

THE STATE OF NEW HAMPSHIRE

CHAIRMAN
Amy L. Ignatius

COMMISSIONERS
Michael D. Harrington
Robert R. Scott

EXECUTIVE DIRECTOR
Debra A. Howland



PUBLIC UTILITIES COMMISSION

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

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

Tel. (603) 271-2431

FAX (603) 271-3878

Website:
www.puc.nh.gov

January 16, 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: Notices Nos. 2012-136 and 2012-137, Puc 206 and Puc 1100;
Commission Docket Nos. DRM 12-189 and DRM 12-190, Final Proposals

Dear Mr. Eaton:

On July 11, 2012, the Commission voted pursuant to RSA 541-A to initiate two rulemakings to: (1) readopt without amendment certain Puc 200 Organizational Rules and Rules of Practice and Procedure, and (2) readopt without amendment Puc 1100 (Steam Rules). Rulemaking notice forms were filed with the Office of Legislative Services on September 27, 2012, as required by RSA 541-A:6. The notice scheduled public hearings on the proposed Readoptions Without Amendment for October 26, 2012 (Puc 1100) and November 6, 2012 (Puc 200).

The hearings were held as scheduled, and comments were received. On January 16, 2012, the Commission voted to approve the established Final Proposals for Notices 2012-136 and 2012-137, with 2012-136 cut back to include only Puc 206. The Commission asks that the JLCAR consider these proposals for Approval. As required by the new Rulemaking Manual, you will find enclosed one copy of the following, for each rulemaking:

- A completed Appendix II-G, Cover Sheet for Final Proposal;
 - A copy of the full text of the statutory rulemaking authority for the rule;
 - The established text of the final proposed rules 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 rules as the "Final Proposal—Annotated Text".

Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Amy Ignatius".

Amy L. Ignatius
Chairman

Enclosures

NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL

APPENDIX II-G

COVER SHEET FOR FINAL PROPOSAL

Notice Number	2012-136	Rule Number	Puc 206
1. Agency Name & Address: Public Utilities Commission 21 S. Fruit Street, Suite 10 Concord, NH 03301		2. RSA Authority: RSA 365:8, XII; 365:8, III 3. Federal Authority: N/A 4. Type of Action: <input type="checkbox"/> Adopt <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal <input checked="" type="checkbox"/> Readoption <input type="checkbox"/> Readoption w/amendment	
5. Short Title: PUC 206, Alternative Regulation			
6. Contact person for copies and questions: Name: Alexander F. Speidel, Esq. Title: Staff Attorney Address: 21 S. Fruit Street, Ste. 10 Phone #: (603) 271-6016 Concord, NH 03301			
7. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> 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 <u>Rulemaking Register</u> on			
9. Yes <input type="checkbox"/> N/A <input checked="" type="checkbox"/> 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 <input type="checkbox"/> N/A <input checked="" type="checkbox"/> 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 <input checked="" type="checkbox"/> N/A <input type="checkbox"/> 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(d).			

NEW HAMPSHIRE DRAFTING AND PROCEDURE MANUAL

13. Yes ☐ N/A ☒ The amended fiscal impact statement because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS) pursuant to RSA 541-A:5, VI.

INSTRUCTIONS FOR THE COVER SHEET FOR FINAL PROPOSAL

The first and second unnumbered items, and Items 1 through 5, shall be completed with the same information as appeared in the “Rulemaking Notice Form” (Appendix II-C) as published for the Initial Proposal in the Rulemaking Register. Item 6 shall identify the name, title, address, and telephone number of the person in the agency who can answer questions about the proposed rule and supply copies.

The agency shall then indicate, by checking the appropriate box on Item 7, whether it is requesting that it receive and respond to comments of the Committee legal staff prior to the Committee meeting that is at least 28 days, but not more than 60 days, after the proposal is filed. In effect, this would be a request for postponement of Committee action. See RSA 541-A:12, I-a and Section 2.14 of Chapter 3 in the Drafting and Procedure Manual for Administrative Rules (Manual).

In Item 8 the agency shall list the full date, by month, day, and year, on which the “Rulemaking Notice Form” was published in the Rulemaking Register.

In Item 9 the agency shall indicate, by checking either the “Yes” box or the “N/A” (not applicable) box, whether it had notified the House and Senate policy committees, or the House Speaker and Senate President, pursuant to RSA 541-A:10, I because the Initial Proposal was the first time the rule or its amendments had been proposed to implement newly-enacted state authority.

Items 10 through 13 all relate to required attachments to the “Final Proposal Cover Sheet”. PROVIDE ONE COPY OF EVERYTHING SUBMITTED. IT IS OPTIONAL TO NUMBER THEM ACCORDINGLY. Item 10 is required in every filing, and therefore is listed without a check-box. Items 11 through 13 will be required only under the circumstances set forth in the description of the items listed below. The agency shall determine whether such attachment is required and then check either the “Yes” box to indicate that the document is required and has been attached or the “N/A” box if the document is not required and therefore not applicable:

- Item 10. The “Final Proposal—Fixed Text,” required by RSA 541-A:12, II(b). See also Section 2.12 of Chapter 3 in the Manual. Include the cross-reference table required by RSA 541-A:3-a, II as was done for the Initial Proposal. See Section 2.4 of Chapter 3 in the Manual.
- Item 11. An “Incorporation by Reference Statement” (Appendix II-H) if the agency has incorporated a third-party document or Internet content by reference for which such a statement is required pursuant to RSA 541-A: 12, III. See Section 3.12 of Chapter 4 in the Manual.
- Item 12. The text of the final proposal annotated to reflect how the text of the Final Proposal differs from the text of the Initial Proposal, if the text has changed during the public hearing and comment process. See RSA 541-A:12, II(e) and Section 5.4 of Chapter 4 in the Manual.
- Item 13. The amended fiscal impact statement obtained from the Legislative Budget Assistant if, as a result of the public hearing and comment process, a change has been made to the rule which affects the original fiscal impact statement. See RSA 541-A:5, VI and Section 2.11 of Chapter 3 in the Manual.

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 365:8, XII

CHAPTER Puc 200 RULES OF PRACTICE AND PROCEDURE

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- (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).

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(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.

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(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:
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 - 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) Reinstitute 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:
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