

CONSUMER ADVOCATE
Meredith A. Hatfield

ASSISTANT CONSUMER
ADVOCATE
Rorie E.P. Hollenberg

STATE OF NEW HAMPSHIRE



OFFICE OF CONSUMER ADVOCATE

21 S. Fruit St., Suite 18
Concord, N.H. 03301-2429

TDD Access: Relay NH
1-800-735-2964

Tel. (603) 271-1172

Website:
www.oca.nh.gov

October 3, 2011

Debra Howland
Executive Director & Secretary
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, New Hampshire 03301-7319

RE: DRM 11-023 Puc 100 and 200 Rules

Dear Ms. Howland:

The purpose of this letter is to provide the OCA's comments on the proposed changes to the Puc 100 and 200 rules in the above-referenced docket. These comments are in addition to those provided by the OCA at the hearing held on September 20, 2011.

Puc 102.19. We support retaining the language "outside of an adjudicative proceeding" in the Initial Proposal of the rules. We do not believe that removing this language "more accurately reflects" the language in RSA 365:8 as Staff has suggested. There is nothing in the legislation that refers to this issue.

Puc 104.19. We believe that including both "confidential" and "not a matter of public record" seems repetitive. If there is another category of information that "not a matter of public" but is not "confidential" under RSA 91-A, it would be useful to cite that statutory provision to clarify the difference.

Puc 201.04. We strongly support the language for sections (b) and (c) that appears in the Initial Proposal, and we strongly object to Staff's proposal to weaken the requirements for how confidential and redacted materials must be prepared and marked. As we stated at the hearing, the OCA has been complying with the approaches set forth in these sections of the Initial Proposal for at least four years and we do not understand why some parties find them so cumbersome. We would also support additional language, similar to that suggested by Commissioner Below at the hearing, to create another subsection that allows that if neither of the two methods described are possible, a party may utilize another approach that is comparable and clearly indicates the scope of the information for which confidential treatment and redaction is requested. This provides plenty of flexibility for those who must comply. In addition, a party can always seek a waiver of the rule in a particularly difficult situation. Finally, we agree with Staff that only those pages that contain confidential information should bear the word CONFIDENTIAL in a watermark or at the top of the page. Redacted pages or public pages should not bear the word CONFIDENTIAL in a watermark or at the top of the page.

Puc 201.06. We do not support including responses to data requests in the definition of routine filings. We also do not agree with PSNH's suggestion that after something has been filed a few years in a row it automatically becomes routine. We also agree with Commissioner Ignatius' comment at the hearing that the list of routine filings was getting further and further away from what was intended to be included. We also disagree with Attorney Speidel's characterization that the Legislature believed that "the public's interest in [routine filings] is relatively low," or that the Legislature's intent in passing SB425 in 2010 was because "they recognized the fact that there was a tremendous volume of material that did not attract the interest of outside parties..." See Hearing Transcript at p. 47-48. We do not believe that these statements are reflected in the Legislative history.

Puc 203.02. We respectfully request that subsection (4) include language making clear that in adjudicative proceedings to which the OCA is a party, filing parties must also provide confidential materials to the OCA. See RSA 363:28 (VI).

Puc 203.08. This section refers to the fact that documents submitted to the Commission and Staff shall not be disclosed until the Commission rules on a motion for confidential treatment. We suggest changing this language to make clear that materials provided to any party all have the same treatment until the Commission makes a ruling.

Subsection (k) refers to "on motion of staff or on motion of any member of the public to reconsider the determination." We believe that this language should also include "any party" in order to ensure that any party receiving information for which the filer seeks confidential treatment understands that the information should not be disclosed until a final Commission decision determining that it is public is issued.

As we noted at the hearing, the OCA agrees with the Commission that "the purpose of the Right-to-Know law is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies and their accountability to the people we resolve questions regarding the Right-to-Know law with a view to providing the utmost information" to the public. See Order No. 25,168 (November 10, 2010) at p. 16, citing *Lambert v. Belknap County Convention*, 157 NH 375, 378 (2008). We trust that the Commission will develop final rules that meet that important state goal.

Please do not hesitate to contact me if you require further information. Thank you for your assistance.

Respectfully,



Meredith A. Hatfield, Esq.
Consumer Advocate

cc: DRM 11-023 Service list (via email)