

THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 17-124

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

Sale of Generating Facilities

MUNICIPAL INTERVENORS' JOINT MOTION
FOR REHEARING PROCEDURAL SCHEDULE

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 with regard to this Commission's Secretarial Letter dated November 9, 2017 ("**Letter**"), concerning the modification of the procedural schedule in this matter. 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 Order No. 26,057.

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 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. See Order of Notice, DE 17-124.

¹ Berlin was granted intervenor status in the Divestiture Docket.

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

3. By a secretarial letter dated October 13, 2017, the Commission established a procedural schedule, which provides that the hearing on the merits in this Auction Review Docket would occur on November 30, December 1, and December 4, 2017.

4. On November 9, 2017, the Commission, sua sponte, issued the Letter altering the procedural schedule, such that the hearing on the merits in this Auction Review Docket will now be scheduled for November 27 through 29, 2017.

5. The Municipal Intervenors hereby request that the Commission grant this Motion for Rehearing and reinstate the October 13, 2017 procedural schedule, making the hearing on the merits the dates November 30, December 1, and December 4, 2017.

II. STANDARD OF REVIEW

6. 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.

7. “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

8. The Commission should grant this Motion for Rehearing because the alteration of the procedural schedule in the manner set forth in the Letter will be prejudicial to the procedural due process rights of the Municipal Intervenors.

9. The Municipal Intervenors' procedural due process rights will be adversely affected because the Municipal Intervenors will not have adequate time to prepare for the hearing on the merits in this matter. Where a governmental action would affect a legally protected interest, the due process clause of the New Hampshire Constitution guarantees to the holder of an interest the right to be heard at a meaningful time and in a meaningful manner. See In re Pennichuck Water Works, Inc., 160 N.H. 18, 36 (2010).

10. Here, the amended procedural schedule will not permit the Municipal Intervenors to prepare and participate in the adjudicatory hearings in a meaningful way sufficient to protect the tax bases, taxpayers, and ratepayers in their respective communities. The Municipal Intervenors will not be able to adequately prepare because the Municipal Intervenors just recently submitted their pre-filed testimony in a timely fashion on November 15, 2017 and are presently in the process of responding to data requests propounded by PSNH and Commission Staff. Therefore, under the revised procedural schedule set forth in the Letter, the Municipal Intervenors would be required to both prepare and respond to responses to data request and prepare for a hearing on the merits in this matter, all during the week of a national holiday. The three days lost by the amendment to the procedural schedule were of importance and necessity to the Municipal Intervenors and, without those three days, the Municipal Intervenors' procedural rights will be adversely affected.

11. The potential harm to the Municipal Intervenors as a result of this lost preparation time is substantial. For example, in the City of Berlin alone, if the allocated purchase price of the Smith Hydro-electric Generating Station were used for taxation purposes (which the City would argue it should not), the City of Berlin alone stands to lose \$1.1 million per year in tax revenues. In short, the City of Berlin and the other Municipal Intervenors have a high stake in this adjudicatory process and the process provided by this Commission should recognize that significant interest. Cf. In re School Administrative Unit #44, 162 N.H. 79, 83-84 (2011) (setting forth factors to determine process due for disciplinary hearings).

12. Moreover, the harm to the Commission and PSNH in reinstating the prior procedural schedule is minimal. Id. (considering impact to Government's interest in considering process due). It is notable that the change in the procedural schedule was not asked-for or sought by PSNH or any other the other parties in this Auction Review Docket. Rather, the Commission amended the procedural schedule sua sponte. Presumably, the prior procedural schedule maintained a sufficient balance of preparation and expedition for the other parties in this Auction Review Docket. The addition of three days' preparation time will not materially impact the other parties, but will materially benefit the Municipal Intervenors.

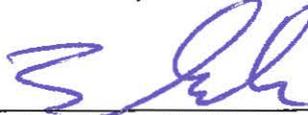
13. In closing, the Commission should grant this Motion for Rehearing and reschedule the hearings on the merits in this matter for November 30, December 1, and December 4, 2017. The Municipal Intervenors file this Motion in good faith and not in the interest of delay. The Municipal Intervenors have worked in good faith to proceed in accordance with this expedited adjudicative schedule. The Municipal Intervenors propounded data requests as soon as possible, sought to resolve discovery disputes without the Commission's involvement, and suggested means by which to limit the scope and complexity of this adjudicative process.

The Municipal Intervenors are not seeking to materially delay this adjudicative hearing; they only seek to ensure that their rights are adequately represented and accounted for in this Auction Review Docket.

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

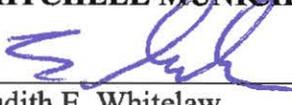
- A. Grant this Motion for Rehearing;
- B. Reschedule the hearings on the merits in this matter for November 30, December 1, and December 4, 2017; and
- C. Grant such further relief as is just and equitable.

Respectfully submitted,
DONAHUE, TUCKER & CIANDELLA, PLLC


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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 20th day of November, 2017.



Eric A. Maher, Esq.