

RATH YOUNG PIGNATELLI

MEMORANDUM

FROM: Rath, Young and Pignatelli, P.C.

DATE: April 30, 2016

RE: **Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH”) Summary of Generation Asset Auction**

I. Executive Summary

This memorandum summarizes the auction process through which PSNH will divest its fossil and hydro generation assets. The auctions will be conducted pursuant to a Settlement Agreement¹ entered into by PSNH and its parent organization, Eversource Energy (“Eversource”), on June 10, 2015, with the New Hampshire Public Utilities Commission (the “Commission”) and the Office of Consumer Advocate, as well as several other stakeholders.² The Settlement Agreement also addresses other issues not explored here, such as PSNH’s recovery of its stranded costs and debt refinancing.³

PSNH will divest its fossil and hydro generation facilities through one or more auctions overseen by the Commission and conducted by an outside auction advisor. The final structure and details of the auction processes will be established by this advisor. The design of the auction process, selection of asset groupings, and approval of final bids for generation assets will be subject to expedited adjudicative proceedings by the Commission. Qualified bidders will be given the opportunity to conduct detailed due diligence. Asset sales are subject to federal, state and local regulatory approvals, as well as third party consents, but PSNH is required to assist successful purchasers in obtaining such approvals or consents. PSNH must manage these assets pending sale, which includes continuing to bid generation into the ISO-NE forward capacity markets. Successful purchasers must honor PSNH’s collective bargaining agreement for 2 years from closing, including its special employee protections during divestitures, such as notice requirements, severance packages, health insurance, and transition benefits. Successful purchasers must also provide pension benefits such that, upon retirement, these employees receive a total pension benefit that equals (when combined with PSNH’s benefits) the plan the

¹ This agreement is titled 2015 Public Service Company of New Hampshire Restructuring and Rate Stabilization Agreement (the “[Settlement Agreement](#)”). The Settlement Agreement can be viewed by clicking [here](#).

² The parties subsequently amended the Settlement Agreement on January 26, 2016 (the “Amendment”). The Amendment can be viewed by clicking [here](#).

³ Other issues include: resolution of certain issues with PSNH’s Merrimack Station “scrubber” (a wet flue gas desulfurization system), a 2 year freeze by PSNH on general distribution rates, extension of PSNH’s reliability program funding, and the establishment of a \$5 million clean energy fund. Settlement Agreement at 1-2.

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employee qualified for at the time of acquisition. If a sale decreases a facility's assessed value for property tax purposes, the burden of making special stabilization payments to the affected municipality falls on PSNH, not the purchaser.

II. Facilities

The PSNH fossil and hydro generating assets to be auctioned are listed below. Detailed facility specifications will be provided as part of the divestiture process.⁴

Hydro Facilities	MW	Thermal Facilities	MW	Remote Combustion Turbines	MW
Amoskeag Station	16.0	Merrimack Station	496.4	Lost Nation Combustion Turbine	18.0
Androscoggin Reservoir Company ("ARCO") ⁵	N/A	Newington Station	414.0	White Lake Combustion Turbine	18.6
Ayers Island Station	8.4	Schiller Station	150.0		
Canaan Station	1.1				
Eastman Falls Station	6.4				
Garvins Falls Station	12.3				
Gorham Station	2.2				
Hooksett Station	1.6				
Jackman Station	3.2				
Smith Station	15.0				

PSNH's minority ownership interest in Wyman Unit 4, a 600 MW oil-fired generator located in Yarmouth, Maine, will be offered for sale outside of the auction process.⁶

III. Generation Facilities Auction

The goals of the asset auctions are to maximize the net total transaction value (i.e., all cash and non-cash elements of each transaction) realized from the sale in order to minimize stranded costs, to provide a market-based determination of stranded costs, and to establish a competitive energy market, while at the same time providing certain protections for affected

⁴ Settlement Agreement at 18.

⁵ Hydroelectric stations on the Androscoggin River receive headwater benefits from ARCO. PSNH is a 12.5% owner in ARCO.

⁶ Settlement Agreement at 22. PSNH's minority interest amounts to a 3.14% share or 18.84 MW. The majority interest is held by NextEra Energy Resources.

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employees and host communities.⁷ Eversource affiliates may not bid on the assets. The costs of the auction advisor will be netted against the auction proceeds.⁸ Successful purchasers of PSNH's generation facilities will be required to keep the acquired plants in service for a minimum of 18 months from the date of the financial closing on the purchase.⁹

IV. Auction Structure

The exact structure and details of the auction processes will be established by the auction advisor, subject to oversight and control by the Commission.¹⁰ The Settlement Agreement expressly provides that the fossil assets may be auctioned pursuant to separate processes from the hydro assets.¹¹ The design and approval of the auction process, selection of any asset groupings, and approval of final bids for generation assets, will be subject to expedited adjudicative proceedings by the Commission.¹² Municipalities will automatically qualify to bid on any individual asset or asset package.¹³ Before the bidding process, qualified bidders will be given the opportunity to conduct detailed due diligence, ask detailed questions, and visit the facility sites.¹⁴ Additionally, the auction advisor must disclose any agreed-upon asset groupings before the binding bid process commences.¹⁵ Participants will submit bids in accordance with the process ultimately established by the auction advisor.¹⁶

Interested parties will receive information concerning the generation assets through a secure internet web site, data room, transaction documents, and other means.¹⁷ The designated advisor will serve as the intermediary for communications from bidders throughout the bidding process.¹⁸

V. Approvals and Consents

The Settlement Agreement identifies various approvals required prior to any closing of an asset sale.¹⁹ PSNH is required to cooperate with the winning bidders to obtain these and any other necessary approvals.²⁰

⁷ Settlement Agreement at 16.
⁸ Settlement Agreement at 17.
⁹ Settlement Agreement at 17.
¹⁰ Amendment at 3.
¹¹ Settlement Agreement at 3, 17.
¹² Amendment at 3.
¹³ Amendment at 3.
¹⁴ Amendment at 3.
¹⁵ Amendment at 3.
¹⁶ Amendment at 3.
¹⁷ Settlement Agreement at 18.
¹⁸ Settlement Agreement at 18.
¹⁹ Settlement Agreement at 20.
²⁰ Settlement Agreement at 20.

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Specifically, federal approvals from the Federal Energy Regulatory Commission (“FERC”) will be required for the transfer to the buyer of any jurisdictional facilities, the jurisdictional hydroelectric projects and underlying FERC licenses, and the interconnection and operation agreements.²¹ Additionally, the pre-merger notification requirements of the federal antitrust statutes (the Hart-Scott-Rodino Act) may require PSNH and the buyer to file notification regarding the intended sale.²²

At the state level, and in addition to approvals required from the Commission, approval may be required by the Vermont Public Service Board²³ for the sale of PSNH’s Canaan, Vermont generating plant, and from the Maine Public Utilities Commission²⁴ for the sale of PSNH’s minority interest in the Wyman 4 generating station in Maine.²⁵ Approvals and appropriate findings may also be required from state regulators under the federal exempt wholesale generator regulations.²⁶

The asset sales may require prior written consent from certain lenders under PSNH’s existing credit agreements (with PSNH tasked with obtaining such consents).²⁷ In addition, the sales may require additional regulatory approvals that will be based on the identity and regulatory requirements applicable to the selected buyer of each divested asset.²⁸ Approvals or third party consents may also be required to transfer various licenses, permits, and other authorizations.²⁹

VI. Prudent Operation of Assets

Until the assets are sold, PSNH is required to prudently operate these facilities, and to prudently manage the generation-related entitlements and purchase obligations.³⁰ PSNH must file with the Commission annual plans describing its generation related capital and maintenance expenditures until the sale or retirement of its final generation asset, and must not increase or decrease expenditures by more than 20% from the plan without prior Commission approval.³¹ PSNH must also continue to bid its generating assets into the ISO-NE forward capacity markets in order to preserve the value of these assets, unless it receives Commission approval to the

²¹ Settlement Agreement at 21.

²² Settlement Agreement at 21.

²³ Under Vt. Stat. tit. 30, §109.

²⁴ Under Me. Rev. Stat. tit. 35-A, §1101.

²⁵ Settlement Agreement at 21.

²⁶ 18 C.F.R. 366.7. Settlement Agreement at 21.

²⁷ Settlement Agreement at 21.

²⁸ Settlement Agreement at 21.

²⁹ Settlement Agreement at 21.

³⁰ Settlement Agreement at 25.

³¹ Settlement Agreement at 25.

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contrary.³² PSNH must annually file a report with the Commission describing its plant operations and the results of output sales.³³

VII. Employee Protection

PSNH is a party to a collective bargaining agreement³⁴ between it and its unionized workforce.³⁵ The agreement will remain in effect, and each asset purchaser will be required to substantively comply with the terms of the agreement for a period of 2 years from closing.³⁶

All affected employees (union or otherwise)³⁷ will be entitled to certain protections, including: (1) notice from the purchaser concerning its staffing expectations 120 days before financial closing; (2) recognition of employees' service with PSNH for purposes of buyer's programs; (3) a severance package with 52 or more weeks pay (based on employment length), outplacement/tuition assistance, and medical/counseling benefits; (4) health benefits equal to PSNH's programs; (5) pension benefits such that, upon retirement, these employees receive a total pension benefit that equals (when combined with PSNH's benefits) the plan the employee qualified for at the time of acquisition; and (6) certain pension plan modifications for involuntarily separated employees that meet certain age and eligibility criteria.³⁸

These requirements also will be binding upon any successor, assign or acquirer of any purchaser.³⁹ Costs associated with subsequent workforce restructuring activities will be borne solely by each purchaser.⁴⁰

VIII. Property Tax Stabilization

To protect the municipalities impacted by the sale of these assets, PSNH must make property tax stabilization payments to the municipalities that ramp down on a straight-line basis and phase out over a period of three tax years following divestiture, to the extent that the purchase price of the asset is less than the municipality's imputed fair market value as expressed

³² Settlement Agreement at 25.

³³ Settlement Agreement at 26.

³⁴ Collective Bargaining Agreement, between PSNH and Local 1837 of the International Brotherhood of Electrical Workers, governing the "Generation Group," as modified by that certain "Memorandum of Agreement Extending Current CBA Upon Divestiture by PSNH of any Generating Asset" and its referenced "Exhibit A" and "Exhibit B," attached as Appendix B to the Settlement Agreement.

³⁵ Settlement Agreement at 26.

³⁶ Settlement Agreement at 17; 26; also see Appendix B to the Settlement Agreement.

³⁷ The Settlement Agreement and New Hampshire law extend the protections afforded to PSNH's union members to all of PSNH's affected employees. Settlement Agreement at 27 (citing RSA 369-B:3-b).

³⁸ Settlement Agreement at 27; also see Appendix B to the Settlement Agreement.

³⁹ Settlement Agreement at 26.

⁴⁰ Settlement Agreement at 26.

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by the assessed value of the asset, multiplied by the New Hampshire Department of Revenue Administration's median equalization ratio for the subject municipality.⁴¹

IX. Conclusion

The Commission is still early in the process of structuring the auctions. As of the drafting of this memorandum, it is soliciting and evaluating proposals from firms interested in serving as potential auction advisors, as well as law firms that would serve as counsel to the Commission.

Please call with comments and questions. The firm's contact for auction-related inquiries is Fred Coolbrooth at 603-226-2600.

⁴¹ Settlement Agreement at 3, 22-23.