

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

August 18, 2017 - 1:05 p.m.
Concord, New Hampshire

5 SEP '17 PM3:04

RE: DE 17-124
EVERSOURCE ENERGY:
Sale of Generating Facilities.
(Prehearing conference)

PRESENT: Chairman Martin P. Honigberg, Presiding
Commissioner Kathryn M. Bailey
Sandy Deno, Clerk

APPEARANCES: Reptg. Public Service Company of
New Hampshire d/b/a Eversource Energy:
Robert A. Bersak, Esq.

Reptg. the Town of New Hampton:
Judith E. Whitelaw, Esq. (Mitchell...)

Reptg. the City of Berlin and the
Town of Gorham:
Christopher L. Boldt, Esq. (Donahue..)

Reptg. NextEra Energy Resources:
Brian J. Murphy, Esq.

Reptg. Conservation Law Foundation:
Thomas F. Irwin, Esq.

Reptg. the Sierra Club:
Zachary M. Fabish, Esq.

Court Reporter: Steven E. Patnaude, LCR No. 52

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ORIGINAL TRANSCRIPT

APPEARANCES: (C o n t i n u e d)

**Reptg. the Office of Strategic
Initiatives (OSI):**

Christopher G. Aslin, Esq.
Assistant Attorney General
N.H. Department of Justice

Reptg. Residential Ratepayers:

D. Maurice Kreis, Esq., Consumer Adv.
Brian Buckley, Esq.
James Brennan, Finance Director
Office of Consumer Advocate

Reptg. PUC Staff:

Alexander F. Speidel, Esq.
Thomas C. Frantz, Dir./Electric Div.
Richard Chagnon, Electric Division

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P R O C E E D I N G

CHAIRMAN HONIGBERG: Good afternoon.

We're here in Docket 17-124, which is the docket we've opened to deal with the auction process of Eversource's generation assets. We're here for a prehearing conference. There is no technical session scheduled afterwards. I know we have a bunch of interventions to deal with. Other than that, I'm not sure what's on the docket.

But let's take appearances before we do anything else.

MR. BERSAK: Good afternoon, Commissioners. Robert Bersak, on behalf of Public Service Company of New Hampshire. And with me today are Mr. Eric Chung and Mr. Christopher Goulding.

MS. WHITELAW: Good afternoon. Jae Whitelaw, J-a-e, on behalf of the Town of New Hampton. I'm with the Mitchell Municipal Group.

MR. BOLDT: Chris Boldt, Donahue, Tucker & Ciandella, for the City of Berlin and the Town of Gorham.

1 MR. MURPHY: Brian Murphy -- sorry.
2 Brian Murphy, on behalf of NextEra Energy
3 Resources.

4 MR. IRWIN: Good afternoon,
5 Commissioners. Tom Irwin, representing the
6 Conservation Law Foundation.

7 MR. ASLIN: Good afternoon. Chris
8 Aslin, from the Attorney General's Office,
9 representing the Office of Strategic
10 Initiatives, formerly known as the "Office of
11 Energy & Planning".

12 MR. FABISH: Good afternoon. Zack
13 Fabish, on behalf of the Sierra Club.

14 MR. KREIS: Good afternoon. I'm D.
15 Maurice Kreis, the Consumer Advocate, here on
16 behalf of residential utility customers. With
17 me today is our staff attorney, Brian Buckley.

18 MR. SPEIDEL: Good morning,
19 Commissioners. Alexander Speidel, representing
20 the Staff of the Commission. And I have with
21 me the Director of the Electric Division, Tom
22 Frantz. I also have Electric Division Analyst
23 Rich Chagnon. And not with us right now is the
24 lead counsel, General Counsel Anne Ross.

1 CHAIRMAN HONIGBERG: Is there
2 anything that we need to deal with today, other
3 than the interventions?

4 Mr. Speidel.

5 MR. SPEIDEL: I would say not. You
6 may be interested in hearing an offer of proof
7 from the Staff regarding J.P. Morgan Chase's
8 position on the confidentiality structure
9 that's been penciled out in the Order of
10 Notice. It doesn't have to be lengthy.

11 CHAIRMAN HONIGBERG: Okay. But we'll
12 hear generally from the parties about their
13 positions on this. And it will probably make
14 sense for you to do that when we get around to
15 you, Mr. Speidel.

16 Are there other issues that we're
17 going to be dealing with, other than
18 interventions?

19 Mr. Bersak.

20 MR. BERSAK: No.

21 CHAIRMAN HONIGBERG: All right.
22 Looked like you were grabbing the microphone
23 there, I wanted to --

24 MR. BERSAK: I was just anticipating.

1 CHAIRMAN HONIGBERG: Well, let's
2 start with interventions. See if I can get
3 this right. The towns that are represented by
4 Attorneys Whitelaw and Boldt, there was no
5 objection to those.

6 Staff, any position on those
7 interventions?

8 MR. SPEIDEL: No objection.

9 CHAIRMAN HONIGBERG: Actually, I
10 thought you would support the intervention, as
11 they were Parties to the Agreement.

12 MR. SPEIDEL: Sure. In general
13 terms, I can offer no objection to any of the
14 interventions, but one, which we can get into
15 later.

16 CHAIRMAN HONIGBERG: Okay.

17 MR. SPEIDEL: But we would not
18 hesitate to support the interventions, if you
19 would so prefer, Chairman.

20 CHAIRMAN HONIGBERG: All right. So,
21 the towns are in.

22 CLF, also a party, there's no
23 objection to CLF, I assume?

24 *[No verbal response.]*

1 CHAIRMAN HONIGBERG: CFL is in.

2 Whatever Mr. Aslin's client is called today,
3 "Office of Strategic Initiatives", right?

4 MR. ASLIN: Correct.

5 CHAIRMAN HONIGBERG: All right. And
6 there's no objection to Mr. Aslin's client?

7 *[No verbal response.]*

8 CHAIRMAN HONIGBERG: That is correct.
9 Does that bring us to NextEra and the Sierra
10 Club, or was there anybody else?

11 *[No verbal response.]*

12 CHAIRMAN HONIGBERG: Okay.
13 Mr. Murphy, have you seen the objection that
14 was filed by Eversource?

15 MR. MURPHY: Yes, I have. I have
16 read it.

17 CHAIRMAN HONIGBERG: Off the record.

18 *[Brief off-the-record discussion*
19 *ensued.]*

20 CHAIRMAN HONIGBERG: All right.
21 We're back on the record. Do you have anything
22 you want to say in response to what the Company
23 has filed?

24 MR. MURPHY: Thank you, Mr. Chairman.

1 Is this -- testing? Are you able to hear?

2 CHAIRMAN HONIGBERG: Uh-huh.

3 MR. MURPHY: Thank you, Mr. Chair,
4 for the opportunity this afternoon to address
5 the Commission.

6 In response to the objection of
7 Eversource, I would go back to our petition and
8 elaborate on the reasons we filed the petition.
9 We have three lines of businesses that are
10 outlined in the petition that are substantially
11 impacted by and have an interest in this
12 proceeding.

13 The first line is our wholesale
14 marketing entity, which is NextEra Energy
15 Marketing. They are very interested in
16 participating in the procurement process that
17 has been set forth in Docket Number DE 17-113,
18 where they are an intervenor. Their rights are
19 directly impacted on how this proceeding
20 proceeds, and in the timely manner that the
21 Commission wants it to proceed in. So, I would
22 say they have a direct right that is impacted
23 by the ability of this proceeding.

24 Secondly, the retail marketing entity

1 that is already active in New Hampshire. We'd
2 like this proceeding to proceed, because it is,
3 as we view it, one of the last large pieces of
4 the puzzle of restructuring in New Hampshire.
5 We have been involved in the --

6 *[Court reporter interruption.]*

7 MR. MURPHY: -- ANE contract capacity
8 case, as well as the Northern Pass PPA case for
9 similar reasons that we want to be involved in
10 this case. We want restructuring in New
11 Hampshire to succeed and to be consistent with
12 the statutes.

13 Here we want to participate as the
14 largest generator in the state as well, because
15 the owner of the fossil and hydro plants, we
16 have an interest in them being well qualified.
17 As in the Seabrook case, I believe it's on Page
18 50 -- or, 45 of that order, the Commission was
19 interested at that time, and I would say should
20 be interested in this time, that the owner be
21 qualified from an operation and maintenance
22 standpoint. A nuclear power plant, the owners
23 and operators of the surrounding generation,
24 very important that, for safety, as well as

1 reliability reasons, that they be well
2 qualified. And I think we're in a unique
3 position to give a thumbs-up or a thumbs-down
4 on whether the entity that is ultimately
5 selected is well qualified. So, we have a
6 direct and substantial interest for that
7 reason.

8 Lastly, as in the other proceedings
9 that I mentioned, I believe NextEra brings an
10 aspect of justice to the proceeding, in that we
11 are able to provide the Commission with an
12 informed and full record. We're willing to do
13 that in the timeline that the Commission has
14 outlined in its order, which is expedited, we
15 understand that. And we believe that, given
16 that this is an important last piece of the
17 puzzle in restructuring in New Hampshire, that
18 having a well-developed record provides the
19 Commission the best position to move this
20 proceeding forward.

21 Thank you.

22 CHAIRMAN HONIGBERG: Mr. Bersak, do
23 you have any response you want to offer to
24 that?

1 MR. BERSAK: Well, as we stated in
2 our objection filed earlier today,
3 Commissioners, this docket has a very specific
4 scope and a very narrow purview. The specific
5 scope is to finish up the divestiture of our
6 generating assets. We have gone through the
7 entire Phase I and Phase II process of that
8 auction, and due diligence is done, and we now
9 await final bids. Once final bids are done and
10 negotiations have taken place, and contracts
11 are signed, we'll be back in this docket before
12 this Commission for the Commission to determine
13 whether the final bids from that process are
14 acceptable and whether we should close on the
15 sale of those assets.

16 The Legislature has changed the law
17 with respect to divestiture of our assets to
18 make it clear that the only interest at stake
19 is the economic interests of PSNH's retail
20 customers. The Legislature changed it from
21 including a public interest standard for some
22 piece of the divestiture to being solely
23 economic interests of customers. They have
24 taken out issues with respect to environmental,

1 they have taken out interests with respect to
2 retail suppliers, they have taken out issues
3 with respect to wholesale suppliers.

4 The real issue in this docket is "has
5 the total transaction value for the sale of our
6 assets been maximized, as was contemplated by
7 the Settlement Agreement, in order to
8 effectuate a transition out of generation,
9 which would reduce stranded costs the maximum
10 amount possible?"

11 And we do know NextEra is involved in
12 other dockets that are related, such as the
13 docket that will deal with how energy service
14 is procured post divestiture. And that's, you
15 know, that's a different docket. And, if
16 they're an intervenor there, they can intervene
17 over there, but that doesn't give them entrée
18 into every docket here, such as this one.

19 Northern Pass/Access Northeast,
20 not -- they're not issues here either. To the
21 extent that NextEra feels that it has something
22 to add potentially with respect to who the
23 ultimate winning bidders are, they can do that
24 in public comment, once the identity of the

1 winning bidders have been known. There is no
2 need for them to be involved in a docket whose
3 scope and interests are outside of the purview
4 of their intervention.

5 CHAIRMAN HONIGBERG: Mr. Murphy, you
6 sound an awful lot like a competitor coming in.
7 And there's a fair bit of precedent that
8 competitors don't have intervenor rights. I
9 think the Company has the better of this
10 argument here. And I'm not -- I mean, I think
11 you're probably going to get denied
12 intervention. That doesn't mean that you can't
13 participate as a member of the public and
14 follow what's going on, as anyone could, and
15 offer comments at appropriate times. But you
16 do not look like an intervenor in this docket
17 to us. And the competitive concerns that your
18 client has in three different ways don't give
19 you standing, and the last way you put it, I
20 think you used the phrase "aspect of justice",
21 which I'm not even sure what that means.

22 But, in terms of making sure the
23 process is good, there's lots of people here
24 who will make sure we have a good process.

1 And, as I said, you can follow along as we're
2 going. So, I think your intervention request
3 is denied.

4 Let's turn to Mr. Fabish. Have you
5 had a chance to read the Company's response?

6 MR. FABISH: Yes, briefly.

7 CHAIRMAN HONIGBERG: And you heard
8 some of it in what Mr. Bersak said, because I
9 think some of what he said was addressed to you
10 as well.

11 MR. FABISH: Yes.

12 CHAIRMAN HONIGBERG: Do you have
13 anything you want to offer?

14 MR. FABISH: Yes. Just a simple
15 point that, whether or not the lense through
16 which this Commission is to view the auction
17 results, in making its ultimate approval or
18 disapproval of those results, may be economic,
19 the impacts of those decisions will affect
20 whether or not these facilities ultimately run,
21 particularly in the case of a potential failed
22 auction.

23 Now, we don't know, I certainly don't
24 know whether or not a failed auction is even

1 something that's within the ambit of
2 possibility, because we don't know the results
3 of the final bids yet. But the Sierra Club has
4 a substantial interest in the ultimate
5 disposition of these facilities, whether or not
6 they're retired, whether or not they continue
7 to operate, and their impacts on the
8 environment thereby.

9 So, again, whether or not the lense
10 through which this Commission views this as
11 maximizing the economic benefit to ratepayers,
12 the impacts of those decisions go directly to
13 the core interests of the Sierra Club.

14 CHAIRMAN HONIGBERG: Other than what
15 you said a moment ago, Mr. Bersak, is there
16 anything you want to add?

17 MR. BERSAK: Just very briefly. You
18 know, the interests of the Sierra Club, as
19 expressed by Attorney Fabish, are environmental
20 issues that go beyond the very narrow scope
21 that the Legislature has set forth, economic
22 interests of our customers. Their
23 environmental interest is a public interest,
24 that is not the standard anymore.

1 With respect to the possibility of a
2 failed auction, in the event there's a failed
3 auction, I assume we're going to have to do
4 some changing of what we anticipate the docket
5 is going to be. In the event of a failed
6 auction, I expect that Sierra Club could, at
7 that point, refile for intervention to
8 determine what the process is going to be in
9 the event there isn't a divestiture at that
10 time. But I don't think now, speculating that
11 something might happen, that's not ripe for
12 intervention at this point.

13 CHAIRMAN HONIGBERG: Mr. Fabish, what
14 Mr. Bersak just said included two -- a concept
15 that I was thinking and a word that I was
16 thinking. "Speculative" was the word that I
17 was thinking, and "not yet", with respect to
18 your client's interests.

19 If there's a failed auction, things
20 may be different, and at that time maybe we
21 would revisit that. But I'm not seeing the
22 kind of right that Sierra Club has that would
23 be appropriate for intervention at this time.

24 Anything else you want to say on

1 this?

2 MR. FABISH: Yes. Just two things.
3 One, the Order of Notice gave a timeline for
4 filing interventions, and I wanted to adhere to
5 that timeline.

6 Secondly, my read of the Settlement
7 Agreement governing how the auction is to take
8 place, in its sections discussing a failed
9 auction, whether or not there's a failed
10 auction is a determination to be made by the
11 Commission. And, so, that is, you know, the
12 aspect of the determination that this
13 Commission is going to be engaging in that we
14 have a particular heightened interest in at
15 this point. Even though, rightly said, we
16 don't know what the results of this auction are
17 going to be at this point, because this docket
18 was opened a bit before those results were
19 available.

20 I mean, I could add one other thing,
21 which is that we certainly don't intend to
22 burden this proceeding with extra process or
23 discovery or things like that, that would be
24 irrelevant prior to those results.

1 CHAIRMAN HONIGBERG: Well, then it
2 seem to me that what you -- you've reserved
3 your place in line should something happen.
4 That you would be well served to follow what's
5 going on, attend everything that's public, and
6 be as active as you can be without intervenor
7 status. And, then, if we are faced with the
8 question of "is there a failed auction and, if
9 so, what should we do about it?", you renew
10 your request and come in at that time.

11 All right. So, we're going to deny
12 the Sierra Club's request for now,
13 understanding that all decisions are final
14 until changed should circumstances warrant.

15 Anything else with respect to
16 interventions?

17 *[No verbal response.]*

18 CHAIRMAN HONIGBERG: All right. I
19 think we're ready to hear then from folks on
20 their views of how this is going to go. Mr.
21 Bersak, why don't you start us off.

22 MR. BERSAK: Very briefly. I mean,
23 the purpose, I think, of the remaining
24 proceeding today is to set forth some

1 procedures that will -- how we'll handle
2 confidential information, once final contracts
3 are filed with the Commission. So that the
4 parties that have interest in determining that
5 the process actually worked and that we
6 actually are maximizing the total transaction
7 value will have access to information they
8 need.

9 We need to ensure that the Commission
10 has the ability to review and hopefully approve
11 final contracts as quickly as possible, because
12 bids have a shelf life. And, so, to the extent
13 that we can prearrange what the processes will
14 be, particularly with respect to confidential
15 information, that will be very helpful.

16 And we will await Mr. Speidel's
17 proposal on how that process should be dealt
18 with, and we will concur with what they're
19 going to say.

20 CHAIRMAN HONIGBERG: Ms. Whitelaw.

21 MS. WHITELOW: Thank you. My concern
22 is --

23 *[Court reporter interruption.]*

24 MS. WHITELOW: Is this better?

1 CHAIRMAN HONIGBERG: Much.

2 MS. WHITELAW: Okay. My only concern
3 is when we will have access to the information,
4 which I understand will be identified --
5 identifying information redacted, but otherwise
6 the complete bid package. When we would have
7 information available to us, so that we can
8 review it in time for the technical session
9 that is scheduled to be ten days after the
10 petition is filed.

11 And then -- and I think that's my
12 biggest concern.

13 CHAIRMAN HONIGBERG: Mr. Boldt.

14 MR. BOLDT: Well, aside from the
15 underlying fundamental issue of whether the
16 information from the bidders is properly to be
17 deemed confidential under our law, you are
18 acting in an adjudicative proceeding here, you
19 are a court, in essence. And, as most recently
20 as on the 15th, the Supreme Court addressed a
21 91-A confidentiality case in the *State v. Kibby*
22 matter, which I suggest review be given.

23 We start with the premise that the
24 information is public. We also start with the

1 underlying documentation that is in this
2 proceeding, in the bid package information,
3 which started out in late February with the
4 initial invitation, that clearly says, in
5 Section I believe it's 4(c), that "the bidders
6 should be aware that, under 91-A, your
7 information may be public."

8 It goes on to say "The Company and
9 J.P. Morgan will try to keep it confidential,
10 but there's no guarantee."

11 That is mirrored -- or, rather the
12 subsequent bid invitation materials of later
13 on, April and June, two packets in June, are
14 silent on the issue of whether the bids are
15 going to be confidential. And, in any form of
16 a government, I'm a selectman in Sandwich, when
17 we open a bid package, whether it's for a new
18 building or a new road, those bids are public,
19 because we need to assure our citizenry that
20 the information that we are using to select the
21 best bid is actually the best bid, and then we
22 have a system of checks and balances in our
23 government.

24 Accordingly, I do not view the

1 information coming from the bidders as
2 legitimately confidential. If this body deems
3 it confidential, my concern is we need to be
4 able to have access to it and potentially use
5 it as exhibits, like any other confidential
6 information, in the proceeding here. It is
7 definitely one of those things, I am dealing
8 with a black box right now. I don't know
9 what's going to be provided, what the form is.

10 But I do see, in the orders of
11 notice, which I will note for the record we
12 received on the 16th, and hence our late
13 application, it makes reference to the court's
14 -- excuse me, the PUC's order back in 2002 of
15 the Seabrook Nuclear sale. Page 14 of that
16 order is merely a conclusion that you decided
17 to treat two classes of information as
18 confidential. One, the information coming from
19 the Company, and, two, the information coming
20 from the bidders. It gives us no real clear
21 reading of how it's treated, why that decision
22 was made. So, I'm merely placing a bookmark
23 here.

24 I expect to ask data requests --

1 CHAIRMAN HONIGBERG: I think you're
2 placing a bookmark in the epilogue. I have
3 this order in many hand, it's only 12 pages
4 long.

5 MR. BOLDT: I'm reviewing -- I'm
6 reviewing Order Number 24,050, from
7 September 12, 2002.

8 CHAIRMAN HONIGBERG: Okay. I've got
9 a different one. I've got one from June.

10 MR. BOLDT: So, accordingly, it's one
11 of those things, we're dealing with a black
12 box. I don't want to give up rights. I'm
13 hoping that J.P. Morgan and the Company will
14 give us full, fair access. That access may
15 need to include those folks that were culled
16 early on, and why. The information of being
17 able to say why were someone selected in one
18 way and rejected in another may have bearing on
19 this case. And I hate to say that I'm going
20 into speculation, but we are even before the
21 date the bids are due. So, we're dealing with
22 a bit of amorphousness.

23 So, we would ask that, if you
24 consider the bid packages as confidential

1 information, then we must make sure that we, as
2 signing off on confidentiality agreements, have
3 full and fair access to the information and,
4 more importantly, can use that information
5 before this body.

6 Thank you.

7 CHAIRMAN HONIGBERG: Thank you,
8 Mr. Boldt. Mr. Irwin.

9 MR. IRWIN: Thank you. On behalf of
10 Conservation Law Foundation, we would
11 acknowledge sort of the expedited and
12 aggressive nature of the schedule, but agree
13 that the expedited nature of this process makes
14 sense. So, we don't have any specific concerns
15 with the schedule as outlined in the Order of
16 Notice.

17 I think Attorneys Boldt and Whitelaw
18 have raised some interesting issues and
19 concerns around confidentiality. And,
20 ultimately, I would echo the concern that, if,
21 in fact, Company and bidder materials subject
22 to a protective order, we would obviously be
23 willing to enter confidentiality agreements,
24 but would want to make sure that that

1 information is clearly available for use before
2 the Commission.

3 CHAIRMAN HONIGBERG: Mr. Aslin.

4 MR. ASLIN: Thank you. On behalf of
5 OSI, I guess I would echo just the general
6 concern that there be adequate access to the
7 documents. I believe that is what is
8 contemplated in the process set forth in the
9 Order of Notice. But, obviously, until we get
10 to that point, no one knows, so everyone has a
11 little bit of discomfort.

12 But, as a general statement of
13 position, OSI finds that the proposed process
14 and handling of confidential information seems
15 appropriate. Subject to that qualification, we
16 hope that we will have prompt access to
17 information, so that we can review it in a
18 timely manner before these various dates in the
19 schedule -- proposed schedule kick in.

20 Thank you.

21 CHAIRMAN HONIGBERG: Mr. Kreis.

22 MR. KREIS: Thank you, Mr. Chairman.
23 As you know, our primary interest here in this
24 docket is assuring that the asset divestiture

1 makes the maximum possible contribution to
2 reducing stranded costs that will be recovered
3 from PSNH's customers, particularly its
4 residential customers. And we favor whatever
5 process and whatever confidentiality rules
6 apply that will best lead to that desired end.

7 And, so, as a general matter,
8 although, as the Commission knows, I'm usually
9 the guy in the room who is arguing most
10 vociferously for maximizing disclosure, this is
11 one of those cases where the confidentiality
12 interest is particularly high. You know,
13 ultimately, a balancing test under RSA 91-A
14 applies. And, in this case, there is a great
15 deal on the nondisclosure side of that scale.

16 That said, like the learned attorneys
17 who have spoken before me, I'm finding it a
18 little bit difficult to commit myself fully to
19 things in the absence of knowing the actual
20 results of the auction. I'm not sure that I
21 understand why the names of the bidders have to
22 remain totally secret, given the
23 extraordinarily confidential treatment that the
24 other information about losing bidders will be

1 granted. And I think we need to make clear the
2 distinction between information that will be
3 disclosed to the various parties under the
4 protective order and information that will be
5 publicly disclosed.

6 And I assume there will be some
7 opportunity later on in the docket to
8 appropriately examine the question of what
9 ultimately is public information. And I think
10 that's best resolved in the context of figuring
11 out what the Commission is actually going to
12 decide and what record will be necessary to
13 support that decision.

14 So, overall, we want to be as
15 cooperative as we can. That's why we commend
16 the Commission for having called us together
17 and holding this prehearing conference really
18 at a point that is unusually early in the
19 process. Usually we await the filing of a
20 petition. And we're eager to be as supportive
21 as we can with getting this docket as well
22 organized as we can as we await the filing of
23 the actual petition.

24 CHAIRMAN HONIGBERG: Thank you, Mr.

1 Kreis. Mr. Speidel.

2 MR. SPEIDEL: Mr. Chairman, thank
3 you. In general terms, the Staff is definitely
4 hearing the concerns raised by the various
5 parties and the OCA, regarding the need for
6 prompt access to confidential -- confidentially
7 protected information in this docket. We
8 intend to work very closely with J.P. Morgan
9 about the specifics of how to produce redacted
10 documents and how to deal with the mechanics of
11 redaction in preparation for sharing right off
12 the bat. There's a lot of specific work that
13 has to be done. And we would like to place a
14 reminder that there will be a formal motion for
15 confidential treatment when the information
16 actually comes in. So, that will delineate the
17 specific categories of information that will be
18 available or not available under the motion,
19 since the Order of Notice refers to the
20 Commission intends to treat confidential
21 auction data in this docket in the same manner
22 as it was treated in the Seabrook Station sale.

23 So, we're not at hour zero yet.

24 There is a lot of grunt work that needs to be

1 done in terms of how to redact the information.
2 But we will be sure to act promptly when it
3 does come in. There will be a motion, and I
4 think, for guidance purposes, I've been looking
5 online through our docketbook materials, the
6 specific order on the confidential treatment
7 that had a reference made within the order
8 presented in the Order of Notice, the order
9 within the Order of Notice was 24,050, from
10 September 12th, 2002. And, on Page 14, as
11 Mr. Boldt indicated, there was a subreference
12 to Order Number 23,986, issued on June 5th,
13 2002, regarding confidentiality, and you have
14 that in your hand.

15 The motion itself was made on May the
16 17th of 2002. So, I looked around our online
17 website, it doesn't seem to have that there
18 anymore. I'm going to inquire as to whether we
19 can have that document pulled and maybe
20 forwarded to the parties for their
21 informational purposes.

22 CHAIRMAN HONIGBERG: The motion, the
23 order, or both?

24 MR. SPEIDEL: The motion. The order

1 they can get themselves.

2 CHAIRMAN HONIGBERG: Okay.

3 MR. SPEIDEL: But the motion. We'll
4 look in our files and we'll share it with
5 folks. So that, again, it won't be exactly the
6 same, the general thrust will be the same, but
7 the specifics will be different. But just to
8 give a little comfort, a little familiarity of
9 what was in and what was out, I think that
10 would be helpful to folks.

11 The offer of proof that I am making
12 is from the representatives of J.P. Morgan, our
13 Auction Advisor. And many of the same persons
14 that helped the Commission during the Seabrook
15 sale are helping us now for the general
16 divestiture sale. So, they have reviewed what
17 happened during Seabrook, and they have
18 reviewed the general description of the process
19 as presented in the Order of Notice and they
20 are comfortable with it.

21 They would be available to the
22 Commission to provide written responses to
23 record requests, for instance. Or, in the
24 alternative, to provide informal consultation

1 to the Commissioners regarding how to handle
2 all of this going forward. So, they're ready
3 to put their shoulder to the wheel and provide
4 technical assistance as an Auction Advisor to
5 the Commissioners and to the Commission at
6 large and Staff.

7 So, I think, in general terms where
8 we're at right now, is we will work very
9 closely with J.P. Morgan to make sure
10 everything is a turnkey operation once the
11 petition comes in. And the concerns remain the
12 same as they were in 2002, namely, trying to
13 avoid a chilling effect on economic
14 participation in these auctions, trying to
15 avoid scenarios where you have commercial harm
16 brought to potential bidders. And it was
17 essentially an exercise in making sure that all
18 commercially reasonable standards are
19 maintained in the auction.

20 And one of the promises made to
21 auction participants, yes, there was a
22 disclaimer regarding RSA 91-A, but there was
23 also a promise that due confidentiality would
24 be provided to their bids.

1 So, I think fitting all the pieces
2 together, we are well-situated to provide
3 participants with the information that they
4 need, while also making sure that commercial
5 standards are respected.

6 Thank you.

7 CHAIRMAN HONIGBERG: You've had a
8 conversation or multiple conversations with the
9 folks at J.P. Morgan about how 91-A works and
10 how dealing with a public entity is different
11 from dealing with sales on behalf of private
12 clients of theirs?

13 MR. SPEIDEL: Yes. Of course. And,
14 again, many of the principals at J.P. Morgan
15 we're working with are the same as in the
16 Seabrook sale. So, for them, it's a little bit
17 of a refresher. But they have done this, and
18 they have done it in New Hampshire. So, they
19 understand our law, they understand the
20 presumption for disclosure, and Staff does as
21 well. We're going to make sure that any
22 redaction pen is as thin as possible, and that
23 as much information as can be provided under
24 the terms of commercial reasonableness and

1 protection against commercial harm or the
2 competitive harm are maintained.

3 CHAIRMAN HONIGBERG: Ms. Whitelaw and
4 Mr. Boldt both have their hands up. Ms.
5 Whitelaw, why don't you go first.

6 MS. WHITELOW: Thank you. I just --
7 I'm sorry. I'm sort of new to this. So, I
8 don't know how to work the mike and my
9 questions may be a little off.

10 I would like to understand from what
11 you just said, Mr. Speidel, in terms of timing,
12 is all of this confidentiality work on
13 redacting, work on process, everything going to
14 be done before the petition is filed? Because
15 I'm looking at the ten days we have from the
16 filing of the petition until we have to be
17 ready to participate in a technical session.
18 And I'm still wondering when we're going to
19 have access to that information?

20 MR. SPEIDEL: Well, the answer is,
21 yes, as much as we can possibly do in advance,
22 we will do. That said, best laid plans can
23 change. And I think it's understood
24 collectively that we all, as a group of

1 parties, ought to reserve to ourselves the
2 ability to have slight adjustments to the
3 schedule to incorporate the need for additional
4 work on such important matters.

5 So, you know, we're not in the
6 business of harming procedural rights and
7 participation rights. If there is a document
8 production delay, we can seek minor adjustments
9 to the schedule accordingly. But we'll just
10 have to play it as it lies.

11 We're dealing with a multi-national
12 corporation. They have their own personnel
13 needs. And they understand that this is a
14 top-priority project. But, despite their best
15 efforts, there may be a slight delay, and we
16 just have to adjust. And it won't be at the
17 cost of the rights of parties to participate.

18 MS. WHITE LAW: Thank you.

19 CHAIRMAN HONIGBERG: Mr. Boldt.

20 MR. BOLDT: Thank you, Mr. Chairman.

21 I wanted to follow up on the reference Attorney
22 Speidel made that "promises were made to the
23 bidders". I am looking at an April 12th
24 invitation, that's the preliminary indicative

1 bid document, a June 13th and June 29th final
2 bid invitation documentation. And all three of
3 those documents are silent on the issue of the
4 bids being confidential. They do require,
5 however, the bidder to sign off on a
6 confidentiality agreement, much like we had to
7 as the City and Town. And it clearly states
8 that "the information provided to, or to be
9 provided to, must be kept confidential". So,
10 that's the one way coming from J.P. Morgan and
11 the Company to the bidder. But these documents
12 are silent on the issue of the bid information
13 coming back to this body, which is the Public
14 Utility Commission.

15 CHAIRMAN HONIGBERG: We're not
16 litigating this right now.

17 MR. BOLDT: I just wanted to raise
18 the question for your --

19 CHAIRMAN HONIGBERG: Nor are we
20 paving a road or purchasing a truck. So,
21 there's lots of differences between what goes
22 on in localities and what's going on here
23 today. The statute is the same, but the
24 statute has a lot of different provisions. But

1 we're not litigating that here today.

2 I understand that there's many, many
3 documents that flow back and forth between J.P.
4 Morgan and prospective bidders here. And I
5 don't know what's in virtually any of them.
6 So, we'll, I think somebody used the metaphor
7 earlier, we'll cross that bridge when we get to
8 it.

9 Are there other comments or questions
10 for Mr. Speidel, or on anything else for that
11 matter, because I think we're almost done with
12 this prehearing conference?

13 [No verbal response.]

14 CHAIRMAN HONIGBERG: All right. If
15 there's nothing else we can do for you, we will
16 adjourn. And thank you all.

17 ***(Whereupon the prehearing***
18 ***conference was adjourned at***
19 ***1:42 p.m., and a technical***
20 ***session was held thereafter.)***