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STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

May 7, 2015 - 10:03 a.m.
Concord, New Hampshire

NHPUC MAY26'15 AM 8:25

RE: DRM 15-075
RULEMAKING:
Puc 1800 - Energy Conservation in
Building Construction.
(Hearing to receive public comment)

PRESENT: Chairman Martin P. Honigberg, Presiding
Commissioner Robert R. Scott

Sandy Deno, Clerk

APPEARANCES: (No appearances taken)

Court Reporter: Steven E. Patnaude, LCR No. 52

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I N D E X

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QUESTIONS BY:

Commissioner Scott 6, 10, 18

Chairman Honigberg 7, 13, 19

P R O C E E D I N G

CHAIRMAN HONIGBERG: Good morning.

We're here on Docket DRM 15-075, which is a rulemaking docket on the Puc 1800 rules, which cover energy conservation in building construction. On March 13th of this year, the Commission voted to initiate a rulemaking for the 1800 rules. The Initial Proposal represented a readoption of the existing 1800 rules, with certain amendments. There was an informal conference on February 18th to discuss possible revisions, and that involved professionals who are involved in the construction of new buildings. The 1800 rules describe the process whereby the Commission administers the code for energy conservation in new building construction, and gives parties involved in design and construction of new buildings an explanation of what they must do to comply with the Code.

The Commission voted to amend the rules by adding language permitting electronic submission of application forms for a certificate and -- for certification of compliance with the Code. When the rules are adopted, assuming that they are, they will replace the current version of the 1800 rules.

Notice was filed with the Office of

{DRM 15-075} {05-07-15}

1 Legislative Services setting a public hearing for today,
2 and providing for the submission of written comments until
3 May 15th. So, that's eight days from now. We've received
4 one written comment that I'm aware of. We have an empty
5 room, other than Staff.

6 I guess I would turn it over to Staff to
7 see what, if any, comments they would like to make,
8 perhaps responding to the one comment we did receive?
9 Mr. Osgood, are you going to be -- do you have a speaking
10 part today?

11 MR. OSGOOD: Oh, absolutely. I usually
12 do, whether it's relevant or not.

13 CHAIRMAN HONIGBERG: It probably would
14 be best for the court reporter if you were at a
15 microphone. And, you do not have to stand.

16 Off the record.

17 (Brief off-the-record discussion
18 ensued.)

19 MR. OSGOOD: It's not often I get to
20 address such distinguished gentlemen.

21 MR. PATNAUDE: That's on the record.

22 CHAIRMAN HONIGBERG: I heard that.

23 MR. OSGOOD: I even wore my submissive
24 tie. Not my power tie, but my "submitting to power" tie.

1 CHAIRMAN HONIGBERG: All right.

2 MR. OSGOOD: So, with that --

3 CHAIRMAN HONIGBERG: Mr. Osgood, the
4 floor is yours.

5 MR. OSGOOD: We thank Bruce Buttrick for
6 his participation in this process. Bruce is the Building
7 Inspector in the Town of Bow. And, he offered a written
8 comment, very insightful, asking regarding -- asking about
9 the possibility of having the Energy Code Office, here at
10 the Public Utilities Commission, provide a notice to each
11 community of rejected or expired Energy Code applications,
12 in that a new provision of the rules will allow us to call
13 a application that we receive and request information on,
14 thus not a complete application, reject that if we do not
15 get a response within ten days. So, Bruce suggested that
16 the town should be informed of that.

17 As it is, we typically inform the towns
18 of approvals, if we have their e-mail, current e-mail
19 addresses. But this is a courtesy. We are under no
20 obligation by law or rule to notice the towns at all of
21 these applications. The towns, by statute, are not
22 supposed to approve a building permit until they have an
23 approved Energy Code certification. So, they should
24 insist on getting this Energy Code application prior to

1 completing the building permit process.

2 So, given that we don't have any mandate
3 to provide this information to a town, and given that we
4 try to provide it as best we can, and would certainly do
5 the same for any rejected applications, provided we had
6 the appropriate information, e-mail contacts, *etcetera*.
7 But I don't think it belongs in rules at this point.

8 CHAIRMAN HONIGBERG: Commissioner Scott,
9 do you have questions for Mr. Osgood?

10 COMMISSIONER SCOTT: I'll think of
11 something. Let me think.

12 CHAIRMAN HONIGBERG: I do, if you don't.

13 COMMISSIONER SCOTT: So, can you tease
14 that out a little bit? So, the -- and I'm not quibbling,
15 but some of your logic is circular, because you're saying
16 it's not in a rule, and he's asking for it to be put in
17 rules, right? So, then, it would be a requirement. So,
18 right now, do they -- how do they communicate with you
19 right now? So, sometimes it sounds like give you an
20 e-mail address you can put on your list and some don't, is
21 that what I'm gathering?

22 MR. OSGOOD: Right. As I understand it,
23 Mr. Buttrick is requesting that we inform the towns of
24 non-approved applications.

1 CHAIRMAN HONIGBERG: And, could I stop
2 you there? You should circle back to Commissioner Scott's
3 question. But I'm not sure I agree with the premise of
4 your statement, in that, as I read what Mr. Buttrick is
5 saying, he seems to be saying that the process allows for
6 certain -- certain approvals to happen by default. That,
7 if an approval is requested and nothing happens, it's
8 approved by default. And, then, if a builder then goes to
9 a town, says "look, I was approved by default", that would
10 be some sort of conflict between what the town wants to do
11 and what the builder wants to do.

12 So, why don't you sort through both
13 Commissioner Scott's question and my question in whichever
14 order you feel comfortable.

15 MR. OSGOOD: Firstly, we never have
16 applications that are not processed, that come into effect
17 by default. Because, technically, they are approved
18 99 percent within two days, and that's because we make an
19 effort to contact any individuals to sort out any
20 difficulties. So, while the statute allows us 15 days to
21 complete that process, it's done within two, typically, or
22 sometimes even hours.

23 When we -- if it were to get to that
24 default situation, it's a problem, because a builder could

1 simply say "I've submitted this, but got no response."
2 And, at that point, they have no certification. So, the
3 town should not be, theoretically, issuing a building
4 permit, because there is no certification. And, I would
5 think the town, when challenged with a default
6 certification, should such a thing exist, they would
7 contact us here, and we would communicate to them the true
8 reason or cause or whether an application was even
9 submitted to us.

10 So, I think it, in that respect, much of
11 the problem will be solved by this automatic rejection.
12 And, in the case of rejection, we would certainly submit
13 that to the town. Making them aware that an application
14 had been received, but the applicant was non-responsive to
15 our data requests.

16 So, I've tried my circular reasoning
17 here. Have I answered anybody's questions?

18 CHAIRMAN HONIGBERG: Well, circle back
19 to Commissioner Scott's question then about, well, you
20 said "you don't think it belongs in the rules", but that's
21 precisely what he's asking. He's saying "put it in a
22 rule, because it will be better that way."

23 MR. OSGOOD: And that -- but any
24 communication with the town is not in rule, at this point.

1 So, it would be establishing a whole process by which we
2 are mandated to provide information on approvals and
3 non-approvals to the towns, which we do as a courtesy, to
4 those towns who are interested enough to send us their
5 e-mail, or if I'm able to find their e-mail on their
6 websites.

7 MS. AMIDON: If I may, Mr. Chairman?

8 CHAIRMAN HONIGBERG: Ms. Amidon.

9 MS. AMIDON: Thank you. Suzanne Amidon,
10 for purpose of the record, is my name. This goes actually
11 to the first comment of Mr. Buttrick as well. Where he
12 proposes to have a new definition for "authority having
13 jurisdiction". And, I think that Mr. Osgood will confirm
14 this, but not every town has a building inspector or a
15 code enforcer or someone of that nature. And, I believe
16 that -- so, my understanding, and Mr. Osgood can confirm
17 this, I believe, is that there may be, for example, a town
18 clerk who process these things or there may be a fire
19 inspector or somebody like that, it would be very
20 difficult for Mr. Osgood to know, for each town, who that
21 authority was, for those towns that do not have building
22 inspectors.

23 But I would just ask him to comment on
24 that, too. Because I found that, in my mind, that was

1 probably a bigger problem. Is that right?

2 MR. OSGOOD: Yes. Probably a third at
3 least of the towns and municipalities in the state do not
4 have a building inspector full-time or part-time. Now, in
5 many cases, I'm able to send the approvals by e-mail to
6 the town Clerk or to the town administrator. But it's not
7 consistent. It's not necessarily possible for me to
8 easily identify these e-mails, and, particularly, as it's
9 not a mandate.

10 So, I think the mandate lies with the
11 town, to ensure that they have received the approved
12 application. In those communities without building
13 departments or building inspectors or any authority having
14 jurisdiction, then, it's the builder who's entirely
15 responsible for ensuring that they -- that he or she meets
16 the requirements of the Code. That's true, approval or
17 not.

18 COMMISSIONER SCOTT: So, Mr. Osgood, if
19 I'm a town -- whether I have one, let's say I do have a
20 part-time building inspector in my town, is it -- is it
21 clear to me, as a town, what I need to do? If you have an
22 e-mail saying you're disapproved or -- you know, you have
23 a disapproval or approval in your town, what you're
24 implying is, before they issue their building

1 certificate -- what's the word I want, not "building
2 certificate", but their --

3 MR. OSGOOD: Permit.

4 COMMISSIONER SCOTT: -- permit, they
5 should see that this is happening first. So, you're
6 saying it's incumbent on them, right? So, how is that
7 clear to them? Can you point me to where that would be
8 clear to them and they would know this?

9 MR. OSGOOD: Well, it's clear in the
10 statute. And, the statute has been essentially unchanged
11 for 30 some years. So, unfortunately, the building
12 departments of communities where there is one, where there
13 is even a part-time one, are not well financed. And,
14 they're, of course, responsible for all aspects of code,
15 fire, safety, and snow load, rafter strengths, and
16 everything else. And, they oftentimes don't have any
17 training budget whatsoever. So, it's difficult for them
18 to pick up the knowledge that they need.

19 But I had conducted a training on
20 Tuesday in Lebanon, and one of the local building
21 inspectors, not from the City or Hanover or those
22 communities, but from a smaller community, was asking me
23 about provisions of the Code that had expired back in
24 2002. And, he was not, as you might expect, angry that he

1 didn't know this. But he was extremely disappointed that
2 he didn't have the resources to pursue the training. So,
3 we do trainings, usually a session of 4:00 to 6:00, every
4 spring and every fall.

5 COMMISSIONER SCOTT: Well, that's good.
6 And, I appreciate, and I'm glad you do that. And, it's
7 clearly necessary. I guess what I was trying to get at
8 is, do you feel the rules, this Initial Proposal, is on
9 its face sufficient enough for, I'm just a newly appointed
10 dog catcher and building inspector part-time for my town,
11 do the rules provide enough on their face so I know what's
12 supposed to happen?

13 MR. OSGOOD: I believe so. I would love
14 to have the budget such that I could visit every town and
15 speak with the building department. But that's simply not
16 going to happen. As it is, I will go out and visit with
17 towns and talk with building inspectors upon their
18 request. But I typically don't volunteer and don't cold
19 call the towns to ask if they need information.

20 COMMISSIONER SCOTT: And, that's the
21 reason for my questions. I think, given the -- for want
22 of a better word -- that aspect of not fully staffed, not
23 necessarily, with the turnover, all the most knowledgeable
24 people involved in the process, you know, that would argue

1 to me, you know, one-stop shopping, if possible in the
2 rules, would help everybody. That's all I was suggesting.

3 MR. OSGOOD: If I might, one of my
4 predecessors did design and pursue a federal grant to
5 provide a code "rider", I guess he called it, who would go
6 help builders upon request, go help towns upon request, to
7 not only review Energy Code provisions, *etcetera*,
8 *etcetera*, but to inspect structures. It was a request
9 only system, and he had virtually no requests.

10 So, this does not rise to a high level
11 in town activities. And, we could certainly stimulate it
12 with a public relations budget and so forth beyond that
13 which the utilities do, through a contract with GDS
14 Associates. But, typically, we're here to administer, not
15 to promote.

16 COMMISSIONER SCOTT: All right. Thank
17 you.

18 CHAIRMAN HONIGBERG: Ms. Amidon, I think
19 maybe all my questions are for you. In 1803.01(c)(2),
20 which I think is what Mr. Buttrick is referring to in his
21 second comment, it does seem to provide that, "if there's
22 no Commission action on completed application within 15
23 working days", which to me means "three weeks", "it's
24 deemed approved." That's what he's identifying as a

1 potential problem. Do you agree with that?

2 MS. AMIDON: Yes. I was just looking at
3 that myself, and I was trying to find the statutory
4 language.

5 CHAIRMAN HONIGBERG: Yes. He cites --
6 or, I mean, the rule cites "RSA 155-D:4, V".

7 MS. AMIDON: Right.

8 CHAIRMAN HONIGBERG: Which I don't have
9 in front of me.

10 MS. AMIDON: Yes. And, the statute
11 reads as follows: "If the public utilities commission
12 does not transmit notification of compliance or
13 noncompliance of submitted plans and specifications to the
14 applicant within 15 working days of receipt of said plan,
15 they shall be considered automatically approved."

16 I did not work on these rules before.
17 But I see now, when you read that section, 1803.01(c)(2),
18 it appears to be consistent with the statute. But, when
19 you go to 1803.04(c), which is on Page 4, I believe, of
20 the Initial Proposal, you'll see contrary language.

21 CHAIRMAN HONIGBERG: I'm sorry, what --
22 give me the whole cite again. 1804 what?

23 MS. AMIDON: 1803.04(c).

24 CHAIRMAN HONIGBERG: The one with "plans

1 which have been deemed to be"?

2 MS. AMIDON: Right.

3 CHAIRMAN HONIGBERG: Okay.

4 MS. AMIDON: And, if you read that, that
5 sort of confuses the issue. It reads as follows: "Plans
6 which have been deemed to be automatically approved due to
7 failure of the commission to act on a completed
8 application within 15 days of submittal, pursuant to RSA
9 155-D:4, V, shall not be deemed to be previously approved
10 plans, for purposes of this section."

11 So, it's confusing to me. I think that
12 perhaps it's something that we need to take another look
13 at, because I really did not see that conflict before
14 today.

15 CHAIRMAN HONIGBERG: Well, but I don't
16 think it is a conflict, although I'm not sure. I think
17 the 1803.04 is about "standard designs".

18 MS. AMIDON: Oh, okay.

19 CHAIRMAN HONIGBERG: So, that if you've
20 got one that you're using over and over, if it's been
21 approved, truly approved, you don't have to get it
22 reapproved every time. And, what they're saying is, if
23 there was a deemed approval, because of a failure to act,
24 that doesn't work --

1 MS. AMIDON: Uh-huh.

2 CHAIRMAN HONIGBERG: -- for future.

3 MS. AMIDON: Okay.

4 CHAIRMAN HONIGBERG: But it does work
5 for that one. And, so, while I understood -- if I
6 understood what Mr. Osgood to be saying, is that "it's
7 never going to happen, because we're always going to act
8 on these things within three weeks, within 15 days."

9 MS. AMIDON: Uh-huh.

10 CHAIRMAN HONIGBERG: Mr. Buttrick is
11 identifying a theoretical then problem. But it does read
12 like a problem. I understand why -- I think I understand
13 why he's saying what he's saying. Because, if there's a
14 deemed approved plan, that is woefully inadequate, just
15 because it slipped through the cracks somewhere, is that
16 something that needs to be dealt with? And, Mr. Buttrick
17 thinks that it is. I think Mr. Osgood feels that it's
18 not.

19 But I am not sure that it's been
20 resolved, at least in my mind, as I sit here. I confess
21 not having thought about it until ten minutes ago. So, --

22 Mr. Osgood, do you have something else?

23 MR. OSGOOD: Well, I was just going to
24 agree with you that it doesn't happen. And, furthermore,

1 informing the Town of approved applications often doesn't
2 happen as well, because there is no mandate that such be
3 done. Bruce Buttrick has been part of this process for
4 decades.

5 CHAIRMAN HONIGBERG: Well, and he's -- I
6 mean, there's an illogic, too, I mean, I have to confess,
7 there's an illogic to his second proposal. And, the
8 illogic is, if it's deemed approved because of a failure
9 to act, he is looking for the Commission to notify
10 people --

11 MS. AMIDON: Yes.

12 CHAIRMAN HONIGBERG: -- of the failures
13 to act. It's like, chances are, if it failed to act, it's
14 because they missed it. And, so, such a notification is
15 going to be unlikely. And, so, his proposal, which is
16 fairly simple language, he wasn't purporting to give us
17 precise rule language, I think he's just flagging the
18 issue. But he didn't really complete the thought.
19 Because, if you complete the thought, you probably need
20 something else to have happened. And, it might be -- it
21 might be postings on a website of an application as they
22 come in, so that people can see what's out there. I don't
23 know. That's thinking out loud.

24 So, anyway, are there other comments --

1 we have no other commenters, this is kind of an odd public
2 comment here. It's turned into a discussion with Staff,
3 but I don't think a -- certainly not a waste of anybody's
4 time.

5 So, is there anything else anybody wants
6 to add? Commissioner Scott.

7 COMMISSIONER SCOTT: Again, less to do
8 with the rules, but it is germane to the rules, I suppose.
9 Mr. Osgood, if you had to guesstimate what the compliance
10 rate is in the state for adherence to these standards,
11 what would that be?

12 MR. OSGOOD: Well, I would guess, in
13 terms of the applications that come through us, probably
14 60 percent, that come through us, of the state
15 construction, are compliant at our level. Which is to
16 say, the promises that builders make are listed
17 appropriately to meet Code requirements. But, without any
18 enforcement authority, we can't get out to ensure that
19 those promises are actually complied with.

20 COMMISSIONER SCOTT: And, probably the
21 unknowable, do you have a guess on the percentage that
22 don't even submit anything to us?

23 MR. OSGOOD: Well, probably, maybe
24 15 percent of the state, of the construction in the state.

1 And, those would usually be in communities where there is
2 no full-time building inspector. It largely depends on
3 the attitude of the building department as well. But, in
4 my community, we had a structure fail under a snow load
5 that completely collapsed the structure. The structure
6 had been built without any code approval or adherence or
7 inspections or even informing the town of the changes, not
8 a professional builder. And, unfortunately, no insurance
9 either. So, the structure lies where it is. Now, there's
10 100 percent non-compliance with any of the State Building
11 Code, and still it happens, even in communities like mine,
12 where there is a part-time inspector.

13 COMMISSIONER SCOTT: Thank you.

14 CHAIRMAN HONIGBERG: Roughly how many
15 applications come in in a year?

16 MR. OSGOOD: Roughly, 1,200 at this
17 point, but it varies dramatically, depending on the state
18 of the economy. It's on the increase now. Had been as
19 low as 900.

20 CHAIRMAN HONIGBERG: Anything else?

21 COMMISSIONER SCOTT: Nothing.

22 CHAIRMAN HONIGBERG: Anything else from
23 Staff?

24 MS. AMIDON: Just a process note. I

1 mean, we extended the deadline for comment to the 15th,
2 because we believed that there wouldn't be anybody here
3 today, due to the fact that it's building season. After
4 that, the Commission would -- the next step for the
5 Commission is to approve a final proposal in a public
6 hearing, and then it would be scheduled for a hearing
7 before the Joint Legislative Committee.

8 CHAIRMAN HONIGBERG: Yes. I think you
9 used the word "public hearing", technically, a "public
10 meeting" would be the next time.

11 MS. AMIDON: "Public meeting".

12 CHAIRMAN HONIGBERG: Because it would
13 not be technically an opportunity for the public to weigh
14 in, right?

15 MS. AMIDON: You are correct. Thank
16 you.

17 CHAIRMAN HONIGBERG: It's significant in
18 another rulemaking proceeding that I'm involved in.

19 MS. AMIDON: It is.

20 CHAIRMAN HONIGBERG: If there's nothing
21 else, then we will adjourn this session. I thank you very
22 much.

23 MS. AMIDON: Thank you, too.

24 **(Whereupon the hearing was adjourned at 10:29 a.m.)**