

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 16-817**

**EVERSOURCE ENERGY AUCTION OF GENERATION FACILITIES**

**Order Denying Request for Reconsideration of Auction Design  
And Stay of Auction Process**

**ORDER NO. 25,973**

**December 23, 2016**

In this order, the Commission denies the request by several municipalities for reconsideration and a stay of Order No. 25,967 approving the auction design recommended by the Commission's auction advisor, J.P. Morgan.

**I. PROCEDURAL HISTORY**

This docket was established to conduct the sale of the fossil and hydro electric generation facilities (Generation Facilities) owned by Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource) as directed 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) (collectively the Settlements). 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 Executive Council on

September 7, 2016. On September 12, 2016, JPM filed a description of the proposed auction process and on October 17, 2016, JPM filed a modification to the auction process to further accommodate municipal participation in the auction. On November 4, 2016, JPM filed additional comments on the auction design.

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).

On September 15, 2016, by secretarial letter, the Commission gave all parties notice that the Auction Advisor, would be available for questioning concerning its recommended auction design at the prehearing conference on September 19, 2016. All parties present at the prehearing conference had an opportunity to question the witness for JPM, Neil Davids, who testified under oath about the proposed auction process described in JPM's September 12 filing. *See* Hearing Transcript Sept. 19, 2016, at 27.

Following the hearing, during a technical session, parties had further opportunity for questions and discussions with Mr. Davids. Commission Staff (Staff) filed a letter on September 21, summarizing the parties' discussions at the technical session. The Commission granted all intervention requests by Secretarial Letter on September 22, 2016, 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. On November 10, 2016, the Commission issued Order No. 25,967 (Auction

Order) approving the auction process and design recommended by JPM, with certain modifications to further accommodate participation by intervening cities and towns.

On December 9, 2016, the City of Berlin and the Towns of Gorham and New Hampton (together the Municipalities) filed a joint motion for Reconsideration and Stay (Joint Motion).

On December 15, 2016, Eversource filed an objection to the Joint Motion (Objection). The 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>.

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

### **A. Joint Motion**

#### **1. Requirements of an Adjudication on Auction Design**

The Municipalities claim that this docket did not afford them sufficient process and did not comply with N.H. Code of Admin. Rules Puc Part 203. Specifically, they claim they were entitled to all of the discovery allowed under Puc 203.09, including data requests, technical sessions, depositions, and any other discovery method permissible in civil proceedings, when necessary to enable parties to acquire admissible evidence. Joint Motion at 8. The Municipalities argue that JPM has presented conclusory and unsupported assertions in support of its auction design. Specifically, the Municipalities question JPM's statements concerning use of ascending clock auctions for electric generating facilities, grouping of hydro facilities separately from the fossil facilities, delaying bids by Municipalities until May 1, 2017, setting a reserve price, and allowing the Municipalities into a final negotiation process. *Id.* at 9.

The Municipalities argue that they must be allowed to cross-examine JPM concerning sworn testimony and to submit evidence, either at hearing or in the form of pre-filed testimony.

*Id.* at 10. According to the Municipalities, if they had been allowed to submit pre-filed testimony, they could have expanded on their concerns that the proposed auction design makes participation by the Municipalities practically impossible. *Id.* at 11. They also stated that had they been allowed to submit prefiled testimony they might have submitted testimony on auction design from individuals familiar with auction processes used in market conditions similar to the Eversource divestiture. *Id.* They claim that cross-examination of a JPM witness would have allowed them to challenge JPM's bare assertions concerning the advisability of certain auction processes. *Id.* Finally, the Municipalities argue that the process provided by the Commission falls short of the adjudication required under the Litigation Settlement, and violates their rights to due process. *Id.* at 12-13.

## 2. Auction Process and Municipal Participation

The Municipalities repeat arguments made in both rounds of their written comments, that the approved auction process does not allow them enough time to comply with processes required by RSA Chapter 38 and effectively shuts them out of the auction. According to the Municipalities, RSA 38 requires two votes, one to authorize a bid, and a second to approve financing. *Id.* at 16. They assert that they cannot determine the price to be paid under RSA 38:13 until their bid is selected as a winning bid, and only after that can they submit a financing to voters for approval. *Id.* at 14 and 17. The Municipalities claim that the Commission's interpretation of RSA 38:13 is incorrect. They assert that RSA 38:13 prevents them from determining a final price to submit as a bid and submitting that amount to voters before entering the bid in the auction. They also assert that the Commission incorrectly found that, under RSA 38, they would only have to hold one vote in order to participate in the auction. *Id.* at 14 and 16.

The Municipalities argue that they may not acquire their hosted hydro facilities under RSA 374-D because they do not currently own the sites where the facilities are located. *Id.* at 17, fn 7. They also argue that RSA 374-D applies only if a municipality is seeking to construct or develop a new small energy facility, and does not allow purchase of existing facilities. *Id.* The Municipalities claim that requiring them to obtain financing approval before submitting their binding bid would put them at a disadvantage because their bid amount would then be public while other second round bids would not be public. *Id.* at 19.

The Municipalities repeat arguments that Gorham and New Hampton cannot present the question of whether or not to participate in an auction at their respective annual town meetings in March 2017. They argue that they must review complicated and extensive materials concerning the hydro facilities during an exceptionally busy time of year, and that determining the advisability of participating in the auction process and holding the necessary public education meetings in time for the March 14, 2017, annual meeting is “practically impossible.” *Id.* at 20. They assert that they are not able to hold a special meeting to authorize a bid in the auction until May 1, 2017. *Id.* at 22. Under their interpretation of RSA 38, they would then need to have a second vote on issuing bonds following a determination that theirs was the winning bid. They also contend that they should be allowed to submit a bid in round two without bond approval and that their bid should not be disadvantaged as compared with commercial parties’ bids with pre-financing approval. *Id.* at 21-22.

Finally, the Municipalities repeat arguments that a third round of bidding should occur, where the Municipalities would review the second round bids, and if the bids were not competitive with the Municipalities’ assessment of the facilities’ value, the Municipalities would be allowed to submit bids which would then be subject to voter ratification of bonding. *Id.* at 23.

They claim that the “third round has little downside, primarily where [their] involvement will act as a firewall against a depressed sale and will not materially delay the divestiture of PSNH’s assets.” *Id.*

3. Proposed Procedural Schedule

The Municipalities recommend a procedural process for additional discovery, pre-filed testimony, and a hearing on auction design. The proposed schedule would take approximately four and a half months (19 weeks) and, if begun immediately, would end sometime in mid-May 2017. The auction process itself could then not begin until the summer of 2017 at the earliest.

**B. Eversource Objection**

1. Requirements of an Adjudication on Auction Design

Eversource argues that the Commission properly expedited the process on auction design and that the 2015 Settlement contemplates that the auction advisor establish the structure and details of the auction process under the Commission’s oversight. *Id.* at 11. Eversource points out that the Commission provided an expedited adjudicatory process consistent with the Administrative Procedure Act, RSA 541-A. Under the Municipalities’ suggested procedural schedule, Eversource states that a final hearing would not take place until May 2017 and an auction would not commence until June or July 2017. In addition, if the Municipalities’ process arguments under RSA 38 were accepted, Eversource posited that the auction would not conclude until early 2018. *Id.* at 11 fn 2.

Eversource points out that delay of the auction harms ratepayers who must continue to pay a return on the equity in the generation assets as part of their default service rates. *Id.* at 12. In addition, according to Eversource, as interest rates rise the potential value of the assets is

reduced, while the cost of securitizing the stranded costs at the end of the auction process increases. Eversource disagrees with the Municipalities' speculation that delay of the auction could increase generation asset values because of a new federal administration. Eversource further argues that outstanding National Pollutant Discharge Elimination System permits for Eversource's Merrimack Station could be issued in the future and might negatively impact the auction. *Id.* at 4.

Eversource also refutes the Municipalities' claim that "concerns over rising interest rates have not materially occurred." Joint Motion at 25. According to Eversource in July 2016 when Order No. 25,920 was issued interest rates on the 10 and 20 year Treasury Bonds were 1.46% and 1.81% respectively. Objection at 4. On the date of the Joint Motion those rates were 2.47% and 2.87%. Eversource states that Triple-A rated securitization bonds, required by the 2015 Settlement to pay for stranded costs, bear rates reflective of the underlying Treasury bond rates. *Id.* Eversource points out that on December 14, 2016, the Federal Reserve did increase interest rates further. *Id.* Such increases raise the costs of securitizing the stranded costs following the auction.

## 2. Auction Process and Municipal Participation

Eversource first argues that the Municipalities complaint that it is too late for Gorham and New Hampton to get town meeting approvals to participate in the auction, is the result of the Towns' "failure to act in a timely manner." *Id.* at 2. The Commission approved the Settlements by Order No. 25,920 on July 1, 2016, and both Berlin and Gorham were party intervenors in that docket. Since then, it has been clear that there would be a "near-term process for the divestiture of PSNH's fossil and hydro generating assets ...." 2015 Settlement at lines 24-25. The Settlement also describes the divestiture process as "expeditious," *id.* at line 33, and

“expeditiously pursued,” *id.* at line 430. According to Eversource, despite the Municipalities’ knowledge that the divestiture auction would occur soon, they did not take steps to set up special meetings to authorize their participation in the auction process, nor did they take steps to include the question of auction participation in the upcoming annual Town meetings in March 2017.

In addition to failing to take prompt action to be in a position to participate in an auction, according to Eversource, the Municipalities failed to avail themselves of an alternative statute that would allow them to eliminate the problems caused by the need for multiple Town Meeting approvals under RSA 38. Objection at 5. RSA 38:32 provides an exemption from the provisions of RSA 38 for the development by a municipality of any small scale power facility as defined in RSA 374-D:1, IV. Eversource claims that all of its hydro facilities are less than 80 megawatts in capacity and qualify under the small scale power facility definition of RSA 374-D:1, IV.

Eversource asserts that RSA 374-D allows municipalities to acquire small scale power facilities with only one vote to authorize bonding of the purchase. Eversource disagrees with the Municipalities’ interpretation of RSA 374-D:2 as limited to situations where the municipality owns the site or is acquiring the site to develop a new facility. Eversource cites a prior Commission order which states “[t]he Legislature has explicitly determined that ‘the development by a municipality of any small scale power facility, as defined in RSA 374-D:1, IV shall not be subject to the provisions of [Chapter 38].’” Order No. 23,350, November 22, 1999, Docket No. DE 99-135. Docket 99-135 involved the City of Manchester’s proposed acquisition of the existing Amoskeag Hydro Station in Manchester. Objection at 6. Eversource also quotes from a Memorandum of Law filed by the City of Berlin, on June 1, 2001, in Commission dockets DE 00-210 and DE 00-211. In that Memorandum, the City of Berlin argued that RSA 374-D



was available for Berlin to acquire the Smith Hydro station without following the provisions of RSA 38. Objection at 7-8.

Although Eversource acknowledges that the exemption under RSA 38:32 is not available if there is a dispute between the utility and the municipality, Eversource claims that in this case there is no dispute because the purchase will be made by a winning bidder by contract with terms agreed to between Eversource and the bidder and approved by the Commission. *Id.* at 8.

Eversource describes legislative history regarding language rejected by the Legislature that would have required facilities acquired by municipalities under RSA 374-D to be new.

Eversource argues that the fact that this language was not enacted supports the interpretation that RSA 374-D applies to existing as well as new facilities. *Id.* 8-9.

Eversource notes that the 2015 Settlement makes clear that the “primary objective will be to maximize the realized value of the fossil and hydro generation assets,” Settlement at lines 459-460, and that the “secondary objective of the auction processes, to the extent not inconsistent with the primary objective, will be to accommodate the participation of municipalities that host generation assets . . . .,” *id.* at lines 460-462. Eversource challenges the Municipalities’ assertions that the auction design recommended by JPM will not maximize the value of the prices bid for the generation assets.

Eversource states that its own auction witness, John J. Reed, recommended the same two-round auction process for the sale of the Eversource generation assets in Docket No. DE 14-238. Further, Eversource asserts that the auction process recommended by JPM (except for certain accommodations offered the Municipalities) is the same process used for every utility divestiture to date. Objection at 9. Finally, Eversource points out that the Municipalities are not

experts in generation asset auctions and argues that the Commission properly relied upon the advice of its own auction advisor, JPM, for the auction design.

### **III. COMMISSION ANALYSIS**

The Commission may grant rehearing or reconsideration for “good reason” if the moving party shows that an order is unlawful or unreasonable. *See* RSA 541:3, RSA 541:4; *Rural Telephone Companies*, Order No. 25,291 (November 21, 2011). A successful motion must establish “good reason” by showing that there are matters the Commission “overlooked or mistakenly conceived in the original decision,” *Dumais v. State*, 118. N.H. 309, 311 (1978) (quotations and citations omitted), or by presenting new evidence that was “unavailable prior to the issuance of the underlying decision,” *Hollis Telephone Inc.* Order No. 25,088 at 14 (April 2, 2010); *Verizon New Hampshire Petition to Approve Carrier to Carrier Performance Guidelines*, Order No. 23,976 (May 24, 2002); *Consumers New Hampshire Water Co., Inc.*, 80 NH PUC 666 (1995). A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome. *Public Service Co. of N.H.*, Order No. 25,676 at 3 (June 12, 2014); *see also Freedom Energy Logistics*, Order No. 25,810 at 4 (September 8, 2015).

We agree with Eversource that the Joint Motion does not present any new information that would change our original decision on the design of the auction process recommended by our Auction Advisor, JPM. Further, the Joint Motion does not demonstrate that the Commission overlooked or mistakenly conceived of the meaning and interpretation of the relevant agreements and statutes addressed therein. Nonetheless, for the sake of clarity, we will address the arguments made in the Joint Motion.

**A. Requirements of an Adjudication on Auction Design**

The Municipalities' rights regarding the auction design come from the 2015 Settlement Agreement, the 2016 Amendments to that Agreement, and the Litigation Settlement. Those documents in turn are controlled by the provisions of RSA 369-B:3-a and all provide the process offered in this docket. In the order approving the divestiture of the Eversource generation assets, the Commission held that, "[w]e 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 (July 1, 2016).

The 2015 Settlement provides, "[t]he structure and details of the auction process(es) shall be established by the auction advisor, under the oversight of and administration of the Commission and subject to the additional expedited adjudicatory proceedings requested in Section X below, with the Commission retaining such direction and control as it deems necessary." Section X of the 2015 Settlement states:

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

2015 Settlement at ln. 908-911. The statute requiring our review of the 2015 Settlement requires us to expedite our review process. RSA 369-B:3-a, II. The 2015 Settlement does not elaborate on the "expedited adjudicatory" process for approving an auction design recommended by the Commission's auction advisor.

JPM provided a written auction design with its proposal for approval by the Governor and Executive Council on September 7, 2016, and filed that written auction design in this docket on September 12, 2016. The Commission made a JPM witness available for questioning at the prehearing conference on September 19, 2016. Attorneys Boldt, Tanguay and, Whitelaw each appeared at the prehearing conference and Mr. Boldt questioned the JPM witness under oath at that hearing. At the conclusion of his questioning Attorney Boldt indicated that “the remainder of my questions can go into tech session.” Transcript Prehearing Conference, September 19, 2016, at 35.

Following the prehearing conference all parties were given the opportunity to ask the JPM witness questions during a technical session. In addition, following the technical session, parties were given the opportunity to submit further written questions to the JPM witness, before written comments were filed. Only one party, the Town of New Hampton, submitted a written question to JPM and JPM responded with a written answer filed with the Commission on September 29, 2016. The JPM response to that question provided an accommodation to the Municipalities in the proposed auction design.

All parties, including the Municipalities, filed the first round of written comments on the auction design on September 30, 2016. Following written comments, Commission Staff (Staff) and JPM witnesses had two conference calls with counsel for the Municipalities concerning the various process and auction design concerns described in the Municipalities’ first round comments. Following those discussions, on October 17, 2016, JPM filed a modified auction design and provided responses to the Municipalities’ first round comments, as well as the Municipalities’ concerns raised with Staff and JPM in the two conference calls. On October 21, 2016, the Municipalities filed a second round of written comments on the auction process

modifications JPM had offered that were designed to accommodate municipal participation further than the auction design filed with the Commission on September 12, 2016.

At the Municipalities' request, we also took administrative notice of pre-filed testimony on auction design by several witnesses in DE 14-238. That testimony was submitted by the City of Berlin and by Staff in support of an ascending clock auction design. We reviewed and considered that written testimony and weighed it against the advice we received from JPM in our Auction Order.

Under the Settlements, the competitive bid process and the review and approval by the Governor and Executive Council were designed to assure all parties, including the Municipalities, that the auction advisor was both qualified and impartial and would conduct an auction in a manner designed to maximize overall asset value. The adjudicative process we offered the parties in this docket allowed cross-examination of a JPM witness at the prehearing conference, written questions submitted to a JPM witness, a technical session with the JPM witness, and two rounds of written comments.

N.H. Admin. Code Rule Puc 203.09 provides a range of discovery tools, including written data requests, technical sessions, depositions and other forms of discovery available in civil courts in New Hampshire. Nonetheless, we are not bound by our own administrative rules to offer the same process in all adjudicated proceedings. We have the flexibility to allow questions in technical sessions, as was done here, rather than providing for extensive written data requests. We are also able to offer parties an opportunity for written comments instead of sworn pre-filed testimony in order to gather parties' positions on issues raised. The process offered in this proceeding conforms to requirements of RSA 541-A.

The Settlements were clear that the expedited adjudicated process for considering auction design was to be determined by the Commission. The Settlements were equally clear that we were to open an “appropriate ongoing proceeding to address the administration of the divestiture auction.” 2015 Settlement, Section X. The expedited process offered in this proceeding appropriately balanced the need for parties to question the auction design offered by JPM against the need to move quickly and allow the sale of the generation assets to proceed expeditiously. We have already disposed of the Municipalities’ constitutional due process claims in our Auction Order. *See* Auction Order at 33.

**B. Auction Process and Municipal Participation**

1. Timing of Approvals under RSA Chapter 38

The Municipalities continue to argue that the timing of the proposed auction will prevent them from participating due to the need to conduct two town meeting votes under RSA 38. Contrary to the Municipalities’ assertion, in the Auction Order we agreed that two votes were required under RSA 38, but we held that the first vote authorizing participation in the auction could be taken at the annual town meeting. Despite arguments by the Municipalities that voting at annual town meeting could not happen, the Municipalities did not claim that it is legally impossible to hold the vote to authorize participation in an auction under RSA 38 at annual town meetings. Instead they claimed that they did not have the resources available to educate voters and to prepare for a vote at the annual town meeting.

Given the importance of this auction claimed by the Municipalities in their written comments, and the length of time that they have known that an auction will occur,<sup>1</sup> we agree with Eversource that the Municipalities should have taken actions to enlist additional resources

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<sup>1</sup> The Municipalities have known since we issued Order No. 25,920 on July 1, 2016, approving the sale of Eversources’ generation facilities, that an auction would occur in the near future.

to prepare for a vote on auction participation, and to begin to educate municipal officials and voters about the auction process.

The Municipalities repeat an additional argument under RSA 38:13 that we rejected in the Auction Order. They claim that the language in RSA 38:13 dealing with ratification and bonding approval prevents them from voting on bonding until after an auction has occurred and their bid has been selected as a winning bid. They base this argument on RSA 38:13's requirement that a final price be determined before a vote is taken on bonding for the purchase.

Within 90 days of the *final determination of the price to be paid* for the plant and property to be acquired under the provision of RSA 38:8, 38:9 or 38:10 and any consequential damages under RSA 38:33, 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 ....

RSA 38:13 (emphasis added)

In our Auction Order, we held that “final determination of the price to be paid” could include a municipality’s decision to offer a binding bid in an auction of utility assets. If the Municipalities’ interpretation of this final determination of price is correct, then they can never offer a binding bid in an auction with pre-approved financing. The Municipalities insist that this is the case and therefore demand that their bid, contingent on a future successful financing vote, should not be disadvantaged over competing commercial bids. Berlin Comments, at 6, October 21, 2016. This disparate treatment for municipal bids as well as the subsequent delay needed to determine whether the financing will be approved, is unusual for auction processes of this type, puts commercial bidders at a disadvantage relative to municipal bidders, and in JPM’s opinion would discourage a robust auction. JPM Comments, November 4, 2016 at 6.

2. RSA Chapter 374-D for Municipal Participation in Auction

The Municipalities claim that they cannot use an alternative statutory basis for acquiring their hosted hydro facilities under RSA 374-D. The process under RSA 374-D appears less complicated and is exempt from RSA 38. *See* RSA 38:32. RSA 374-D does not require the two votes that the Municipalities find impractical under RSA 38. Further, RSA 374-D does not contain the final price determination language found in RSA 38:13. As a result, under RSA 374-D, the Municipalities would not have a similar basis for insisting that they cannot offer a bid with financing pre-approved. RSA 374-D:2 provides in part:

Municipalities may design, develop, acquire, and construct small scale power facilities at sites owned or leased by them or otherwise made available to them for a period at least equal to the term of any financing undertaken under this chapter ....

The Municipalities argue that acquisition of an existing small power facility is not included under RSA 374-D:2. We disagree. The use of a list of actions joined by “and” under a plain reading would allow a municipality to engage in any one of those activities, including “acquir[ing] ... small scale power facilities.” Further the Municipalities claim that RSA 374-D:2 only allows Municipalities to develop small scale power that they own or lease. Again, a plain reading of the additional phrase “or otherwise made available to them” would seem to allow purchase of the site at the time that the facility is acquired. Eversource in its objection brought to our attention the fact that a prior Commission found RSA 374-D applicable to municipal purchases of existing hydro facilities. *See* Order No. 23,350, November 22, 1999, Docket DE 99-135. Eversource also cited to a memorandum of law in which the City of Berlin asserted its right to use RSA 374-D in the past to acquire Smith Hydro. *See* Memorandum of Law filed by the City of Berlin, June 1, 2001, in Commission Docket Nos. DE 00-210 and DE 00-211. We



believe Berlin had it right in 2001 and that Eversource is correct today in arguing that RSA 374-D is available to the municipalities who want to acquire their hosted hydro facilities.

3. Other Auction Design Issues Raised by the Municipalities

JPM has offered a number of accommodations to the Municipalities in the auction design. The Municipalities may offer indications of value in round one without submitting a proposal formally, to explore whether their values are competitive with non-binding proposals received from commercial bidders as part of round one indicative bids. The Municipalities were given access to the “data room” for their respective hydro assets in November 2016, while commercial bidders will not get access to such information until approximately March 2017. The auction process has been delayed by several months, with final binding proposals now expected to be due in early to mid-May, which gives the Municipalities more time to prepare their bids, if they decide to participate in the process. JPM Comments, November 4, 2016, at 6.

The Municipalities have suggested many other modifications to the process as designed by JPM. As discussed in the Auction Order, JPM has recommended against making those modifications as they would be expected to impact the auction process negatively by creating uncertainty for commercial bidders and likely reducing the competitiveness of the Auction. The Municipalities continue to suggest auction process modifications that would provide them an advantage over commercial bidders with respect to their respective hydros. This includes a request for a “third round” that would permit the Municipalities to submit proposals and potentially be selected over any commercial bidders for the assets even after commercial bidders have completed their extensive due diligence and submitted final, fully-financed, binding proposals, without the Municipalities having submitted any proposal earlier in the process. Moreover, the Municipalities suggest they should have this right even though such “third round”

proposals from them would not be fully-financed and would also be subject to further voter approval.

We have selected an auction advisor with extensive experience selling electric generation assets and we are justified in following their suggestions concerning an auction design and its likely impacts on the value received for the assets sold. As Eversource points out, the broad, two round auction design recommended by JPM was also recommended by Eversource's own expert in testimony filed in docket DE 14-238, and further, it is the process used for all similar divestitures of utility generation assets. Objection at 9-10. JPM testified that they have handled more than forty sales of similar generation assets, and they have advised the New England public utilities commissions on all regional generation divestiture processes, including the divestiture of the Seabrook Nuclear Generating station in 2002. Transcript, September 19, 2016, at 29. JPM testified that the process is designed to be transparent and flexible and to maximize bidder participation. *Id.* at 29-30. Rather than improving the auction design and encouraging robust participation by commercial parties, the suggestions by the Municipalities will likely discourage such participation and reduce overall transaction value. JPM has indicated that it is important that an auction proceed at an appropriate pace and that bidders have a reasonable chance of winning a bid at the end of the process. JPM Comments, at 4, November 4, 2016. Bidders must expend substantial amounts of time and money for experts and due diligence before bidding on electric generation assets. JPM has advised us that bidders will not likely expend such funds and potentially not participate in the auction at all, if the Municipalities' third round suggestions are incorporated. *Id.* at 6.

The Settlements provide a clear priority in our administration of an auction, and that is to maximize the overall sale value of the assets. Further the Settlements require that we expedite

the auction process. The Municipalities have repeatedly expressed concerns about preserving the assessed tax value for the hydro assets they host as a result of the auction. The Settlements address this concern by providing for payments for three years to any municipalities whose hosted generation assets sell for prices below the tax assessed value. 2015 Settlement at ln. 617-646. Nonetheless the Municipalities assert that they must continue to litigate in order to protect their right to provide “a firewall against a depressed sale.” Joint Motion at 23.

Under the Settlements the Municipalities are given the right to participate in an auction process so long as their participation does not interfere with maximizing asset value. Were we to adopt the Municipalities’ third round of bidding, we would be elevating their priority of participating to preserve their tax base over the competing and higher priority of maximizing the overall transaction value. We must design an auction that will maximize the total transaction value, and the Municipalities’ ability to participate must give way to that primary goal if there is a conflict. We have crafted accommodations to the Municipalities while preserving a commercially reasonable sale process based upon JPM’s advice.

#### **IV. CONCLUSION**

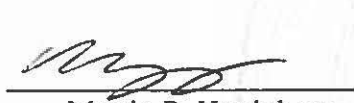
The process we have offered has allowed the Municipalities ample opportunity to present their concerns. We do not believe further litigation will solve their problems. We are bound by RSA 369-B:3-a, II to expedite our review and implementation of the 2015 Settlement. The 2015 Settlement requires that we conduct an auction of the Eversource assets expeditiously. JPM advises us that the market for these assets is favorable at this time. Further delay will only add risk that conditions in the market will shift. Given these considerations, we deny the stay requested by the Municipalities.

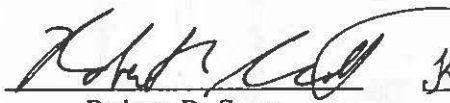
Although the Settlements anticipated a single proceeding to consider the design and to approve the results of the auction, we issue this order as our final order on auction design and we will close this docket. This will allow all parties with appeal rights regarding auction design to pursue those remedies immediately, so that we can conduct a commercially reasonable auction without interruption for ongoing litigation.

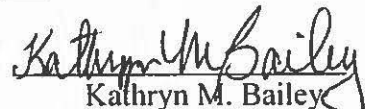
**Based upon the foregoing, it is hereby**

**ORDERED**, that the Motion for Rehearing filed by the City of Berlin and the Towns of Gorham and New Hampton is DENIED.

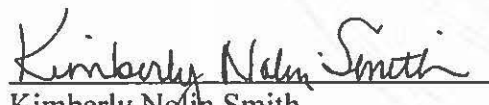
By order of the Public Utilities Commission of New Hampshire this twenty-third day of December, 2016.

  
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Martin P. Honigberg  
Chairman

  
\_\_\_\_\_  
Robert R. Scott  
Commissioner

  
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Kathryn M. Bailey  
Commissioner

Attested by:

  
\_\_\_\_\_  
Kimberly Nolin Smith  
Assistant Secretary