

THE STATE OF NEW HAMPSHIRE



PUBLIC UTILITIES COMMISSION

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October 3, 2011

Debra A. Howland, Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301

SENT VIA E-MAIL

Re: Rulemaking Docket No. DRM 11-023 (Puc 100 and Puc 200 Rules)
Staff Comments

Dear Ms. Howland:

Please find enclosed Staff's suggested edits related to the Initial Proposal for the above-captioned rulemaking. A Staff memorandum will be sent for the Commissioners' consideration separately.

Thank you for your consideration, and the consideration of the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Alexander F. Speidel".

Alexander F. Speidel
Staff Attorney

Cc: Service List

CHAPTER Puc 100 ORGANIZATIONAL RULES

PART Puc 102 DEFINITIONS

Readopt Puc 102.19, INTERIM effective 3-26-11 (Document # 9897), to read as follows:

Puc 102.19 “Routine filings” means documents submitted, on a recurrent basis, by a utility to the commission ~~outside of an adjudicative proceeding.~~

Readopt Renumbering of Puc 102.19-.21, INTERIM effective 3-26-11 (Document # 9897), as Puc 102.20-.22.

PART Puc 103 DESCRIPTION AND CONTACT INFORMATION FOR THE COMMISSION

Redopt with Amendment Puc 103.01, effective 6-10-06 (Document # 8656) to read as follows:

Puc 103.01 Commission Functions.

(a) The commission is established to carry out the requirements of RSA Title XXXIV relative to public utilities and their customers and the requirements of RSA 38 relative to public utilities and municipalities.

(b) Pursuant to RSA 363:17-a, the commission serves as the arbiter between the interests of the customer and the interests of regulated utilities.

(c) Pursuant to RSA 374:3, the commission has the general supervision of all public utilities and their facilities so far as is necessary to carry out the requirements of RSA Title XXXIV.

(d) Pursuant to RSA 378, the commission has the responsibility to assure that rates charged by public utilities are just, reasonable and lawful.

(e) Pursuant to RSA 363:27, II, the commission shall organize its staff as it determines best achieves the commission’s statutory responsibilities.

(f) Pursuant to RSA 363:27, III, the commission shall appoint an executive director and a general counsel.

(g) The staff of the commission is structured around industry-specific divisions and includes divisions with expertise in electric, gas, telecommunications, water and all other types of utilities as set forth in RSA 362:2.

(h) In addition to the industry-specific divisions noted in (g), the commission includes an administration division, a legal division, a safety division, an audit division and a consumer affairs division.

(i) The commission is located at 21 South Fruit Street, Suite 10, Concord, New Hampshire.

(j) The commission has regular hours from 8:00 a.m. to 4:30 p.m. and is closed on Saturdays, Sundays and state holidays.

(k) The consumer affairs division may be contacted directly by telephone at [1-800-852-3793](tel:1-800-852-3793) ~~+ 800-872-2793 or 603-271-2431~~, TDD Access-Relay NH: 1-800-735-2964, by facsimile at 603-271-3878, or by written communication addressed to the attention of:

The Consumer Affairs Division
NH Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, N.H. 03301-2429

(l) The safety division may be contacted directly by telephone at 888-397-5444 or 603-271-6022, by facsimile at 603-271-6048, or by written communication addressed to the attention of:

The Safety Division
NH Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, N.H. 03301-2429

(m) General inquiries and requests for public information pursuant to Puc 104 may be directed by telephone at 603-271-2431, by facsimile at 603-271-3878, by e-mail to puc@puc.nh.gov, or by written communication addressed to the attention of:

Executive Director
NH Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, N.H. 03301-2429

(n) The web site of the commission is www.puc.nh.gov.

PART Puc 104 REQUESTS FOR PUBLIC INFORMATION

Readopt Puc 104.01, INTERIM effective 3-26-11 (Document # 9897) to read as follows:

Puc 104.01 Public Access to Information.

(a) To the extent required or permitted by RSA 91-A, the commission shall permit members of the public to examine and copy public records.

(b) Members of the public may make a request to examine records by contacting the executive director pursuant to Puc 103.01(m).

(c) The commission shall permit examination and copying of public records, as follows:

- (1) On the commission premises;
- (2) During commission business hours; and
- (3) Within the time-frames set forth in RSA 91-A.

(d) Any person who seeks to examine or copy public records shall describe the information requested sufficiently in detail to allow the commission to identify the records requested.

(e) This section shall not require the release by the commission of information determined, pursuant to RSA 91-A:5, Puc 201.06, Puc 201.07, or Puc 203.08, to be:

- (1) Confidential; or
- (2) Not a matter of public record.

(f) Within the time period specified by RSA 91-A:4, the commission shall respond to such a request by:

- (1) Making the record available for inspection and copying;
- (2) Denying the request in writing and stating the reasons for denial; or
- (3) Furnishing written acknowledgement of the receipt of the request and a statement of the time reasonably necessary to determine whether the request shall be granted or denied.

(g) For all records submitted to the commission pursuant to Puc 201.06, the procedures established under Puc 201.07 shall govern the commission's response to requests for public release of such documents.

(h) The commission shall charge for copies of public records at the actual cost of providing the copy, pursuant to RSA 91-A:4, IV.

(i) A written denial issued under this rule shall be treated as the final determination of the commission for purposes of appeal to the superior court pursuant to RSA 91-A:7.

CHAPTER Puc 200 RULES OF PRACTICE AND PROCEDURE

PART Puc 201 GENERAL REQUIREMENTS

Readopt With Amendment Puc 201.04, INTERIM effective 3-26-11 (Document # 9897) to read as follows:

Puc 201.04 Public Records.

(a) All documents submitted to the commission or staff in an adjudicative or non-adjudicative proceeding shall become matters of public record, subject to RSA 91-A, as of the day and time of the submission with the following exceptions:

- (1) Accident reports under RSA 374:40;
- (2) Information about individual residential customers, the disclosure of which would constitute an invasion of privacy within the meaning of RSA 91-A:5, IV;
- (3) Documents submitted in connection with an adjudicative proceeding pursuant to Puc 203.08;
- (4) Documents subject to a protective order of the commission issued pursuant to Puc 203.08;
- (5) Documents granted confidential treatment pursuant to Puc 201.06 and Puc 201.07; or
- (6) Other documents entitled to confidential treatment pursuant to RSA 91-A or other applicable law.

(b) All information within documents described in section (a), above, and submitted to the commission and asserted to be confidential, pursuant to RSA 91-A:5, IV, by the person making the submission shall be redacted in the following manner in the version for public release, and all redactions shall be made in a way that, within the redacted version of the document(s), preserves the line sequencing and pagination of the unredacted version of the document(s) to the greatest practicable extent:

(1) Bear the legend "REDACTED" at the upper-right-hand corner of every redacted page; and

(2) ~~Either: a. Indicate all confidential segments in any manner that clearly indicates the scope of the material redacted, with the legend "BEGIN CONFIDENTIAL," in all capital letters, at the beginning of the redacted segment, followed by a left bracket. Following the left bracket, the confidential segment shall be replaced by a blank space of approximately equal length to the material being redacted. The end of the redacted segment shall be indicated with a right bracket, followed by the legend "END CONFIDENTIAL," in all capital letters, as follows:~~

~~—————"BEGIN CONFIDENTIAL[blank space]END CONFIDENTIAL;" or~~

~~b. If space or format does not allow the redaction to be indicated in the manner set forth in paragraph a. above, such as for individual numbers in a table or column or very short segments of text, then the submitter may indicate redacted material by blacking it~~

~~out or highlighting it with a solid black line in the following manner: **redacted** **material**~~

(c) For each redacted document submitted, the person submitting the document shall also provide an unredacted version of the document(s) to the commission that:

(1) Bears the legend “CONFIDENTIAL” at the upper-right-hand corner of every page with confidential material; and

(2) ~~Either: a. Indicates all redactions in any manner that clearly indicates the material redacted in the redacted version. made pursuant to (b)(2)a. above with the legend “BEGIN CONFIDENTIAL,” in all capital letters, at the beginning of the confidential segment, followed by a left bracket. The end of the confidential segment shall be indicated with a right bracket, followed by the legend “END CONFIDENTIAL,” in all capital letters, as follows “BEGIN CONFIDENTIAL[confidential segment]END CONFIDENTIAL;” or~~

~~b. Indicates all redactions made pursuant to (b)(2)b. above by highlighting the confidential segment in light gray in the following manner: **confidential segment**.~~

Redopt with Amendment Puc 201.06, INTERIM effective 3-26-11 (Document # 9897) to read as follows:

Puc 201.06 Requests for Confidential Treatment of Documents Submitted by Utilities in Routine Filings.

(a) The following shall be the routine filings to which the procedure established by Puc 201.06 and Puc 201.07 applies:

- (1) Telephone company cost of service studies;
- (2) Telephone company retail special contract service agreements;
- (3) Telephone company broadband deployment plans;
- (4) Telephone company infrastructure deployment plans;
- (5) Telephone customer proprietary network information;
- (6) Incumbent Local Exchange Carrier (ILEC) capital expense reports;
- (7) ILEC network improvement plans;
- (8) ILEC overtime reports;
- (9) ILEC commercial agreements;
- (10) ILEC annual retail and wholesale provisioning reports by central office;
- (11) ILEC annual special contract summaries;
- (12) Preliminary and final Performance Assurance Plan Reports for telecommunications companies containing carrier-specific performance and bill credit calculations;
- (13) NHPUC Form ILEC-22;
- (14) NHPUC Form ILEC-23;
- (15) NHPUC Form CLEC-3, Statistics, Lines by Locality and CLEC Foreign Exchange (FX) Eligibility Sections 13 and 18;
- (16) NHPUC Form CTP-3, Statistics, Lines by Locality and CLEC Foreign Exchange (FX) Eligibility Sections 13 and 18;

- (17) NHPUC Form CLEC-4;
- (18) NHPUC Form CLEC-40, Report Statistics ~~Section 3~~;
- (19) Neustar (North American Numbering Plan Administration-designated overseer) Months to Exhaust and Utilization Certification Work Sheets;
- (20) Neustar Part 1A;
- (21) Neustar Part 1B;
- (22) New England Electric Pool “My Settled Certificates” Reports filed in conjunction with annual Renewable Portfolio Standards Reports;
- (23) Listings of prices that utilities pay for fractional Renewable Energy Certificates purchased from utilities’ customers or members;
- (24) Bids for the purchase of RGGI allowances pursuant to RSA 125-O:22;
- (25) Supplier commodity pricing, special terms of supply agreements, and other non-public financial information and statements submitted in connection with Cost of Gas proceedings, including responses to ~~staff~~ data requests;
- (26) NHPUC Form E-1, Monthly Report on Voltage Complaints;
- (27) NHPUC Form E-4, Monthly Report of Electric Meter Complaint Tests;
- (28) NHPUC Form E-5, Accident Reports; and
- (29) Default service solicitations; bidder information, bid evaluations, and purchase power supply agreement materials submitted in connection with a default service proceeding, including responses to data requests.

(b) The commission shall make a determination regarding requests for confidential treatment of documents or portions of documents submitted pursuant to Puc 201.06 upon request for release of those documents to the public submitted pursuant to Puc 201.07. Those parties submitting documents pursuant to Puc 201.06 shall indicate that they are relying on Puc 201.06 and Puc 201.07 in their request for confidential treatment. For paper filings pursuant to this rule, parties shall file one public copy and one confidential copy; for electronic filings, both a public and confidential version shall be prepared.

(c) Prior to commission determination regarding confidential treatment, documents submitted to the commission pursuant to Puc 201.06 shall be:

- (1) Treated as confidential by the commission and any other party that may receive them; and
- (2) Maintained by the commission, and any parties receiving a copy of the documents, according to such conditions as the commission determines are necessary to preserve such confidentiality.

Readopt Puc 201.07, INTERIM effective 3-26-11 (Document # 9897) to read as follows:

Puc 201.07 Requests for Release to the Public of Confidential Documents Submitted in Routine Filings.

- (a) Puc 201.07 shall apply to all routine filings subject to Puc 201.06. All references to written communications in this rule also refer to e-mail communications.
- (b) Puc 201.07 shall govern the commission’s consideration of requests submitted pursuant to Puc 104.01 for public release of one or more documents for which confidential treatment has been requested pursuant to Puc 201.06.

(c) The commission, within 5 business days of the receipt of a request made pursuant to Puc 201.07 by the executive director, shall send a written acknowledgment to the person requesting public release that includes:

- (1) A statement that confidential treatment has been requested for the document(s);
- (2) A statement of the time reasonably necessary to determine whether the request for release shall be granted or denied; and
- (3) A statement that the request for release is subject to the provisions of Puc 201.07.

(d) The commission shall provide the person who submitted the document(s) with written notice of the request for release within 5 business days of the receipt of the request for release.

(e) This notice shall:

- (1) Describe the request for release; and
- (2) Afford the person who submitted the document(s) 10 calendar days from the date of the notice to submit to the executive director a written objection to release of the document(s) to the public, pursuant to (f) below.

(f) Objections to release shall comply with Puc 202.06(a)(1) and (2) and contain:

- (1) A specific description of the document(s) or specific portions of documents for which confidentiality is sought;
- (2) Specific facts showing how release of the requested document(s) would constitute an invasion of privacy under RSA 91-A:5, including a description of how the requested material includes confidential, commercial, or financial information, or other information subject to the exemptions of RSA 91-A:5;
- (3) A specific description of the harm that would result from release; and
- (4) A representation that the information contained in the document(s) or portions of documents for which confidentiality is sought is not already available to the public.

(g) The commission shall take one of the following actions pursuant to RSA 91-A:5 and other applicable law:

- (1) Approve the public release of the requested documents in their entirety;
- (2) Approve the partial release of the requested documents, subject to redactions approved by the commission; or
- (3) Deny the request for release in its entirety.

(h) In making its determination pursuant to (g) above, the commission shall consider:

- (1) The written request for release;
- (2) The original request for confidential treatment pursuant to Puc 201.06;
- (3) Written objections filed with the commission;
- (4) Additional information that the commission requests; and
- (5) Any applicable law.

(i) In determining the proper action under (g) above, the commission shall:

- (1) Consider whether there is a privacy interest at stake that would be invaded by the disclosure of the requested documents;

- (2) Consider whether the public has an interest in disclosure of the requested documents; and
- (3) Decide whether any public interest in disclosure is outweighed by the state’s interest in non-disclosure and any privacy interest in non-disclosure.

(j) The commission shall provide written notice of its decision.

PART Puc 203 ADJUDICATIVE PROCEEDINGS

Readopt with Amendment Puc 203.02, effective 6-10-06 (Document # 8657-A) to read as follows:

Puc 203.02 Filing Requirements.

(a) Except as provided in (b) below, for a filing to be effective in an adjudicative proceeding, a party shall:

- (1) File ~~7~~one original and 6 paper copies of all documents with the commission; for material submitted with a motion under Puc 203.08, file one public copy and 7 confidential copies;
- (2) File an electronic copy, as required by Puc 203.03, with the commission;
- (3) Serve pursuant to Puc 203.11 an electronic copy on each person identified on the commission’s service list for that docket;
- (4) Serve an electronic copy with the office of the consumer advocate; and
- (5) Serve a written copy pursuant to Puc 203.11 on each person identified on the commission’s service list as not able to receive electronic mail.

(b) Upon request of a person submitting a document and upon receipt of an extra copy of the document with the filing, the commission shall date stamp and return the copy as confirmation of the filing.

(c) Documents filed pursuant to this rule shall be printed double-sided (on both sides of the documents’ paper sheets).

Readopt with Amendment Puc 203.04, effective 6-10-06 (Document # 8657-A) to read as follows:

Puc 203.04 Form.

(a) Petitions, pleadings, motions and briefs shall:

- (1) Be typed or printed on paper 8-1/2 by 11 inches in size, ~~either single or~~ double-sided;
- (2) Have no less than one inch margins on all sides;
- (3) Be page numbered sequentially, including attachments;
- (4) Be submitted in unbound form;
- (5) Be double-spaced;
- (6) Contain on the initial sheet a heading across the top thereof, which shall read “Before the New Hampshire Public Utilities Commission”;
- (7) Identify the name of the petitioner, applicant or other party who is the subject of such proceeding; and
- (8) Identify the nature of the document.

(b) Each document shall bear the title of the proceeding and the docket number assigned the matter by the commission, to the extent known.

Readopt Puc 203.08, INTERIM effective 3-26-11 (Document # 9897) to read as follows:

Puc 203.08 Motions for Confidential Treatment.

- (a) The commission shall upon motion issue a protective order providing for the confidential treatment of one or more documents upon a finding that the document or documents are entitled to such treatment pursuant to RSA 91-A:5, or other applicable law based upon the information submitted pursuant to (b) below.
- (b) A motion for confidential treatment submitted pursuant to this rule shall contain:
 - (1) The documents, specific portions of documents, or a detailed description of the types of information for which confidentiality is sought;
 - (2) Specific reference to the statutory or common law support for confidentiality; and
 - (3) A detailed statement of the harm that would result from disclosure and any other facts relevant to the request for confidential treatment.
- (c) Documents submitted to the commission or staff accompanied by a motion for confidential treatment shall not be disclosed to the public until the commission rules on the motion.
- (d) In lieu of immediately filing a motion for confidential treatment, a party providing a document to the commission staff in discovery that the party wishes to remain confidential shall accompany the submission with a written statement that:
 - (1) The party submitting such documents has a good faith basis for seeking confidential treatment of the documents pursuant to this rule; and
 - (2) Such party intends to submit a motion for confidential treatment regarding such documents at or before the commencement of the hearing in such proceedings.
- (e) Documents submitted to the commission or staff accompanied by a written statement pursuant to (d) shall be treated as confidential, provided that the party submitting the documents thereafter files a motion for confidential treatment at or prior to the commencement of the hearing in the proceeding.
- (f) When a party provides the commission or staff with a document accompanied by a motion for confidential treatment or a statement of intent to file such a motion, the party shall furnish 7 copies of the document.
- (g) The commission shall mark each copy as confidential and maintain it within the commission offices in a secure location.
- (h) If the commission grants a motion for confidential treatment, the confidential information shall not be subject to public disclosure and the document shall be treated according to such conditions as the commission determines are necessary to preserve such confidentiality.
- (i) If the commission denies a motion for confidential treatment or modifies a previously issued protective order so that information previously held confidential is no longer entitled to such treatment, the information shall not be disclosed until all rights to request rehearing and to appeal have been exhausted or waived.
- (j) When necessary to protect the confidentiality of material entitled to such treatment under this section, the commission shall include in its protective order a directive that all parties receiving the material shall also treat it as confidential.
- (k) The granting of a motion for confidential treatment shall be subject to the ongoing authority of the commission, on its own motion, on motion of staff or on motion of any member of the public to reconsider the determination.

(l) If any information entitled to confidential treatment under this rule is thereafter released or made public by the party who sought its protection, any confidential treatment shall cease with respect to the released information but shall remain in full force and effect as to the information not so released or made public.

(m) The commission shall retain one copy of any documents entitled to confidential treatment under this rule and destroy all others within one year after all rights to appeal final orders of the commission have been exhausted.

Readopt with Amendment Puc 203.22, effective 6-10-06 (Document # 8657-A) to read as follows:

Puc 203.22 Exhibits.

(a) A party presenting evidence at a hearing shall present such evidence in exhibit form if the evidence contains tabulations and figures so numerous as to make oral presentation difficult to follow.

(b) Exhibits may contain a summary in an accompanying text or caption section.

(c) Exhibits consisting of more than one page shall be paginated sequentially.

(d) Parties filing exhibits shall:

(1) Provide on the first page of each exhibit a space approximately 2-1/2 inches wide by 1-1/2 inches long in the upper right hand corner; and

(2) Provide that each subsequent page shall have no less than one inch margins on all sides.

(e) A party presenting an exhibit at hearing with any material that has not been previously submitted to the Commission shall provide a copy to the hearing clerk, each commissioner, the court reporter, if any, any witness or witnesses then testifying and each party present at the hearing. Parties may request that the Commission mark previously-submitted filings in the current docket as an exhibit at hearing, without having to submit an additional copy of such a document at hearing.

(f) Any party offering an exhibit other than a document or photograph shall:

(1) Produce the exhibit for evaluation during a hearing; and

(2) Submit a photographic representation of the exhibit for inclusion in the record.

PART Puc 207 DECLARATORY RULINGS

Readopt with Amendment Puc 207.01, effective 6-10-06 (Document # 8657-A) to read as follows:

Puc 207.01 Declaratory Rulings.

(a) A person seeking a declaratory ruling on any matter within the jurisdiction of the commission shall request such ruling by submitting a petition pursuant to Puc 203.

(b) Such a petition shall be verified under oath or affirmation by an authorized representative of the petitioner with knowledge of the relevant facts.

(c) The commission shall dismiss a petition for declaratory ruling that:

(1) Fails to set forth factual allegations that are definite and concrete;

(2) Involves a hypothetical situation or otherwise seeks advice as to how the commission would decide a future case; or

(3) Does not implicate the legal rights or responsibilities of the petitioner; or

(4) Is not within the commission's jurisdiction.

(d) Except for a petition dismissed pursuant to subsection (c), the commission shall conduct an adjudicative proceeding on a petition for declaratory ruling in accordance with Puc 203.

APPENDIX

A cross reference of the specific sections of the state statute and federal statute or regulation, as may be applicable, which the rule is intended to implement is set forth as follows:

Rule(s)	State Statute (RSA)	Federal Statute	Federal Regulation
Puc 102.19 Puc 102.20 Puc 102.21 Puc 102.22 Puc 103.01 Puc 104.01	RSA 365:8, XII RSA 365:8, XIV RSA 378:43 (repealed)	none applicable	none applicable
Puc 201.04 Puc 201.06 Puc 201.07 Puc 203.08	RSA 365:8, XII RSA 365:8, XIV RSA 378:43 (repealed)	none applicable	none applicable
Puc 203.02 Puc 203.04	RSA 365:8, XII	none applicable	none applicable
Puc 203.22	RSA 365:8, I RSA 541-A:33	none applicable	none applicable
Puc 207.01	RSA 365:8, I RSA 365:8, XII RSA 541-A:16, I(d)	none applicable	none applicable