

THE STATE OF NEW HAMPSHIRE



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PUBLIC UTILITIES COMMISSION

21 S. Fruit Street, Suite 10
Concord, N.H. 03301-2429

September 27, 2012

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

Re: Puc 202.01 (f-m), PART Puc 204, Puc 205.06, PART Puc 206

(ORM 12-189)

Dear Mr. Eaton:

Enclosed please find documents to be filed with your office regarding the above-referenced docket:

- 1) Appendix II-C, Rulemaking Notice Form;
- 2) Fiscal Impact Statement – FIS 12:135 (2 copies);
- 3) Puc 202.01 (f-m), PART Puc 204, Puc 205.06, PART Puc 206 - Initial Proposal (2 copies)
- 4) Cross Reference Table of Applicable Statutes (2 copies).

Please include the Rulemaking Notice Form in the next available Rulemaking Register.

Thank you.

Sincerely,

Handwritten signature of Amy L. Ignatius in cursive.

Amy L. Ignatius
Chairman

Enclosures

APPENDIX II-C

RULEMAKING NOTICE FORM

Notice Number _____ Rule Number **Puc 202.01 (f)-(m), Puc 204,
Puc 205.06, Puc 206**

<p>1. Agency Name & Address:</p> <p>Public Utilities Commission 21 S. Fruit Street, Suite 10 Concord, New Hampshire 03301</p>	<p>2. RSA Authority: RSA 365:8, XII; 365:8, III; 365:8, XII</p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Amendment _____</p> <p>Repeal _____</p> <p>Readoption <u> X </u></p> <p>Readoption w/amendment _____</p>
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5. Short Title: **Puc 200 Rules of Practice and Procedure**

6. (a) Summary of what the rule says and of any proposed amendments:

Puc 202.01 (f)-(m) provide guidance for persons and entities seeking certain Commission determinations.

Part Puc 204 sets forth certain standards of conduct and related procedures governing the proceedings before the Commission related to complaints regarding public utilities.

Puc 205.06 sets forth certain standards of conduct and related procedures governing the proceedings before the Commission related to explanations of proposed Commission rules.

Part Puc 206 sets forth certain standards of conduct and related procedures governing the proceedings before the Commission related to utilities seeking alternative forms of regulation by the Commission.

Readoption of these rules, without amendment, is being sought in this rulemaking.

APPENDIX II-C (Continued)

RULEMAKING NOTICE FORM - Page 2

6. (b) Brief description of the groups affected:

The rules affect regulated utilities and their affiliates operating in New Hampshire that make filings with the NH Public Utilities Commission.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Provision of the Rule	Specific State Statute the Rule Implements
Puc 202.01 (f)-(m)	RSA 365:8, XII
Puc 204.01 - 204.06	RSA 365:1 – 5
Puc 205.06	RSA 541-A:11, VII
Puc 206.01 - 206.09	RSA 365:8, III; RSA 365:8, XII

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Alexander Speidel** Title: **Staff Attorney**
Address: **New Hampshire Public Utilities** Phone #: **603-271-6016**
Commission Fax#: **603-271-3878**
21 South Fruit Street Suite 10 E-mail: alexander.speidel@puc.nh.gov
Concord NH 03301 TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: November 15, 2012

Fax E-mail Other format (specify):

9. Public hearing scheduled for: November 6, 2012

Date and Time: **November 6, 2012 at 10:00 a.m.**

Place: **21 South Fruit Street, Suite 10, Hearing Room A, Concord, NH**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 12:135 , dated September 26, 2012

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution: **The proposed rules do not modify an existing program or responsibility, and do not assign any responsibility to any political subdivision and therefore is not proposed in violation of Part I, Article 28-a.**

STATE OF NEW HAMPSHIRE
Inter-Department Communication

DATE: September 26, 2012

FROM: *P. Ellis*
Pamela Ellis
Office of Legislative Budget Assistant
State House, Room 102
Concord, New Hampshire 03301

RE: FIS 12:135

TO: Alexander Speidel
Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301

Attached is the fiscal impact statement listed above. It should be reviewed and then submitted to the Division of Administrative Rules, Office of Legislative Services, in accordance with the N.H. Rulemaking Manual dated September 2001.

Attachment

LBAO
FIS 12:135
09/26/12

Fiscal Impact Statement for Public Utilities Commission rules governing Puc 200 Rules of Practice and Procedure. [Puc 202.01 (f-m), PART Puc 204, Puc 205.06, PART Puc 206]

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

There is no difference in cost when comparing the proposed rules to the existing 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:

None.

C. To independently owned businesses:

None.

CHAPTER Puc 200 RULES OF PRACTICE AND PROCEDURE

PART Puc 202 OPERATIONS AND REQUIREMENTS

Readopt Puc 202.01(f)-(m), effective 6-10-06 (Document # 8657-B), to read as follows:

Puc 202.01 Requests for Commission Determinations.

(f) A person seeking to make a complaint against a utility shall do so by complying with Puc 204 or Puc 1200.

(g) A person seeking to register as a competitive electric power supplier or aggregator shall do so by complying with Puc 2003.

(h) A person seeking to register as a competitive natural gas supplier or aggregator shall do so by complying with Puc 3003.

(i) A person seeking to register as a competitive local exchange carrier (CLEC) shall do so by complying with Puc 431.

(j) A person seeking to register as a competitive intraLATA toll provider (CTP) shall do so by complying with Puc 451.

(k) A person seeking a certificate of compliance with the design requirements of the Code for Energy Conservation in New Building Construction shall do so by complying with Puc 1804.

(l) A person seeking a certification that a building as constructed complies with the Code for Energy Conservation in New Building Construction shall do so by complying with Puc 1805.01.

(m) A utility filing a compliance plan, amendment to a compliance plan or notification related to affiliates or affiliate transactions shall do so by complying with Puc 2100.

Readopt Puc 204, effective 6-10-06 (Document # 8657-B), to read as follows:

PART Puc 204 COMPLAINTS AGAINST PUBLIC UTILITIES

Puc 204.01 Submission of Complaints.

(a) Except as provided in (b) below, any person wishing to make a complaint to the commission about a public utility shall do so by filing such complaint in writing with the executive director.

(b) A retail customer with a complaint against a public utility that concerns the customer's service or payment for such service shall submit the complaint to the commission pursuant to Puc 1200.

(c) The provisions of Puc 203 shall not apply to complaints filed pursuant to this rule unless the commission institutes adjudicative proceedings pursuant to Puc 204.05.

Puc 204.02 Forwarding Complaints to Utilities.

(a) Upon receipt of a complaint pursuant to Puc 204.01, the executive director shall cause a copy of the complaint to be forwarded to the utility named in the complaint.

(b) The utility shall provide a written response to the complaint no later than 10 days from the date the complaint is received by the utility.

(c) The response required by (b) above shall include a description of all steps taken by the utility to resolve the complaint and shall be furnished to the complainant as well as the commission.

Puc 204.03 Review of Complaints by Utilities.

(a) A utility shall consider all complaints forwarded to it pursuant to Puc 204.02 and thereafter shall:

- (1) Make any reparations and cease committing any violations as required by RSA 365:3; or
- (2) Advise the commission and the complainant that it disputes the complaint.

Puc 204.04 Investigation.

(a) When a utility has reviewed and responded to a complaint pursuant to Puc 204.02 and Puc 204.03, a complainant not satisfied with the utility's response shall so advise the commission.

(b) If it appears to the commission that there may be a basis for the complainant's dispute, the commission shall conduct an independent investigation pursuant to RSA 365:4.

Puc 204.05 Adjudicative Proceedings. The commission shall commence adjudicative proceedings to resolve a complaint against a utility when it determines after an investigation conducted pursuant to Puc 204.04:

- (a) That a complaint may warrant further action against a utility; or
- (b) A customer has exhausted all remedies available under Puc 1200 and requests a hearing.

Puc 204.06. Investigations Initiated by the Commission. Nothing in this part shall limit the commission's authority to investigate or make inquiry of a public utility pursuant to RSA 365:5.

Readopt Puc 205.06, effective 6-10-06 (Document # 8657-B), to read as follows:

PART Puc 205 RULEMAKING

Puc 205.06 Explanation of Proposed Rule.

(a) If requested by an interested person at any time before 30 days after final adoption of a rule, the commission shall issue a written explanation of the rule pursuant to RSA 541-A:11, VII.

(b) An explanation issued pursuant to this section shall include:

- (1) A concise statement of the principal reasons for and against the adoption of the rule in its final form; and
- (2) An explanation of why the commission overruled the arguments and considerations against the rule.

Readopt Puc 206, effective 1-27-05 (Document # 8276), to read as follows:

PART Puc 206 ALTERNATIVE REGULATION

Puc 206.01 Definitions.

(a) "Alternative form of regulation" means a method of utility rate regulation pursuant to RSA 374:3-a other than methods which are based upon cost of service, rate base and rate of return.

(b) "Utility" means "public utility" as defined in RSA 362:2.

Puc 206.02 Utility May Petition. A utility may file with the commission a petition for an alternative form of regulation.

Puc 206.03 Commission Shall Initiate.

(a) The commission shall initiate a proceeding to establish an alternative form of regulation if it finds that alternative regulation is likely to promote or enhance one or more of the following:

- (1) Competition;
- (2) Advancements in development of infrastructure;
- (3) Investment in new technology, plant and equipment;
- (4) Reduction in prices; or
- (5) Efficiency in services.

(b) When the commission initiates a proceeding to establish an alternative form of regulation, it shall issue an order directing the affected utility to submit detailed information consistent with the requirements of Puc 206.05 and any additional information required by Puc 206.06.

Puc 206.04 Adjudicatory Proceedings.

(a) Proceedings initiated pursuant to Puc 206.02 or Puc 206.03 shall be considered adjudicatory.

(b) Puc 200 Procedural Rules shall apply to proceedings for approval, implementation or withdrawal of approval of an alternative form of regulation.

Puc 206.05 Description of Alternative Form of Regulation. When a utility petitions for an alternative form of regulation, it shall describe in detail in its petition or, as to materials requested pursuant to Puc 206.05 (f), it shall provide the following:

- (a) The form of alternative regulation it seeks;
- (b) The extent to which that form of alternative regulation shall apply to its entire operations or to particular portions of its services or operations;
- (c) The term over which the alternative form of regulation shall apply;
- (d) The form of regulation which shall apply after the term of the approved form of alternative regulation expires;
- (e) How the rates charged under the alternative form of regulation would compare to rates that would be charged under methods which are based upon cost of service, rate base and rate of return, if the utility were to file a rate case concurrently; and
- (f) Any additional information, including but not limited to, rates, pricing, earnings, customer protections, service offerings, expansion of technology, accounting or investments which the commission shall request if the form of alternative regulation and/or the petition raise issues on which the commission needs further information in order to complete the record.

Puc 206.06 Filing Requirements.

(a) When a utility seeks an alternative form of regulation, it shall file a petition with the commission which shall contain identifying information including the name of the utility, address of the utility and contact person.

(b) In its petition filed pursuant to Puc 206.02 or in response to a commission-initiated proceeding pursuant to Puc 206.03, the utility shall describe in detail the effects, if any, that the alternative form of regulation will have on the following:

- (1) Competition;
- (2) The safety, adequacy and reliability of public utility service;
- (3) The traditional regulatory balance which does not unfairly benefit or disadvantage utility consumers, utility investors and other stakeholders;
- (4) Administrative efficiency in the regulatory process for the utility and the commission;
- (5) Economic development within New Hampshire;
- (6) Access to basic utility service to residents throughout the state, also known as universal service;
- (7) Innovation of services;
- (8) Infrastructure improvements; and
- (9) Environmental and conservation safeguards and incentives.

(c) Where the utility concludes that the alternative form of regulation will have no effect on any factor listed in Puc 206.06 (b), the utility shall describe in detail in its petition the basis for its conclusion that there is no effect.

Puc 206.07 Standards for Approval.

(a) After notice and hearing, and after considering the materials submitted by the utility, other interested parties and commission staff, and the factors required by Puc 206.06, the commission shall approve an alternative form of regulation if it determines that such alternative:

- (1) Results in rates that are not unduly discriminatory and are at a level that allows those to whom a service is being marketed to obtain such service;
- (2) Provides the utility the opportunity to realize a return on its investment which falls within a range that is neither confiscatory nor unduly profitable and that reflects the utility's investment risk; and
- (3) Serves the public interest in light of the considerations described in Puc 206.06(b)(1) through (9).

Puc 206.08 Reporting Requirements.

(a) Any utility regulated under an alternative form of regulation which maintains its books on a calendar year basis shall report to the commission no later than March 31 of each year the following information:

- (1) Changes in prices of services under an alternative form of regulation during the calendar year just concluded;
- (2) New services introduced under an alternative form of regulation during the calendar year just concluded;
- (3) The rate of return realized on services under an alternative form of regulation during the calendar year just concluded;
- (4) New construction or improvement to infrastructure introduced under an alternative form of regulation during the calendar year just concluded; and
- (5) Any further information which the commission determines is necessary to confirm that the original bases for approval under Puc 206.07 have still been met.

(b) Any utility regulated under an alternative form of regulation that maintains its books on a fiscal year that does not coincide with a calendar year shall report to the commission no later than 90 days following the close of each fiscal year the information listed in Puc 206.08(a)(1) through (5).

(c) Reporting requirements under this section shall be in addition to and shall not supersede or negate the necessity to comply with any other applicable reporting requirements established under rulemaking authority of the commission.

(d) For any utility in which some services are subject to rate of return regulation and some services are subject to an alternative form of regulation, the utility shall maintain accounting records which demonstrate that the costs and revenues of rate of return regulated services are not commingled with the costs and revenues of services under an alternative form of regulation.

Puc 206.09 Withdrawal of Approval.

(a) When the commission determines, after notice and an opportunity for hearing pursuant to Puc 200, that a utility's performance under an alternative form of regulation no longer complies with the standards for approval established by Puc 206.07, and therefore no longer serves the public interest, the commission shall issue an order:

- (1) Withdrawing approval of the alternative form of regulation and:
 - a. Initiating a proceeding to establish another alternative form of regulation, in accordance with Puc 206.06 and 206.07; or
 - b. Reinstating regulation based upon cost of service, rate base and rate of return.

(b) During the pendency of a proceeding to consider withdrawal of approval of an alternative form of regulation or a proceeding to consider another alternative form of regulation, the commission shall either:

- (1) Maintain the form of regulation last approved for the affected utility; or
- (2) Reconstitute regulation based upon cost of service, rate base and rate of return.

(c) In determining the method of regulation to apply during the pendency of a proceeding pursuant to Puc 206.09(a), the commission shall order the form of regulation that best assures:

- (1) Safe, adequate and reliable utility operation;
- (2) Financial stability of the utility; and

(3) Limited financial impact, if any, on ratepayers.

APPENDIX

Rule	Statute
Puc 202.01 (f)-(m)	RSA 365:8, XII
Puc 204.01 - 204.06	RSA 365:1 – 5
Puc 205.06	RSA 541-A:11, VII
Puc 206.01 - 206.09	RSA 365:8, III; RSA 265:8, XII