

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 17-124

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

d/b/a EVERSOURCE ENERGY

Sale of Generating Facilities

Order on Confidential Treatment of Auction Data

ORDER NO. 26,057

September 19, 2017

In this Order, the Commission determines that an auction report prepared by J.P. Morgan Securities, LLC (J.P. Morgan or JPM), and testimony on the auction process, the winning bid amount, the terms of sale, and the identity of the winning bidder, will be made available to the public. Other auction data, including the Confidential Information Memorandum (CIM), JPM communications with bidders, and bidder communications, offers, and identities are confidential and will be treated as such. Parties wishing to view confidential information will be required to execute the attached non-disclosure agreement.

I. PROCEDURAL HISTORY

On August 3, 2017, the Commission issued an order of notice in this docket and a prehearing conference was held on August 18, 2017. The Office of the Consumer Advocate (OCA) indicated that it would participate in the docket pursuant to RSA 363:28. The following parties requested intervention: the City of Berlin, the Town of Gorham, the Town of New Hampton, the New Hampshire Office of Strategic Initiatives,¹ the Conservation Law Foundation (CLF), the Sierra Club, and NextEra Energy Resources, LLC (NextEra). The Commission

¹ The Office of Strategic Initiatives is part of the Executive Department within the Office of the Governor. Prior to July 1, 2017, it was called the Office of Energy and Planning.

granted intervenor status to all parties except NextEra and the Sierra Club. The Commission found that, based on NextEra's status as a competitive energy supplier and Sierra Club's status as an environmental advocacy organization, neither had interests impacted by this proceeding and denied their intervention on that basis. On August 24, 2017, the Town of Bristol requested intervention and on August 25, 2017, Gorham withdrew as a party.

The Commission approved the current auction process in Order No. 25,967 (November 10, 2016) (Auction Design Order). The Commission opened this docket ahead of receiving the auction results to determine issues of intervention and treatment of confidential data. Early determination of those issues will allow the review of the auction results to proceed expeditiously as required by Order No. 25,920 (July 1, 2016), the 2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement, and the Partial Litigation Settlement (2015 Settlements), and consistent with the timing contemplated in RSA 369-B:3-a. The order of notice in this docket described the manner in which the Commission intended to treat auction results and bidder information, and provided the parties an opportunity to file written comments on the proposed confidential treatment of auction data. The parties were also given the opportunity to address confidential treatment of auction data through oral arguments at the prehearing conference. By Secretarial Letter following the prehearing conference, the Commission extended the deadline to file written comments on confidential treatment to August 25, 2017. Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource), New Hampton, Bristol, Berlin, and CLF filed written comments.

II. APPROVED AUCTION PROCESS

The auction process conducted by J.P. Morgan included a number of steps that were reviewed and approved by the Commission in the Auction Design Order. The process began with a public announcement of the pending sale by JPM followed by a request for qualification to potential bidders. JPM then conducted two rounds of bids, an initial indicative round followed

by a second round involving selected bidders from the first round who were to conduct due diligence and ultimately submit final binding bids.

From those final bids, JPM is to select the best offer or combination of offers to maximize the overall transaction value, and is to negotiate final purchase terms with Eversource and the selected bidder or bidders.

III. POSITIONS OF THE PARTIES

A. CLF

In its written comments and at hearing, CLF requested that it have access to winning and losing final bid information in order to determine whether the results are consistent with the 2015 Settlements. Further, CLF requested that it have a full 10 days to review auction data before the technical conference. CLF asked that it be allowed to make copies of confidential documents to “facilitate and enhance ease of review and participation.”

B. City of Berlin

Berlin first objected to filing comments on treatment of confidential information because it claimed it did not know what documents would be sought to be treated as confidential and there had not been a motion for confidential treatment filed. Berlin asserted that the auction data evaluated by the Commission in this docket “must be deemed to be public.” The City claimed that information concerning potential bidders who may have been interested in the Smith Hydro facility located in Berlin but were not allowed to participate in the auction, as well as complete final bid packages of various bidders, must be subject to full public access to allow full and fair adjudication of the auction results.

Further, Berlin argued that bidders had “no reasonable expectation of privacy of the bid packet information or of the information concerning potential bidders rejected by [JPM] in this public body proceeding.” Berlin based its argument on references to the Commission’s

obligations under RSA 91-A and the lack of a promise of confidentiality in JPM's initial solicitation dated March 10, 2017; JPM's first round bidder instruction letter dated April 12, 2017; and JPM's second round bidder instruction letters dated June 13 and 29, 2017.

Finally, Berlin argued that the analysis of the confidential treatment of the auction data performed by the Commission during the sale of Seabrook in Docket No. DE 02-075 in 2002 no longer applies because the New Hampshire Supreme Court's interpretations of RSA 91-A since 2002 have supported increased disclosure. According to the City, the Court has stressed that the statute favors disclosure and that the entity seeking to avoid disclosure bears a heavy burden. Berlin also claimed that this sale differs from the Seabrook sale in that it involves multiple and differing types of generating facilities rather than just one facility.

In the event that the Commission determines that any of the auction data is confidential, the City requested that it be made available to intervenors subject to a confidentiality agreement with minimal redactions, such as elimination of the names and addresses of the bidders. Further, Berlin asked that such information be fully available to be used as exhibits and in cross examination of witnesses.

C. Town of New Hampton

New Hampton requested that it be given access to the confidential information on the same day that the petition for approval of the sale is filed in order to have a full 10 days to review the confidential information before the initial technical session. The Town indicated that it is not necessary to know the identity of the losing bidders. Nonetheless, it reserved the right to request such information in the event JPM rejects a bid that allocates a higher price to the Ayers Island facility than the winning bid based on other factors, and it is not possible to evaluate the reasonableness of the rejection without knowing the bidder's identity.

D. Eversource

Eversource supported the Commission's suggested confidential treatment of auction data in this proceeding. Further, Eversource committed to working with JPM and Staff to make confidential materials available to parties signing a confidentiality agreement at the time the petition for the sale is filed.

E. OCA

The OCA described its primary interest in this docket as ensuring that the Eversource asset sale contributes the maximum possible amount to reducing stranded costs. Regarding confidential treatment of auction data, the OCA noted that the interest in confidentiality in this case is particularly high. Given the proposed confidential treatment of losing bid information, the OCA questioned the need to keep losing bidder identities confidential, but deferred a final position until a petition for approval of a winning bid is filed.

IV. COMMISSION ANALYSIS

We approved the current auction process in the Auction Design Order, and JPM described the need for confidentiality in its auction design filings in Docket No. DE 16-817. "Confidentiality is of utmost importance in a process such as the one being conducted by J.P. Morgan and it is equally important to both the seller (Eversource) and potential bidders." JPM Comments October 17, 2016, at 3. "The auction process should be transparent with clear rules and procedures.... The transaction should foster a sense of competition among the bidders, while maintaining confidentiality with respect to whether and how much other bidders may have bid, to incentivize each bidder to offer their highest value for the asset or group of assets." Auction Design Order at 20-21 (citations omitted).

The auction is being conducted by JPM based on a well-established commercial process that was described in detail and approved in our Auction Design Order. The Commission is not

conducting this auction directly and instead has deferred to its auction advisor, JPM, to run the auction in a manner that will maximize market participation and ultimately maximize the purchase price of the generation facilities being sold.

Our review of the auction results will consider: (1) an auction report and testimony from JPM regarding the auction process, (2) the Confidential Information Memorandum provided to prospective bidders, (3) the final bid instruction letter, (4) the JPM summary of the first round indicative bids, (5) the JPM analysis of final bids, (6) the final bid packages from all bidders, and (7) the price(s) and terms of the winning bid(s). We have reviewed and approved the auction design and process in our prior docket leading to the Auction Design Order. In this docket we will verify that the process was consistent with our Auction Design Order and that the results of the auction maximize the sale value of the generation facilities and are consistent with the 2015 Settlements.

A. Rules Waiver

As a procedural matter we will not require a formal motion for confidential treatment of auction data by JPM. Our rules provide that the Commission shall issue protective orders on confidential treatment “upon motion.” *See* N.H. Code of Admin. R. Puc 203.08. Nonetheless, the Commission may waive any rule, unless precluded by statute, when the waiver serves the public interest and will not disrupt the orderly and efficient resolution of matters before it. *See* Puc 201.05. We take administrative notice of the JPM filings describing the auction process dated September 12, October 17, and November 4, 2016, in docket DE 16-817 pursuant to N.H. Code of Admin. R. Puc 203.27. Those filings describe the process and the various categories of communications between JPM and potential bidders. The process is also discussed at length in the Auction Design Order. We find that the description of the auction process filed by JPM and

the description in the Auction Design Order are sufficiently detailed to form a basis for our decision here concerning the confidential treatment of auction data.

In addition, in the order of notice in this docket, we described our proposed treatment of auction data and referred parties to the Commission's treatment of similar data in the auction of the Seabrook Nuclear Power Station, which was also conducted by JPM. *See* Order Nos. 24,050 (September 12, 2002) and 23,986 (June 5, 2002) (Seabrook Protective Order). We have allowed all intervenors an opportunity to comment on our proposed treatment of auction data. Given the requirement that we expedite our review of the auction results, we find that the process provided serves the public interest and will not disrupt the orderly process of this docket. Thus, pursuant to Puc 201.05, we waive the requirement of Puc 203.08(a) that we respond to a motion for protective order, and decide issues of confidential treatment without such a motion.

B. RSA 91-A:5 Exemption Analysis

Under RSA 91-A:5, IV, records of "confidential, commercial, or financial information" are exempted from disclosure, and the New Hampshire Supreme Court has adopted a three-step balancing test for determining whether certain documents meet this designation. *See, e.g., Union Leader Corp. v. N.H. Housing Fin. Auth.*, 142 N.H. 540, 552-54 (1997); *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-83 (2008). The first consideration is whether disclosure of the information sought to be protected involves a privacy interest. The second consideration is whether the public has an interest in disclosure of the information. Finally, the public's interest in disclosure is balanced against the privacy interest at stake to determine whether disclosure is warranted. *See, e.g. segTEL, Inc. d/b/a First Light Fiber*, Order No. 25,825 at 5-6 (October 13, 2015). Our determination of whether information is confidential must be based on an objective test and is not determined by the parties' subjective expectations. *Union Leader Corp. v. N.H. Housing Fin. Auth.* at 553.

As stated above, in our order of notice, we indicated that our treatment of confidential auction data would be consistent with Commission precedent. The Seabrook Protective Order dealt with the results of an auction conducted by JPM of the Seabrook Nuclear Power Station owned at that time by Public Service Company of New Hampshire. The auction process leading to the Seabrook Protective Order was similar to the process we have approved in this auction and consisted of two rounds of bids with a winning bidder selected for review and approval by the Commission. In the Seabrook Protective Order, the Commission found:

We have reviewed the request for confidential treatment and protective order and find that JPMorgan has provided credible arguments as to the commercial sensitivity of the information for which protection is sought. Disclosure could result in competitive damage to bidders, and also impair the ability of the state to obtain such information in the future. Not only do we believe the information is commercially sensitive, we also believe that public disclosure of bids, bid analyses, financial assessments, and data related to the auction would chill future auction transactions, thereby limiting the results that might otherwise have been achieved.

Id. at 10.

In the Seabrook Protective Order, the Commission also found that all of the Seabrook auction data was confidential and could not be released to the public, except for the winning bid amount and terms. Nonetheless, the Commission allowed intervening parties access to the final bid packages of the losing bidders under the terms of a protective order. The protective order allowed access to confidential auction data by certain representatives of the parties. Those representatives were allowed to review confidential documents, but were not allowed to make copies. The names and identifying information were redacted from all bidder materials and from any analysis of those bidder materials.

We first consider whether disclosure of the auction information to be provided by JPM for our review involves a privacy interest. As described by JPM, the commercial auction process depends on confidential treatment of bidder communications, identities, and bid terms to

maintain a competitive process that maximizes bid value. As an expert in this type of sale, JPM has developed a process that market parties have come to expect and that facilitates participation in that process. In the event the process is not protected from disclosure, JPM risks less participation in future auction processes and a diminution of its business activity. In addition, individual participating bidders are competitors in the energy markets and their bidding strategy and business goals are likewise proprietary and competitively sensitive. 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. Much of the operational and financial data presented in the CIM is at a level of detail that could potentially harm Eversource in regional competitive markets. Further, a prospective owner of the Eversource generation facilities could be competitively disadvantaged in the energy market if financial and operational information concerning the generation facilities they had acquired from Eversource were publicly available.

For those reasons we find that the auction data, including the CIM, all JPM and bidder communications, bidder offers, and bidder identities, involve a privacy interest. Berlin argued in its written comments that because certain communications from JPM to bidders referenced the Commission's obligations under RSA 91-A, bidders did not have an expectation of privacy, and therefore the communications should not be protected from disclosure. JPM has indicated that treating bidder identities and bids terms as confidential is customary in commercial auctions and the absence of a written commitment between JPM and the bidders to that effect does not form a basis for concluding that the bidders had no expectation of privacy concerning their bids and bid terms. The existence of the Commission's statutory obligations under RSA 91-A, and reference to them in bidder communications, does not change our analysis under RSA 91-A.

Next we consider whether the public has an interest in disclosure of the JPM bidder communications or bidder information. To the extent that the Commission considers this information in its review of the sale of the Eversource generation facilities, the public has some interest in disclosure of the information. That said, the public also has an interest in maximizing the total value of the transaction as specifically required by the 2015 Settlements and supported by legislative directives to minimize stranded costs. *See* RSA 369-B:3-a and RSA 374-F:XII.

Finally, we must balance the public's interest in disclosure against the privacy interest at stake to determine whether disclosure is warranted. In this case, as was argued by the OCA at the prehearing conference, the interest in confidentiality in this commercial auction process is high. According to JPM, the success of this commercial auction process depends on the confidentiality of the process. Bidder participation is discouraged by any release of information on bidder identities and bid terms. Any failure to protect the customary confidential treatment of auction data, risks poor participation and lower prices in future auctions. As a result, JPM risks a loss of future business if disclosure occurs. The bidders in the process risk exposure of their market strategies and bidding strategies which may cause them competitive harm. We find that the privacy interest outweighs the public's interest in disclosure in this case. The balance we strike here is similar to the balance the Commission struck in the earlier docket as described in the Seabrook Protective Order. Accordingly, we will treat all information described above as confidential. Only the JPM auction report and testimony on the auction process, the winning bid amount, the terms of sale, and the identity of the winning bidder, will be made available to the public.

C. Treatment of Confidential Information during Adjudicative Proceeding

In order to facilitate the parties' participation in this proceeding, we will implement the following process for access to confidential auction data. Any party wishing to review the

confidential auction data must first sign a non-disclosure agreement (NDA) agreeing to use the confidential information only for purposes of participating in this docket and no other, and agreeing not to disclose the information to any other party. A copy of the NDA is attached to this order. We note here the statutory requirement that the OCA receive any confidential filings made with the Commission. *See* RSA 363:28, VI. Because the OCA must by statute “maintain the confidentiality of such information,” we will not require the OCA to execute an NDA. *Id.*

Upon execution of an NDA, the confidential material made available for review will be certain bidder instruction letters, the CIM, the first round indicative bid summary by JPM, the final bid instruction letters, the final bid packages submitted by all second round bidders, and the JPM analysis of final bids. Parties will be provided with copies of the CIM and JPM bidder instruction letters. Parties may review but are prohibited from copying the JPM first round bid indicative bid analysis, the JPM second round bid analysis, and the final bid packages. The names and identifying information will be redacted from all bidder materials and from JPM analysis of those bidder materials. The Commission will provide those documents for review in a secure area at the Commission’s offices, and parties may take notes as they review the material. Because the Commission will have access to the confidential documents, the parties may refer to the documents by name or exhibit number for use in pleadings. Further, parties may cross examine witnesses on the contents of documents by reference to those documents and without using copies. JPM and Eversource witnesses will have access to the confidential documents for cross examination during the final hearing.

Based upon the foregoing, it is hereby


ORDERED, J.P. Morgan Securities, LLC’s auction report and testimony, the winning bid amount, the terms of sale, and the identity of the winning bidder, will be made available to the public; and it is

FURTHER ORDERED, that all other auction data, including the Confidential Information Memorandum, JPM communications with bidders, and bidder communications, offers, and identities are confidential; and it is

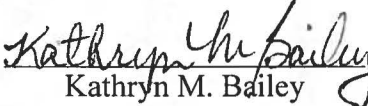
FURTHER ORDERED, that parties wishing to view confidential information must first execute the attached non-disclosure agreement and follow the viewing procedures outlined in this Order, and it is

FURTHER ORDERED, that the request by the Town of Bristol to intervene as a party to this docket is granted.

By order of the Public Utilities Commission of New Hampshire this nineteenth day of September, 2017.



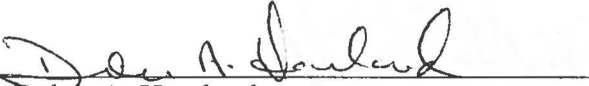
Martin P. Honigberg
Chairman


Kathryn M. Bailey
Commissioner



Michael S. Giaimo
Commissioner

Attested by:



Debra A. Howland
Executive Director

NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

Pursuant to the New Hampshire Public Utilities Commission's (Commission) order on Confidential Auction Data, Order No. 26,057, Sept. 19, 2017, in consideration for and as a condition of the J.P. Morgan Securities, LLC (JPM) and/or the Commission furnishing (or causing to be furnished) to you certain information concerning the auction (Auction) and the generation facilities (Assets) owned by Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource), you hereby agree to hold and keep such information confidential in accordance with the following terms and conditions of this agreement (the "Agreement"):

1. Confidential Material

(a) As used herein, the term "Confidential Material" refers to (i) information of whatever nature relating to Eversource or the Assets, or relating to the Auction conducted by JPM or the bidders participating in the Auction, which you obtain either in electronic format, in writing, or orally from or pursuant to discussions with (A) Eversource or any of its owners, affiliates, directors, officers, employees, agents, investment bankers, attorneys, financiers, accountants, or any other representatives or advisors (collectively, the "Eversource Representatives"); or (B) JPM, the exclusive auction advisor selected by the Commission with respect to the Auction and sale of the Assets (the "Auction Advisor"), or any affiliates, directors, officers, employees, agents or other representatives of the Auction Advisor; or (C) the Commission or the Commission Staff or the Commission's outside attorneys; (ii) any and all other confidential or proprietary, financial, technical, commercial, or other information concerning Eversource's businesses and affairs or the businesses or affairs of any bidders or potential bidders in the Auction, that may be provided or made available to you directly or indirectly by or on behalf of Eversource or the Auction Advisor or the Commission in connection with the regulatory proceeding to review the results of the Auction; and (iii) all notes, summaries, forecasts, analyses, compilations, studies, or other documents made by you or your Representatives (as defined below), or received by you or your Representatives directly or indirectly from Eversource, the Auction Advisor, or the Commission, that contain or reflect, in whole or in part, confidential information described immediately above; in the case of each clause above, (iv) in whatever the form or storage medium, (v) whether or not such information is or was provided prior to or subsequent to the date of this Agreement, and (vi) whether or not such information is marked "Confidential" or bears a similar restrictive legend or other confidential designation.

(b) The term "Confidential Material" does not include information which (i) is or becomes generally available to the public other than as a result of a disclosure by you or your Representatives in violation of the terms and conditions hereof; (ii) was available to you on a non-confidential basis prior to its disclosure to you directly or indirectly by or on behalf of Eversource, the Auction Advisor, or the Commission; (iii) becomes available to you from a source other than Eversource, the Eversource Representatives, the Commission, the Commission Staff, or the Commission's outside attorneys, in connection with this proceeding, or the Auction Advisor, without such source being known or reasonably suspected by you (after reasonable due inquiry) to be in breach of an applicable confidentiality or non-disclosure agreement; or (iv) was

independently developed by you or your Representatives without the use of or reference to any Confidential Material.

2. Permitted Use and Non-Disclosure of Confidential Material.

You agree that you and your affiliates, directors, officers, employees, agents, attorneys, accountants, financial advisors, consultants, and any of your other representatives or advisors (collectively, your “Representatives”) shall use all Confidential Material solely for the purpose of evaluating the Auction in this regulatory proceeding, and for no other purpose whatsoever. You agree that you and your Representatives shall keep the Confidential Material confidential and shall not disclose any of the Confidential Material to anyone; provided, however, that disclosure of such information may be made by you (i) to any of your Representatives who are actively and directly participating in the evaluation of the Auction and who need to know such information, it being understood and agreed that you shall cause each such Representative to treat such information as Confidential Material and comply with the terms of this Agreement as if such Representative were a party to this Agreement, and that you shall be responsible to Eversource and the Auction Advisor for any breach of the provisions hereof by any such Representative.

3. Return, Destruction, or Retention of Confidential Material. Upon written request of Eversource, the Auction Advisor, or the Commission, you shall promptly return or destroy all Confidential Material and any other information held by you or any of your Representatives who are in possession of such information in connection with your review of, or your interest in, the Auction, which contain or reflect any Confidential Material, in each case, along with all copies of the same. In all cases of destruction, you shall promptly provide to Eversource, the Auction Advisor, or the Commission, as applicable, certified written notice of such destruction. Notwithstanding the foregoing, you may keep (a) copies of the Confidential Material to the extent required by law, rule, regulation, or administrative order, and (b) backup copies of items containing or constituting Confidential Material in computer systems to the extent that routine computer backup procedures or processes create such copies; provided that, in either case, notwithstanding anything herein to the contrary, including the expiration of the term of this Agreement, (i) any such Confidential Material shall continue to be subject to all obligations of confidentiality set forth in this Agreement until such Confidential Material has been returned or destroyed as set forth in this section, and (ii) such Confidential Material shall be retained solely by your legal or compliance department and shall not be made available at any point thereafter to personnel in other departments, other Representatives, or any other person, without the express prior written consent of Eversource, the Auction Advisor, or the Commission. Notwithstanding the return or destruction of any Confidential Material, you and your Representatives shall continue to be bound by the confidentiality and other obligations hereunder.

4. Nature of Obligations. You and Eversource and the Auction Advisor agree that, except for any other Non-Disclosure Agreement signed by you in connection with participating as a potential bidder in the Auction process, neither Eversource, the Auction Advisor, the Commission, nor you, will be under any legal obligation of any kind whatsoever with respect to the Auction by virtue of this or any other written or oral expression with respect to the Auction by Eversource, the Auction Advisor, the Commission, or any of their respective Representatives, on the one hand, and you or your Representatives, on the other hand, except for the matters

specifically agreed to in this Agreement. This Agreement contains the entire and only agreement between Eversource, the Auction Advisor, and you concerning the subject matter hereof, and any term or condition of this Agreement may only be modified or waived by a separate writing executed by the parties hereto that expressly modifies or waives such term or condition.

5. Required Disclosure. If you or any of your Representatives become required (by deposition, interrogatory, request for documents, subpoena, civil investigative demand, regulatory review, or similar process) to disclose any of the Confidential Material, you agree to provide Eversource, the Auction Advisor, and the Commission with prompt prior written notice of, and the terms of and circumstances surrounding, such requirement, to the extent permitted by applicable law, rule, or regulation, so that Eversource, the Auction Advisor, or the Commission as intended third party beneficiary may seek a protective order or other appropriate remedy, and/or waive compliance with the terms and conditions of this Agreement. If such protective order or other remedy is not obtained, or if Eversource, the Auction Advisor, or the Commission waives compliance with the provisions hereof, then you and your Representatives agree to disclose only that portion of the Confidential Material that you are advised by counsel is reasonably necessary to ensure compliance with such requirement. In addition, you and your Representatives shall not oppose any action, and shall, if and to the extent required by Eversource, the Auction Advisor, or the Commission, and not otherwise prohibited by law, cooperate with, assist, and join with Eversource, the Auction Advisor, or the Commission, at the requesting party's expense, in any reasonable action, by Eversource, the Auction Advisor, or the Commission as intended third party beneficiary to obtain an appropriate protective order or other reliable assurance that confidential measures will be accorded to the Confidential Material.

6. Term. The terms and conditions of this Agreement, and all obligations of confidentiality contained herein, shall remain in full force and effect indefinitely and without expiration.

7. Remedies and Waiver. It is further understood and agreed that money damages may not be a sufficient remedy for any actual or threatened breach of any of the provisions of this Agreement, and that any party hereto may seek specific performance and injunctive and other equitable relief as a remedy for any such actual or threatened breach. It is further understood and agreed that no failure or delay by the parties hereto in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power, or privilege hereunder. In the event of any litigation relating to this Agreement, if a court of competent jurisdiction determines in a final non-appealable decision that this Agreement has been breached by any party (including a breach hereof by your Representatives or any other signatory's Representatives), then the non-prevailing party shall reimburse the prevailing party for any reasonable legal fees and expenses incurred in connection with all such litigation. The existence of any claim or cause of action that you or any of your Representatives may have against Eversource, the Auction Advisor, or the Commission, or any of their affiliates or Representatives, shall not constitute a defense or bar to the enforcement of this Agreement.

8. Commission as Intended Third Party Beneficiary of Agreement. By signing this Agreement, you agree to be bound by the terms of the Commission's Order on Confidential Treatment of Auction Data, Order No. 26,057, (Sept. 19, 2017), and you further acknowledge and agree that the Commission is an intended third party beneficiary of this Agreement and as

such may enforce the terms of that order and the terms and conditions of this Agreement, including, without limitation, the express rights and remedies provided for in Section 7 hereof, against you in a court of competent jurisdiction located in New Hampshire.

9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire. The parties hereto irrevocably and unconditionally consent hereby to submit to the exclusive jurisdiction of the Business and Commercial Dispute Docket (BCDD) of the Superior Court State of New Hampshire pursuant to N.H. Superior Court Civil Rule 207, or the United States District Court for the District of New Hampshire, for any action, suit, or proceeding arising out of or relating to this Agreement, and hereby further irrevocably and unconditionally waive and agree not to plead in any such court that any such action, suit, or proceeding brought in any such court has been brought in an inconvenient forum.

10. Severability. If any of the provisions of this Agreement is found to violate any statute, regulation, rule, order, or decree of any governmental authority, court, agency, or exchange, such invalidity shall not be deemed to affect any other provision hereof or the validity of the remainder of this Agreement, and such invalid provision shall be deemed deleted herefrom to the minimum extent necessary to cure such violation.

11. Assignment. This Agreement shall be for the benefit of and shall be enforceable by Eversource, the Auction Advisor, or the Commission as intended third party beneficiary, and their respective affiliates, successors, and assigns. It is understood that any assignment of this Agreement by you or your Representatives without the express prior written consent of Eversource, the Auction Advisor, and the Commission shall be void and of no effect. It is further understood that this Agreement shall bind and be enforceable against each party hereto and its successors, legal representatives, and permitted assigns.

12. Counterparts. This Agreement may be executed in one or more counterparts, and by the parties hereto on separate counterparts, each of which shall be deemed an original for all purposes and all of which together shall be deemed one and the same Agreement. A signed copy of this Agreement delivered by facsimile, e-mail, PDF, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

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If you are in agreement with the foregoing, please sign and return the duplicate copy of this Agreement, which shall constitute the parties' entire agreement with respect to the subject matter hereof.

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

By: _____

Name: Robert A. Bersak

Title: Chief Regulatory Counsel

Date: _____

J.P. MORGAN SECURITIES, LLC

By: _____

Name:

Title:

ACCEPTED AND AGREED TO:

[●]

By: _____

Name: _____

Title: _____

Date: _____