factual or rational basis for prohibiting the Municipal Intervenors from using the actual redacted confidential documents, or copies thereof, during technical sessions and the final hearing. The Commission did not identify how the confidentiality of the information in those documents will be further protected by allowing some parties to use the documents and not others and where questions containing or seeking the information which is in the documents are permitted. Simply put, there is no conceivable valid reason why the Municipal Intervenors should be treated differently than other parties in the use of the confidential documents at technical sessions and the final hearing.

49. The Commission's Order effectively negates the Municipal Intervenors' right to fully and fairly participate in the adjudicatory process, which is in violation of the 2015 Agreement, the 2016 Amendment, and the Partial Litigation Settlement and, as such, is unlawful and unreasonable. Therefore, the Commission should reconsider and rescind those provisions of its Order as requested herein. The Commission's refusal to do so will materially deprive the Municipal Intervenors of a contractual and ordered right for which it specifically negotiated through the 2015 Agreement, 2016 Amendment, and Partial Litigation Settlement.

IV. CONCLUSION

50. The Municipal Intervenors respectfully request that this Commission grant this Joint Motion for Rehearing and reconsider its ruling that the speculative and unsubstantiated privacy interests asserted in this matter outweigh the significant interests of the public in the release and disclosure of this information. The Municipal Intervenors further request that this

Commission reconsider its order that the Municipal Intervenors are not permitted to copy the confidential information and are not permitted to use copies of that confidential information during the adjudicatory process.

51. The Municipal Intervenors request that this Commission amend its Order to (1) authorize the Municipal Intervenors, upon execution of a non-disclosure agreement to copy confidential documents; (2) delete the last two sentences of the middle paragraph on page 11 and insert “Further parties may examine witnesses on the contents of documents by reference to those documents and/or by showing the witness copies of the documents, so long as the witness has signed the non-disclosure agreement”; and (3) insert a time limitation for when the information redacted and subject to confidential treatment will no longer be subject to such treatment, or, in the alternative, amend the non-disclosure agreement to limit its applicability to only such times as the Commission’s orders on confidential treatment remain intact.

52. Due to the significance of the issues involved in this proceeding and this Motion, the Municipal Intervenors respectfully request that the Commission stay all proceedings in this Docket, during the pendency of the Commission’s consideration of this Motion for Rehearing, and through any appeal of a denial of this Motion for Rehearing to the New Hampshire Supreme Court.

53. The Municipal Intervenors file this Joint Motion for Rehearing, not for the purpose of delay, but to protect their respective tax bases and the interests of the ratepayers.

WHEREFORE, the Municipal Intervenors respectfully request that this Honorable Commission:

A. Grant this Motion for Rehearing;

- B. Revise the Order to (1) authorize the Municipal Intervenors, upon execution of a non-disclosure agreement, access, review, and copy un-redacted copies of all confidential documents, (b) delete the last two sentences of the middle paragraph on page 11 and insert “Further parties may examine witnesses on the contents of documents by reference to those documents and/or by showing the witness copies of the documents, so long as the witness has signed the NDA,” and (c) insert a time limitation for when the information redacted and subject to confidential treatment will no longer be subject to such treatment, or, in the alternative, amend the non-disclosure agreement to limit its applicability to only such times as the Commission’s orders on confidential treatment remain intact;
- C. Stay this proceeding and all aspects of the cited implementation of the Order pending the Commission’s ruling on this Motion for Rehearing and any appeals therefrom to the New Hampshire Supreme Court; and
- D. Grant such further relief as is just and equitable.

Respectfully submitted,
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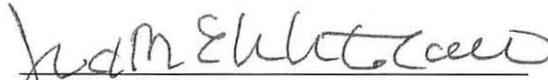
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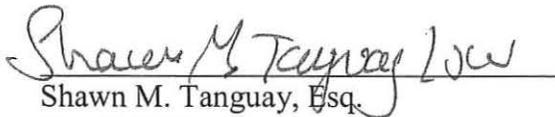
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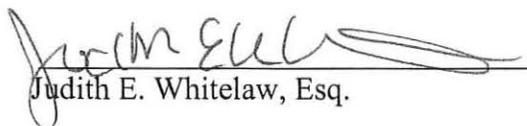
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Certificate of Service

I hereby certify that I served a copy of this Motion for Rehearing pursuant to Puc 203.11(c) to the current service list in this Docket this 28 day of September, 2017.



Judith E. Whitelaw, Esq.