

## COVER SHEET FOR FINAL PROPOSAL

Notice Number 2013-65 Rule Number Puc 1900

1. Agency Name &amp; Address:

Public Utilities Commission  
21 S. Fruit Street, Suite 10  
Concord, New Hampshire 03301

Substantive comment  
p. 2.

2. RSA Authority:

RSA 365:8, X

3. Federal Authority:

4. Type of Action:

- ☒ Adopt  
☐ Amendment  
☐ Repeal  
☐ Readoption  
☐ Readoption w/amendment

5. Short Title: Puc 1900 Rate Case Expenses

6. Contact person for copies and questions:

Name: **Marcia Brown**  
Address: **New Hampshire Public Utilities  
Commission  
21 South Fruit Street Suite 10  
Concord NH 03301**

Title: **Staff Attorney**  
Phone #: **603-271-2431**

7. Yes ☐ No ☒ Agency requests review by Committee legal staff in the Office of Legislative Services and delayed Committee review pursuant to RSA 541-A:12, I-a.

8. The rulemaking notice appeared in the Rulemaking Register on May 23, 2013

9. Yes ☐ N/A ☒ Agency notified policy committees, or House Speaker and Senate President, pursuant to RSA 541-A:10, I because this is the first time this rule or its amendments have been proposed to implement newly-enacted state authority.

**SEE THE INSTRUCTIONS--PLEASE SUBMIT ONE COPY OF THIS COVER SHEET  
AND ONE COPY OF THE FOLLOWING:  
(optional to number correspondingly)**

10. The "Final Proposal-Fixed Text," including the cross-reference table required by RSA 541-A:3-a, II as an appendix.

11.- Yes ☐ N/A ☒ Incorporation by Reference Statement(s) because this rule incorporates a document or Internet content by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.

12. Yes ☒ N/A ☐ The "Final Proposal-Annotated Text," indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(e).

LBAO  
FIS 13:050  
04/19/13

**Fiscal Impact Statement for New Hampshire Public Utilities Commission rules governing Rate Case Expenses. [Puc 1900]**

**1. Comparison of the costs of the proposed rule(s) to the existing rule(s):**

Not applicable, these are new rules.

**2. Cite the Federal mandate. Identify the impact on state funds:**

No federal mandate, no impact on state funds.

**3. Cost and benefits of the proposed rule(s):**

**A. To State general or State special funds:**

None.

**B. To State citizens and political subdivisions:**

To the extent the rules require some expenses to be subject to competitive bidding, the proposed rules may translate into customers paying lower rate case expense surcharges. There will be no impact on political subdivisions.

**C. To independently owned businesses:**

None.

**Adopt Puc 1900 to read as follows:**

CHAPTER Puc 1900 RATE CASE EXPENSES

PART Puc 1901 PURPOSE

Puc 1901.01 Purpose.

(a) The purpose of this chapter, pursuant to RSA 365:8, X, and consistent with the intent of RSA 363:17-a, is to ensure equitable reimbursement of rate case expenses, to establish requirements for utilities to properly document and control rate case expenses, and to limit the impact of rate case expenses on ratepayers.

(b) This chapter establishes criteria for determining whether the rate case expenses that have been incurred by a utility are just and reasonable and are in the public interest.

PART Puc 1902 APPLICATION OF RULES

Puc 1902.01 Application of Rules

Chapter Puc 1900 shall apply to any “utility” as defined in Puc 1903.07.

PART Puc 1903 DEFINITIONS

Puc 1903.01 “Commission” means the New Hampshire public utilities commission.

Puc 1903.02 “Final order” means an order of the commission, issued pursuant to RSA 541-A:35, rendering its final determination on permanent rates.

Puc 1903.03 “Full rate case” means a proceeding in which a revenue requirement is established for a utility and rates are set to meet that revenue requirement pursuant to Puc 1604.

Puc 1903.04 “Non-recurring expenses” means those expenses not regularly recurring as part of a utility’s operating costs.

Puc 1903.05 “Rate case expenses” means those non-recurring expenses incurred by a utility in the preparation or presentation of a full rate case proceeding before the commission, necessary for the conduct of the rate case.

Puc 1903.06 “Service provider” means any natural person or legal entity who provides expert, consulting, administrative, or legal services to a utility and whose services are not already included in the utility’s revenue requirement.

Puc 1903.07 “Utility” means any public utility as defined in RSA 362:2 and RSA 362:4.

PART Puc 1904 APPROVAL BY COMMISSION

Puc 1904.01 Approval Required Prior to Recovery. No utility shall recover from its ratepayers any rate case expense unless such expense has first been found by the commission to be just and reasonable and in the public interest and otherwise conforms to the requirements of Chapter Puc 1900.

Puc 1904.02 Criteria for Determining Allowed Rate Case Expenses.

(a) In ruling upon rate case expenses the commission shall determine whether:

- (1) An expense is properly recoverable as an allowed rate case expense pursuant to Puc 1906;
- (2) The expense is an actual, known, and measurable expense associated with a full rate case proceeding, defined in Puc 1903.03; and
- (3) Recovery of the expense is just, reasonable, and in the public interest.

(b) In making the above determinations, the commission shall consider:

- (1) Whether the issues presented are novel or complex;
- (2) The cost of the service provided to prepare and present the rate case;
- (3) Where appropriate, any information concerning the customary fee for similar services, including the fees rendered in the relevant market to companies of similar size in matters of similar importance to the client;
- (4) Whether the work was relevant and reasonably necessary to the rate case proceeding and the extent to which the services contributed to the efficient resolution of matters presented;
- (5) Whether the utility used a competitive bidding process, when required, pursuant to Puc 1905.03 and Puc 1905.04, and in selecting a winning bidder considered information concerning the availability, experience, quality and cost of services provided;
- (6) The experience and ability of the service provider;
- (7) Whether the request for a rate change was just and reasonable; and
- (8) Other factors as may be considered relevant to a particular rate case proceeding.

## PART Puc 1905 PROCEDURES FOR FILING FOR RECOVERY OF EXPENSES

Puc 1905.01 Estimated Rate Case Expenses.

**Unclear.** While this term is used in RSA 378:7 and 28 (attached), it is not clear what criteria are applied in determining this on a case-by-case basis. The PUC has indicated in the past that there is case law regarding this matter. Also, the Committee has approved other Puc rules with this terminology.

(a) Consistent with the utility's duty to keep the commission informed pursuant to RSA 374:4, at the time a utility files the materials required for a full rate case pursuant to Puc 1604, and every 90 days thereafter during the pendency of the rate case, the utility shall also file with the commission items (1) through (3) below:

(1) A detailed description of rate case expenses actually incurred as of the date of the filing and projected total rate case expenses that include:

- a. The name of the service provider;
- b. The procurement process;
- c. The amount of the expense; and
- d. A description of the charge or service rendered;

(2) A list of all services to be rendered on behalf of the utility in the full rate case by any vendor; and

(3) The total estimated costs of each service.

(b) The filing of the information listed in (a) above shall not constitute or imply commission approval of the expenses.

Puc 1905.02 Deadline for Filing Recovery Request. A utility seeking recovery of rate case expenses shall file its request for recovery pursuant to Parts Puc 202 and 203 along with all supporting documentation, with the commission no later than 30 days after the commission's final order pursuant to Puc 1903.02.

Puc 1905.03 Documentation of Expenses Required. For each expense filed with the commission for recovery as a rate case expense, the utility shall provide detailed evidence of all rate case expenses and any related allocations including:

- (a) All invoices paid or to be paid;
- (b) Name of each vendor;
- (c) The amount of the expense to be included as part of rate case expenses;
- (d) A description and date of the charge or service rendered;
- (e) A statement that the expense is consistent with the utility's written procurement policy;
- (f) The utility's procurement policy in place at the time the expenses were incurred;

- (g) The contract entered into that generated the expense; and
- (h) A statement of whether the contract was obtained after negotiations or competitive bid.

Puc 1905.04 Additional Requirements for Service Providers.

(a) All utilities serving 600 customers or more and hiring service providers for use in a full rate case shall acquire such services through a competitive bidding process if the expense for such service is estimated to be or is \$10,000 or greater.

(b) Except if not necessary under (a), for each service provider used, the utility shall also include a certification that:

- (1) The utility used a competitive bidding process, and in selecting the winning bidder, considered information concerning the availability, experience, customary fees for similar services, quality, and cost of the service provider; and
- (2) The time spent on the rate case by the service provider was undertaken in an efficient and cost effective manner.

(c) If a utility is required to use a competitive bidding process pursuant to Puc 1905.04(a) and engages a service provider who is not the lowest bidder in a competitive bidding process, the utility shall provide clear and convincing justification of its decision to do so.

PART Puc 1906 EXPENSES RECOVERABLE AS RATE CASE EXPENSES

Puc 1906.01 Allowed Expenses The commission shall determine pursuant to Puc 1904 the recovery of actual, known, and measurable rate case expenses from a full rate case, defined in Puc 1903.03, provided the expenses are related to the rate case, just and reasonable and in the public interest, Such rate case expenses may include as follows:

(a) Costs related to the preparation of items required as part of a full rate case, pursuant to PART Puc 1604;

(b) Expert consultant fees;

(c) Legal and accounting fees;

(d) Expenses associated with changing billing systems to reflect temporary and permanent rate changes;

(e) Travel expenses;

Edit. Renummer (a)-(g) as (1)-(7).

(f) Administrative costs such as postage costs, publication costs, photocopying expenses, and transcription costs; and

(g) Such other similar expenses that are related to the preparation or presentation of a full rate case, defined by Puc 1903.03, as determined by the commission after its review.

#### PART Puc 1907 EXPENSES NOT RECOVERABLE AS RATE CASE EXPENSES

Puc 1907.01 Expenses Not Allowed. Expenses not recoverable as rate case expenses shall include:

(a) Expenses for matters handled by service providers that are typically performed by utility management and staff of the utility, based on their experience, expertise, and availability;

(b) Expenses typically included in a utility's test-year revenue requirement or any expense for which recovery is prohibited by other commission rule.

(c) Expenses related to responding to commission audit inquiries;

(d) Expenses for first class airfare, gifts, or alcohol;

(e) Lobbying expenses;

(f) Interest charges on rate case expenses; and

(g) Such other similar expenses that are not related or material to the preparation or presentation of a full rate case, as determined by the commission after its review.

#### PART Puc 1908 SURCHARGES FOR THE RECOVERY OF RATE CASE EXPENSES

Puc 1908.01 Recovery through Rate Surcharge. Approved rate case expenses shall be included in rates through the imposition of a surcharge to rates.

**APPENDIX**

<b>Rule</b>	<b>Specific State Statute the Rule Implements</b>
Puc 1900	RSA 365:8, X



THE STATE OF NEW HAMPSHIRE

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PUBLIC UTILITIES COMMISSION

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SEP 19 2013

September 19, 2013

Scott F. Eaton, Director  
Administrative Rules Division  
Office of Legislative Services  
State House Annex, Room 219  
25 Capitol Street  
Concord, New Hampshire 03301

Re: Notice No. 2013-65 – Final Proposal  
Puc 1900 – Rate Case Expenses  
Commission Docket No. DRM 12-039

Dear Attorney Eaton:

On April 11, 2013, the Commission voted pursuant to RSA 541-A to initiate a rulemaking to adopt the Puc 1900 Rate Case Expenses. A rulemaking notice was filed with the Office of Legislative Services on May 13, 2013 as required by RSA 541-A:6. A public hearing was held on June 17, 2013, pursuant to RSA 541-A:11. The Commission received editorial comments from the Office of Legislative Services and has edited the text of the rules accordingly. The Commission received substantive comments from Office of the Consumer Advocate, Unitil, and Liberty Utilities (attached) and has changed the text of the rules to accommodate their concerns.

Specifically, Liberty expressed concern regarding the definition of "service provider" and the Commission struck "authorized to do business in New Hampshire" because the definition is still clear without the clause. Next, Liberty and Unitil expressed concern in Puc 1905.01(a) and the requirement that utilities file updated estimates of their rate case expenses every sixty days. The Commission understands this concern and has changed the updates to every ninety days. The Commission is not inclined to eliminate this requirement since the utilities are already required to keep the Commission informed pursuant to RSA 374:4, Commission Staff can request updates through discovery in the pending rate proceeding, and the Commission is interested in investigating rate case expenses as part of the rate proceeding rather than leaving the investigation to the end, which is what generally occurs now. The Commission believes incorporating the rate case expense issue earlier in the rate case review will simplify its review. Utilities do not usually have many consultants on any given rate case and the task of updating those costs should not be onerous.

With respect to Puc 1905.04 and the requirement of competitive bidding when services are estimated to be \$10,000 or greater, the OCA recommended that the Commission

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lower the threshold to the threshold applicable to OCA. The OCA believes this threshold to be about \$2,500. The Commission considered that threshold but seeks to maintain a balance between overseeing utilities' expenses and allowing the utility to manage its contracts. Therefore, this provision is unchanged.

With respect to Puc 1907.01(a), Unitil and Liberty objected to the language that expenses that "could have been performed by utility management and staff." The Commission disagrees that the exception is too broad and will keep the proposed language, unchanged. The Commission seeks to avoid, for example, situations where a utility has multiple rate cases in different states, uses its in-house accountants for one state rate case and then hires outside accountants who perform the otherwise in-house accounting functions for its New Hampshire rate case. Under that fact pattern, New Hampshire customers unfairly face rate case expenses that the customers in the other state do not. In the event expenses are in dispute, the utilities will have an opportunity to make their case; the Commission will use the criteria in Puc 1904.02 in evaluating whether the expense is allowed. The Commission disagrees that Puc 1907.01(a) is a blanket prohibition; it merely identifies categories of expenses that are not allowed. The specific facts will determine whether the expense falls within that category.

On September 19, 2013, the Commission voted to establish the attached Final Proposal for the adoption of Puc 1900.

The Commission asks that the JLCAR consider this proposal for approval.

As required by the Rulemaking Manual, enclosed please find one copy of the following:

- A completed Appendix II-G Cover Sheet for Final Proposal;
- The established text of the Final Proposed rule as the "Final Proposal—Fixed Text", including the cross-reference table required by RSA 541-A:3-a, II as an appendix; and
- The established text of the Final Proposed rule as the "Final Proposal—Annotated".

Thank you in advance for your assistance.

Sincerely,



Amy L. Ignatius  
Chairman

Attachments

cc: Service List

# TITLE XXXIV PUBLIC UTILITIES

## CHAPTER 363 THE PUBLIC UTILITIES COMMISSION

### Appointment, Qualification, Etc.

#### Section 363:17-a

**363:17-a Commission as Arbiter.** – The commission shall be the arbiter between the interests of the customer and the interests of the regulated utilities as provided by this title and all powers and duties provided to the commission by RSA 363 or any other provisions of this title shall be exercised in a manner consistent with the provisions of this section.

**Source.** 1979, 494:4, eff. Aug. 1, 1979.

# TITLE XXXIV

## PUBLIC UTILITIES

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### CHAPTER 365

### COMPLAINTS TO, AND PROCEEDINGS BEFORE, THE COMMISSION

#### Proceedings Before the Commission

##### Section 365:8

**365:8 Rulemaking Authority.** – The commission shall adopt rules, pursuant to RSA 541-A, relative to:

I. The conduct of its hearings, including alternative processes in hearings and other forms of alternative dispute resolution.

II. Standards and procedures for streamlined review or other alternative processes to enhance the efficiency of the commission and respond to the needs of the utility's ratepayers and shareholders.

III. Standards and procedures for the creation, monitoring and evaluation of alternative forms of regulation.

IV. Standards and procedures for the handling of confidential information, in accordance with RSA 91-A.

V. Standards and procedures for filing requirements for tariffs, engineering, accounting, and other commission matters.

VI. Standards and procedures for franchise terms and conditions, including extended area telephone service.

VII. Standards and procedures for safe and reliable utility service and termination of service subject to RSA 363-B.

VIII. Standards and procedures for matters related to the proper administration of RSA 366 relative to utility relations with affiliates.

IX. Standards and procedures relative to a reasonable amount of the short-term notes, bonds or other evidences of indebtedness based upon the amount of the utility's respective plant investment which each utility shall not exceed without first obtaining the approval of the commission pursuant to RSA 369:7.

X. Standards and procedures for determination and recovery of rate case expenses. \*

XI. Standards and procedures for the conduct of investigations authorized under this title.

XII. Procedures necessary to provide for the proper administration of and to further the purposes of this title.

XIII. [Repealed.]

XIV. Standards and procedures for public utilities to request protection of routine filings that contain confidential commercial or financial information.

**Source.** 1911, 164:2. PL 238:9. RL 287:9. 1951, 203:11 par. 8. RSA 365:8. 1981, 220:4. 1994, 193:1. 2005, 102:1, eff. June 15, 2005. 2010, 206:2, eff. June 22, 2010; 336:3, eff. Oct. 18, 2010.

# TITLE XXXIV PUBLIC UTILITIES

## CHAPTER 374 GENERAL REGULATIONS

### Supervisory Power of Department of Transportation

#### Section 374:4

**374:4 Duty to Keep Informed.** – The commission shall have power, and it shall be its duty, to keep informed as to all public utilities in the state, their capitalization, franchises and the manner in which the lines and property controlled or operated by them are managed and operated, not only with respect to the safety, adequacy and accommodation offered by their service, but also with respect to their compliance with all provisions of law, orders of the commission and charter requirements.

**Source.** 1911, 164:5. PL 240:4. RL 289:4. 1951, 203:23, eff. Sept. 1, 1951.

# TITLE XXXIV PUBLIC UTILITIES

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## CHAPTER 378 RATES AND CHARGES

### Schedules, Etc., Generally

#### Section 378:7

**378:7 Fixing of Rates by Commission.** — Whenever the commission shall be of opinion, after a hearing had upon its own motion or upon complaint, that the rates, fares or charges demanded or collected, or proposed to be demanded or collected, by any public utility for service rendered or to be rendered are unjust or unreasonable, or that the regulations or practices of such public utility affecting such rates are unjust or unreasonable, or in any wise in violation of any provision of law, or that the maximum rates, fares or charges chargeable by any such public utility are insufficient, the commission shall determine the just and reasonable or lawful rates, fares and charges to be thereafter observed and in force as the maximum to be charged for the service to be performed, and shall fix the same by order to be served upon all public utilities by which such rates, fares and charges are thereafter to be observed. The commission shall be under no obligation to investigate any rate matter which it has investigated within a period of 2 years, but may do so within said period at its discretion.

**Source.** 1913, 145:10. PL 242:7. RL 292:7. 1951, 203:46 par. 7, eff. Sept. 1, 1951.

# TITLE XXXIV PUBLIC UTILITIES

## CHAPTER 378 RATES AND CHARGES

### Temporary and Permanent Rates of Utilities

#### Section 378:28

**378:28 Permanent Rates.** — So far as possible, the provisions of RSA 378:27 shall be applied by the commission in fixing and determining permanent rates, as well as temporary rates. The commission shall not include in permanent rates any return on any plant, equipment, or capital improvement which has not first been found by the commission to be prudent, used, and useful. Nothing contained in this section shall preclude the commission from receiving and considering any evidence which may be pertinent and material to the determination of a just and reasonable rate base and a just and reasonable rate of return thereon.

**Source.** 1951, 203:46 par. 28. RSA 378:28. 1993, 223:1; 330:4. 1994, 193:5, eff. July 23, 1994.