

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

Docket No. DE 17-124

Public Service Company of New Hampshire d/b/a Eversource Energy
Sale of Generating Facilities

**RESPONSE OF PSNH TO
MUNICIPAL INTERVENORS' JOINT MOTION
FOR REHEARING PROCEDURAL SCHEDULE**

Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH” or the “Company”), hereby responds to the Municipal Intervenors’ Joint Motion for Rehearing [of the] Procedural Schedule (the “Motion”)¹ in this proceeding dated November 20, 2017.² As noted below, depending upon the views of the Commission, the Company either has no objection to the relief sought in the Motion or it objects to the Motion.

BACKGROUND

1. The Legislature has mandated that the generation divestiture process proceed in an expedited manner. RSA 369-B:1, XIV (“The general court requests that the supreme court and any other courts asked to rule on any matters pertaining to the subject matter of this chapter act as expeditiously as possible. Time is of the essence.”; RSA 369-B:3-a, II (“As part of an expedited proceeding, the commission shall review the 2015 settlement proposal... .”) The Commission itself noted the requirement for expedition in the Order of Notice for this

¹ Instead of being captioned as a rehearing motion, the Motion is more properly filed as a request for postponement of hearing under Rule Puc 203.13 and should be governed by the standards set forth therein.

² Although dated November 20, 2017, the Motion was not received and docketed by the Commission on that date.

proceeding: “RSA Chapter 369-B and the Settlement Agreements, as well as the needs of the marketplace, require this to be an expedited proceeding,”

2. Time is of the essence particularly for the sale of PSNH’s thermal (fossil) assets to Granite Shore Power LLC. The thermal PSA has a “Delayed Closing Adjustment” whereby the price paid for PSNH’s thermal assets decreases if closing on that sale does not occur on or before January 1, 2018. See Section and Schedule 2.6(a)(iv) of the thermal PSA. A closing on the thermal asset sale as soon as possible will preserve value for PSNH’s customers.
3. Moreover, closing on the sale of the thermal assets is a critical path item for the securitization of stranded costs via the issuance of Rate Reduction Bonds (“RRBs”). Issuance of the RRBs sooner rather than later will provide additional value to PSNH’s customers.
4. The PSA for the sale of PSNH’s hydro assets does not contain a similar “Delayed Closing Adjustment.” At this time, other regulatory approvals that are conditions of closing indicate that closing may not occur for the sale of the hydro assets until late-February at the earliest.

PSNH DOES NOT OBJECT TO THE RELIEF SOUGHT IF APPROVAL OF THE SALE OF THE THERMAL ASSETS IS NOT DELAYED

5. Thus, as long as the Commission’s process for the approval of the thermal PSA is not delayed, the Company does not object to the relief sought by the Municipal Intervenors in their Motion. Though the Company is aware that the prior hearing dates (November 30, December 1 and December 4) may no longer be available, the Company is amenable to collaborating with the Commission to rescheduling the hearing on the hydro PSA to a mutually agreeable time. In addition, based upon the status of other regulatory approvals,

hearings on the hydro PSA could be rescheduled for early or mid-January without impacting the likely closing schedule (assuming issuance of an order by the end of January).

PSNH OBJECTS TO THE RELIEF SOUGHT IF APPROVAL OF THE SALE OF THE THERMAL ASSETS WOULD BE DELAYED

6. Alternatively, if the Commission is unable to issue an order regarding the thermal asset sale on a time schedule bifurcated from the issuance of a hydro asset sale order, then PSNH objects to the Motion.
7. One of the conditions of closing in the thermal PSA is receipt of this Commission's approval. See Schedule 3.3. That approval must be final, such that "all appeal, reconsideration, rehearing or other time periods relating to the finality of all such Consents have expired with no appeals, motions for reconsideration, or rehearing shall have been made or exist... ." Thermal PSA Section 6.1(e).
8. Thus, taking into consideration the statutory 30-day rehearing period provided under RSA 541:3, for a closing on the sale of the thermal assets to occur on or before January 1, 2018, an order approving that sale must be issued within days of this pleading.
9. The Municipal Intervenors claim that the three day acceleration of the hearing schedule will not permit them to prepare and participate in the hearing in a meaningful way. Motion at ¶10. The basis for this assertion is "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." *Id.*
10. This rationale holds no water. The testimony has been filed. That is done. The testimony comes from a panel of three witnesses with claimed expertise in their subject matter. The data

requests these three witnesses responded to are not daunting. In fact, Commission Staff has not asked any discovery questions of the Municipal Intervenors' witness panel. PSNH asked fourteen numbered questions, one of which (question 10) is now moot. A review of PSNH's remaining questions (attached as Attachment 1) reveals that the panel of three witnesses should have no problem responding to the questions; they are simple and straightforward.

11. The Motion also states that the new schedule interferes with the Municipal Intervenors ability "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." *Id.* As just noted, the three witnesses should be able to respond to the questions asked regarding their testimony with little or no involvement of the Municipal Intervenors' lawyers. Should such assistance be necessary, PSNH notes that the Municipal Intervenors had five different lawyers listed on the Motion. There appears to be adequate resources for the Municipal Intervenors to have their witnesses respond to PSNH discovery and for their lawyers to prepare for hearing at the same time.
12. In the Motion, it is claimed that the City of Berlin might lose \$1.1 million per year in property tax revenues "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)." Motion at ¶11. But note the parenthetical: the City claims that the purchase prices set forth in the PSAs "should not" be used for property tax valuation purposes. Indeed, the claim that the PSA sales prices are not valid indicators of value for property tax purposes is the singular theme of the Municipal Intervenors' prefiled testimony. Their witnesses testify that it would be improper to use the results of the generation asset auction in a property tax valuation proceeding.

13. Clearly, the instant docket is not a property tax valuation proceeding. This Commission has no authority regarding that subject. The Municipal Intervenors undermine their own testimony that the results of the auction sale cannot be used for property tax valuation purposes when they seek a delay in this docket “if the allocated purchase price” under the PSA was used for that purpose.
14. Any potential harm to the City of Berlin is speculative, based upon its own witnesses’ testimony. However, the harm to PSNH’s retail customers of a delayed closing is not speculative. The thermal PSA’s “Delayed Closing Adjustment” that would reduce the purchase price of PSNH’s thermal assets is real. The continued recovery of generation and other costs at PSNH’s embedded cost of capital until they are sold and securitized is real. The Commission should not allow speculative harm that the City’s own experts say is not legally viable to cause real harm to PSNH’s customers.
15. The scope of this proceeding is very narrow. Per the Order of Notice: “This proceeding is intended to review the results of the auction process for the sale of Eversource’s generation facilities as provided by Order No. 25,920. This matter raises, inter alia, issues related to whether the sale or sales maximize the value of the sale(s) and conform to Order No. 25,920, the Settlement Agreements, RSA Chapter 369-B, RSA Chapter 374-F and RSA 374:30”
16. Preparation for this narrow list of issues should not be daunting.
17. The testimony submitted by the Municipal Intervenors contains nothing disputing the conformance of the auction process to Order No. 25,920, the Settlement Agreements, RSA Chapter 369-B, RSA Chapter 374-F or RSA 374:30.
18. The Municipal Intervenors’ testimony merely complains that the sales prices should have been higher. In that testimony, using various metrics, calculations, estimations, and forecasts,

the witnesses state that “the PSNH hydros combined *could sell*” at certain prices. (Sansoucy Panel Testimony at p. 21, line 1, emphasis added) and that “the individual plants *could possibly sell* in the following price ranges.” (*Id.* at p. 21, line 12, emphasis added.) The point of the auction process was to determine what the actual market prices of the assets were using an industry standard sales process. The result - - the assets do not have the values claimed by the Municipal Intervenors’ witnesses.

19. The price received for PSNH’s hydro generation fleet did not achieve the estimates of the Municipal Intervenors’ experts, but that price was very close to the estimate provided by La Capra Associates in its August 17, 2015 update marked as Exhibit X in Docket No. DE 14-238 (attached as Attachment 2). La Capra’s estimate, now over two years old, was that the value of PSNH’s hydro fleet was \$88.1 million – within about 5% of the actual sales price.
20. In their testimony, the Municipal Intervenors point to the results of TransCanada’s recent sale of its hydro generation assets as indicators of a successful sale process. Who was TransCanada’s auction agent? J. P. Morgan. What auction process was used? The same 2-stage process as used in the PSNH divestiture.
21. The testimony offered by the Municipal Intervenors does not allege any improprieties by J. P. Morgan, by Commission Staff, or by PSNH Staff regarding conformance of the auction process to Order No. 25,920. They merely do not like the result.
22. In RSA 369-B the Legislature has declared that divestiture is in the public interest. RSA 369-B:3-a, I. That is a statutory finding that cannot be assailed by the parties or by the Commission. The public interest should not be materially harmed by allowing the sale of PSNH’s thermal assets to be delayed by the Municipal Intervenors’ unhappiness over the

market valuation of the hydro assets.

WHEREFORE, if approval of the sale of the Company's thermal assets can proceed without hindrance, the Company does not object to rescheduling the hearings regarding the hydro asset sale until a future date; however, if the two sales cannot be unlinked, then the public interest demands that the hearings take place as scheduled.

Respectfully submitted this 21st day of November,

2017 by:

PUBLIC SERVICE CO. OF NEW HAMPSHIRE

A handwritten signature in black ink, appearing to read "Robert Bersak". The signature is written in a cursive style with a horizontal line underneath.

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CERTIFICATE OF SERVICE

I certify that on this date I caused this Motion to be served on parties listed on the Commission's service list for this docket.

November 21, 2017

A handwritten signature in black ink, appearing to read "Robert A. Bersak". The signature is written in a cursive style with a horizontal line underneath the name.

Robert A. Bersak