

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION
DRM 14-149
RULEMAKING
Puc 200 – Rules for Practice and Procedure

COMMENTS OF THE
NEW HAMPSHIRE TELEPHONE ASSOCIATION

August 4, 2014

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INTRODUCTION AND SUMMARY

Pursuant to the Commission's Order of Notice dated June 16, 2014, the member companies of the New Hampshire Telephone Association ("NHTA")¹ are pleased to comment on the Commission's proposed Chapter Puc 200 Rules for Telecommunications.

In 2012, Title 34 of the New Hampshire Revised Statutes was substantially revised by 2012 N.H. Laws Chap. 177 ("SB 48"). SB 48 deregulated end user telephone services to a very great extent. By so altering the regulatory landscape in New Hampshire, SB 48 made it necessary to rewrite and readopt most of the rules by which the Commission regulates telephone service. The Commission accomplished much of this effort earlier this year, when it adopted vastly revised 400 Rules governing telecommunications services. These rules did not, however, address all of the rules that were affected by SB 48, particularly as they relate to Commission procedure. Accordingly, the Commission issued its Order of Notice which announced an Initial Proposal that, among other things, further addresses the changes brought by SB 48, particularly pertaining to routine filings (many of which are no longer required) and complaint procedures.

As the following comments explain, NHTA believes that the Commission's proposal, taken by itself, appears inconsistent with the intent of SB 48 and the recently adopted Puc 400 Rules regarding end user complaints. These comments are accompanied by recommendations for revisions to the proposed rules that make them conform with the letter and intent of SB 48 and the current Puc 400 Rules. The comments are comprised of two parts: 1) a discussion of each rule with which NHTA takes issue and 2) a separate "redline" of the proposed rules as an aid for visualizing how the recommendations are reflected in the rules.

¹ NHTA is comprised of Bretton Woods Telephone Company, Inc.; Dixville Telephone Company; Dunbarton Telephone Company, Inc.; Granite State Telephone, Inc.; Hollis Telephone Company, Inc.; Kearsarge Telephone Company, Merrimack County Telephone Company, Northern New England Telephone Operations LLC d/b/a FairPoint Communications – NNE, Union Telephone Co. and Wilton Telephone Company, Inc.

Puc 204.01 Submission of Complaints

In proposed rule Puc 204.01, the Commission proposes to broaden the scope of Part 204 of its rules beyond retail customers and beyond statutory public utilities:

Puc 204.01 Submission of Complaints.

- (a) A customer with a complaint that concerns the customer's service or payment for such service shall submit the complaint to the commission.
- (b) If resolution is not reached following an informal process, the customer may file a formal complaint in writing submitted to the executive director.
- (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.

As support for its authority to establish this rule, the Commission cites:

- RSA 365:1 (Complaints against public utilities)
- RSA 365:2 (Initial treatment of complaints)
- RSA 365:3 (Resolution of complaints without further Commission action)
- RSA 365:4 (Investigation of complaints)
- RSA 365:5 (Independent investigations by the Commission)

DISCUSSION: This rule does not reflect, nor does the Commission reference, the provisions of RSA 365:1-a (Exceptions), which states that:

Except for complaints about RSA 371:17 through RSA 371:24 [Crossings of public waters and lands], RSA 374:2-a [Herbicide use], RSA 374:22-p, I(b) [Basic service], RSA 374:28-a [Slamming], RSA 374:34-a [Pole Attachments], RSA 374:48 through RSA 374:56 [DigSafe], RSA 374:59 [Number conservation], and RSA 378:44 through RSA 378:48 [Cramming], the provisions of this chapter shall not apply to any end user of an excepted local exchange carrier, nor to any service provided to such end user. Such end users may make complaints to the commission regarding basic service, as defined by RSA 374:22-p, I(b) by excepted local exchange carriers.

Under the provisions of this section, the only end user complaints over which the Commission has jurisdiction pertain to basic service, slamming, cramming, and certain number portability issues. However, as written, proposed rule Puc 204.01 (and those immediately following in Part 204) appear to grant the Commission blanket authority to

accept, investigate and effect the resolution of complaints regarding *all* matters from *all* customers. This result is too broad.

RECOMMENDATION: A new rule Puc 204.01 should be inserted before the proposed rule, and all subsequent rules renumbered, as follows:

Puc 204.01 Exceptions. This Part shall not apply to the end users of ELEC service, with the exception of complaints as described in Rule Puc 405.06.

Puc 204.02 Submission of Complaints.

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Puc 204.02 Submission of Complaints

As in proposed rule Puc 204.01, the Commission proposes to broaden the scope of Part 204 of its rules beyond retail customers and beyond statutory public utilities:

Puc 204.02 Complaints Regarding Utilities.

(a) Upon receipt of a complaint pursuant to Puc 204.01, the commission 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 by the date specified in the letter, or, when no date is specified in the letter, 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.

As support for its authority to establish this rule, the Commission cites:

- RSA 365:1 (Complaints against public utilities)
- RSA 365:2 (Initial treatment of complaints)
- RSA 365:3 (Resolution of complaints without further Commission action)
- RSA 365:4 (Investigation of complaints)
- RSA 365:5 (Independent investigations by the Commission)

DISCUSSION: As described in the comments to rule Puc 204.01, preceding, this rule does not reflect the provisions of RSA 365:1-a (Exceptions) and is overly broad.

RECOMMENDATION: The broadness of this rule can be corrected with the new rule Puc 204.01 that NHTA has proposed in its comments on proposed rule Puc 204.01.

Puc 204.03 Review of Complaints by Utilities

As in proposed rule Puc 204.01, the Commission proposes to broaden the scope of Part 204 of its rules beyond retail customers and beyond statutory public utilities:

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, cease committing any violations as authorized by RSA 365:3, and take any other appropriate actions; or
- (2) Advise the commission and the complainant that it disputes the complaint.

As support for its authority to establish this rule, the Commission cites:

- RSA 365:1 (Complaints against public utilities)
- RSA 365:2 (Initial treatment of complaints)
- RSA 365:3 (Resolution of complaints without further Commission action)
- RSA 365:4 (Investigation of complaints)
- RSA 365:5 (Independent investigations by the Commission)

DISCUSSION: As described in the comments to rule Puc 204.01, preceding, this rule does not reflect the provisions of RSA 365:1-a (Exceptions) and is overly broad.

RECOMMENDATION: The broadness of this rule can be corrected with the new rule Puc 204.01 that NHTA has proposed in its comments on proposed rule Puc 204.01.

Puc 204.04 Investigation

As in proposed rule Puc 204.01, the Commission proposes to broaden the scope of Part 204 of its rules beyond retail customers and beyond statutory public utilities:

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.

As support for its authority to establish this rule, the Commission cites:

- RSA 365:1 (Complaints against public utilities)
- RSA 365:2 (Initial treatment of complaints)
- RSA 365:3 (Resolution of complaints without further Commission action)
- RSA 365:4 (Investigation of complaints)
- RSA 365:5 (Independent investigations by the Commission)

DISCUSSION: As described in the comments to rule Puc 204.01, preceding, this rule does not reflect the provisions of RSA 365:1-a (Exceptions) and is overly broad.

RECOMMENDATION: The broadness of this rule can be corrected with the new rule Puc 204.01 that NHTA has proposed in its comments on proposed rule Puc 204.01.

Puc 204.05 Adjudicative Proceedings

As in proposed rule Puc 204.01, the Commission proposes to broaden the scope of Part 204 of its rules beyond retail customers and beyond statutory public utilities:

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.

As support for its authority to establish this rule, the Commission cites:

- RSA 365:1 (Complaints against public utilities)
- RSA 365:2 (Initial treatment of complaints)
- RSA 365:3 (Resolution of complaints without further Commission action)
- RSA 365:4 (Investigation of complaints)
- RSA 365:5 (Independent investigations by the Commission)

DISCUSSION: As described in the comments to rule Puc 204.01, preceding, this rule does not reflect the provisions of RSA 365:1-a (Exceptions) and is overly broad.

RECOMMENDATION: The broadness of this rule can be corrected with the new rule Puc 204.01 that NHTA has proposed in its comments on proposed rule Puc 204.01.

Puc 204.06 Investigations Initiated by the Commission

As in proposed rule Puc 204.01, the Commission proposes to broaden the scope of Part 204 of its rules beyond retail customers and beyond statutory public utilities:

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

As support for its authority to establish this rule, the Commission cites:

- RSA 365:1 (Complaints against public utilities)
- RSA 365:2 (Initial treatment of complaints)
- RSA 365:3 (Resolution of complaints without further Commission action)
- RSA 365:4 (Investigation of complaints)
- RSA 365:5 (Independent investigations by the Commission)

DISCUSSION: As described in the comments to rule Puc 204.01, preceding, this rule does not reflect the provisions of RSA 365:1-a (Exceptions) and is overly broad.

RECOMMENDATION: The broadness of this rule can be corrected with the new rule Puc 204.01 that NHTA has proposed in its comments on proposed rule Puc 204.01.

CHAPTER Puc 200 RULES OF PRACTICE AND PROCEDURE

PART Puc 201 GENERAL REQUIREMENTS

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 customer proprietary network information;
- (2) Incumbent Local Exchange Carrier (ILEC) capital expense reports;
- (3) NHPUC Form T-2 Assessment Reports
- (4) Preliminary and final Wholesale Performance Plan Reports for telecommunications companies containing carrier-specific performance and bill credit calculations;
- (5) NHPUC Form T-8 Exchange Eligibility Report;
- (6) Neustar (North American Numbering Plan Administration-designated overseer) Months to Exhaust and Utilization Certification Work Sheets;
- (7) Neustar Part 1A;
- (8) Neustar Part 1B;
- (9) New England Power Pool "My Settled Certificates" Reports filed in conjunction with annual Renewable Portfolio Standards Reports;
- (10) Listings of prices paid, and bids received, for Renewable Energy Certificates, that identify specific suppliers or dates of purchase;
- (11) Bids for the purchase of RGGI allowances pursuant to RSA 125-O:22;
- (12) In cost of gas proceedings:
 - a. supplier commodity pricing information related to the unit volumetric and demand cost;
 - b. pricing and delivery special terms of supply agreements;
 - c. pricing and special terms for storage lease agreements;
 - d. natural gas or propane costs and availability relating to hedging;
 - e. special terms for hedged natural gas or propane contracts;
 - f. supply commodity cost information specific to individual suppliers in supply and demand forecasts;
 - g. and responses to data requests related to a. through f. above;
- (13) NHPUC Form E-1, Monthly Report on Voltage Complaints;
- (14) NHPUC Form E-4, Monthly Report of Electric Meter Complaint Tests;
- (15) NHPUC Form E-5, Accident Reports; ~~and~~

(16) In default service proceedings:

- a. default service solicitations;
- b. bidder information;
- c. descriptions of the financial security offered by each bidder;
- d. bid evaluations;
- e. rankings of bidders' financial security;
- f. descriptions of financial security required by bidders;
- g. fuel supplier contracts;
- h. commodity and fuel pricing;
- i. planned generation plant maintenance schedules;
- j. contact lists used during the requests for proposals process;
- k. financial security, pricing and quantity terms of master power agreements and amendments;
- ll. Renewable Energy Certificate purchase prices, quantities and seller identities under existing contracts;
- m. transaction confirmations;
- n. retail meter commodity cost calculations;
- o. wholesale power purchase prices until made public by other governmental agencies;
- p. and responses to data requests related to a. through o. above.

(17) Utilities' cybersecurity plans;

(18) Utilities' physical security plans;

(19) Competitive Electric Power Supplier (CEPS) sales reports filed pursuant to Puc 2003.03(b);

(20) CEPS aggregator listings filed pursuant to Puc 2003.03(c);

(21) Competitive Natural Gas Supplier (CNGS) sales reports filed pursuant to Puc 3003.03(b) and (c); and

(22) CNGS aggregator listings filed pursuant to Puc 3003.03(d).

(b) 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.

(c) For paper filings made pursuant to this rule outside of an adjudicative proceeding or special contract filing, parties shall file one public paper copy and one confidential paper copy. For electronic

filings, both a public and confidential version shall be prepared and submitted. Filings made in an adjudicative proceeding shall comply with Puc 203.02.

(d) 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.

(e) 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.

PART Puc 202 OPERATIONS AND REQUIREMENTS

Puc 202.01 Requests for Commission Determinations.

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

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

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

(d) A person seeking to be authorized to provide voice service as an excepted_local exchange carrier (ELEC) shall do so by complying with Puc 404.02.

(e) A person seeking to register as a telecommunications carrier shall do so by complying with Puc 413.

(f) 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.

(g) 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.

(h) 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.

(n) A person seeking certification of a renewable energy source shall do so by complying with Puc 2500.

Puc 202.06 Requirements for Written Communications. Any person submitting written communications to the commission shall:

- (a) Date the submission;
- (b) Identify the name and address of the person submitting the document and the party or parties on whose behalf it is submitted, if any;
- (c) Identify the appropriate docket number, order number or other pertinent subject matter identification;

- (d) Comply with Puc 203.02, 203.03, 203.04 and 203.05 if making the filing in an adjudicative proceeding, or
- (e) For all other commission filings, including those required by statute, made in a non-adjudicative proceeding, submit one original and two paper copies.

Puc 202.07 Signatures. Each filing submitted to the commission shall be signed by a person authorized to make such a filing. An electronic signature, or “/s/” mark, with the full name of the signing person provided with the electronic signature or “/s/” mark, is an acceptable means of signing the filing.

PART Puc 204 COMPLAINTS

Puc 204.01 Exceptions. This Part shall not apply to end users of ELEC service, with the exception of complaints as described in Rule Puc 405.06.

Comment [A1]: The proposed rule does not reflect the provisions of RSA 365:1-a (Exceptions). A new rule Puc 204.01 should be inserted before the proposed rule, establishing the exceptions.

Puc 204.02~~4~~ Submission of Complaints.

- (a) A customer with a complaint that concerns the customer’s service or payment for such service shall submit the complaint to the commission.
- (b) If resolution is not reached following an informal process, the customer may file a formal complaint in writing submitted to the executive director.
- (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 204.03~~2~~ Complaints Regarding Utilities.

- (a) Upon receipt of a complaint pursuant to Puc 204.01, the commission 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 by the date specified in the letter, or, when no date is specified in the letter, 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 204.04~~3~~ 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 cease committing any violations as authorized by RSA 365:3, and take any other appropriate actions; or
 - (1) Advise the commission and the complainant that it disputes the complaint.

Puc 204.05~~4~~ 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 204.06~~5~~ 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 204.07~~6~~. 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.

| Puc 204.08~~7~~. Complaints Regarding Non-Utilities. For all other complaints over which the commission has jurisdiction, the provisions of Puc 204.01 through 204.06 shall apply.

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.

APPENDIX

Rule	Statute
Puc 201.06	RSA 365:8, XII; RSA 365:8, XIV
Puc 202.01 (f)-(m)	RSA 365:8, XII
Puc 202.01(n)	RSA 365:8, XII
Puc 202.06	RSA 365:8, XII
Puc 202.07	RSA 365:8, XII
Puc 204.01 - 204.06	RSA 365:1-5
Puc 204.07	RSA 365:8, XII; RSA 374-F:7; RSA 365:8-a
Puc 205.06	RSA 541-A:11, VII