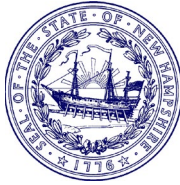


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November 7, 2022

Daniel C. Goldner, Chairman
New Hampshire Public Utilities Commission
21 South Fruit Street
Concord, NH 03301-2429

Re: DRM 22-055, N.H. Code Admin. Rules Puc 200
Rules of Practice and Procedure Rulemaking
Department of Energy Initial Comments

Dear Chairman Goldner:

In accordance with the Commission's Request for Advance Public Comment on Subject Matter of Possible Rulemaking issued with respect to the Rules of Practice and Procedure, N.H. Code Admin. Rules Puc 200, the Department of Energy (DOE) hereby submits the following initial comments addressing the topics specifically listed in the Commission's Request:

1. Electronic Filing: The DOE believes that the current electronic filing practice should be formalized in the Puc 200 rules, and that paper copy requirements should be entirely eliminated. We also recommend that the Commission consider shortening the timeframes typically specified for parties' submission of witness lists and hearing exhibits, as it is unclear why those submissions should be required so far in advance of a scheduled hearing.
2. Filing Deadlines: The DOE believes that the rules should clarify whether the time frames for filing deadlines are in business days or calendar days. We also believe that the deadline for filing objections to motions for rehearing could be extended to be 10 days rather than 5 days, given that the Commission now has 30 days to decide such motions under RSA 365:21.
3. Process for Scheduling Proceedings: The DOE is automatically a party to every proceeding, so the DOE's schedule should be considered when scheduling hearings and other conferences and sessions before the Commission. If the Commission has approved a procedural schedule that includes technical sessions and/or settlement conferences, then the Commission should endeavor to avoid scheduling other events involving the same parties for those dates and times. In addition, the publication of a calendar with available hearing dates would help parties with scheduling; potential hearing dates could then be held by

Commission staff until docket procedural schedules are finalized and approved. It is unclear whether these issues need to be addressed in the rules rather than through changes in Commission process and communications, such as schedule tracking, calendar publication, and designated staff availability to respond to parties' inquiries regarding scheduling issues.

4. Discovery, Evidentiary, and Confidentiality Rules: The DOE does not support rules requirements to either (i) provide discovery requests and responses to the Commission as they are provided to the parties, or (ii) admit all discovery into the record at hearing. Discovery is a process among the parties and is often used to clarify something included in the petitioner's filing; the petitioner may modify its original petition to correct any lack of clarity for the record based on discovery requests received, and, in such a case, including discovery in the record would be redundant. In other instances, discovery may address issues that prove to be tangential to the primary issues in the docket, or merely request workpapers or other documents that need to be reviewed in connection with parties' investigation into the filing. There should not be rules requiring that all discovery responses be included in the record as they are issued, or even at the hearing, because such requirements would potentially delay and impede the orderly conduct of the proceeding. Instead, it should be left to parties to decide which if any discovery responses should be offered into evidence at hearing. We also do not believe it would be appropriate for Commission advisors or other staff to participate in discovery; if the Commission seeks to obtain additional information, it may ask record requests as is currently done.
5. Post-Hearing Briefing: The Commission currently directs that parties submit post-hearing briefs only in cases that present the interpretation or application of a specific legal issue, such as, by way of example, the concept of "used and useful." In other cases, closing statements made at hearing should be sufficient because the hearings are transcribed by a court reporter creating a record of the proceeding. Indeed, mandatory post-hearing briefs or written closing statements might even increase the potential risk of parties seeking to introduce facts not part of the record, with a limited or no opportunity for other parties to respond to such statements, whereas, at least in the hearing room, if something questionable is said in closing, a party can ask to reply prior to closing of the record. Moreover, there are likely to be additional costs incurred in connection with any post-hearing filing requirements, with any such costs incurred by a regulated utility likely to be proposed for recovery from its ratepayers.
6. Rule Waiver Processes: The DOE believes the current rule waiver provisions and the practice of granting specific and limited waiver requests when found to serve the public interest are reasonable and appropriate and should be continued without material change.
7. Public Notice and Publication Requirements: In most cases, publication of notice on the utility's and Commission's websites should be sufficient, although there

may be exceptions in special circumstances where notice should be more widely circulated through newspaper publications (e.g., the Commission docket in which easements related to the Northern Pass transmission project were at issue).

8. Remote Participation at Hearings and Conferences: Remote participation in hearings and conferences is an efficient means of accommodating the limited availability of parties and their witnesses and may result in meaningful cost savings from the ratepayers' perspective (e.g., reducing or eliminating the need to pay the travel expenses of expert witnesses and out-of-state representatives). The DOE believes Commission practice should provide for reasonable facilitation of such remote participation. In addition, if a hearing will be held with remote participation, then the public should also be provided the opportunity to access the hearing remotely.
9. Nisi Orders or Alternative Expedited Processes: The Commission has used the judicial mechanism of the order *nisi* for many years without addressing it in procedural rules, and the DOE would prefer to see that flexible practice continue without the need to expressly provide for it in prescriptive rules.
10. Investigation and Informal Workshop Rules: It is unclear whether or how procedures regarding investigations or informal workshops should be provided for in the Puc 200 procedural rules, and there is no legal requirement that such procedures be covered in the rules. The DOE recommends that the rules not be amended to address any such procedures.
11. Communications with Commission Advisors and Staff: We believe it is appropriate that parties have the opportunity to communicate directly with specified Commission staff personnel regarding scheduling and other procedural and administrative matters. Enhanced opportunities for such communications should result in more efficient procedures benefitting the Commission, the DOE, Office of the Consumer Advocate, regulated utilities, and other interested parties. In addition, such communications would alleviate the need for filing of otherwise unnecessary motions or other submissions.
12. Alternative Dispute Resolution: The DOE believes there may be circumstances in which alternative dispute resolution (ADR) may be appropriate, such as resolution of customer complaints brought to the Commission, but there are many other instances where it seems less appropriate, e.g., utility rate cases or other regulatory proceedings. In general, experienced and sophisticated parties are able to reach, develop, and present their own settlement agreements, where consensus is possible, without the involvement of third-party mediation or facilitation.

The DOE appreciates the opportunity to provide these written comments and respectfully requests that the Commission consider addressing these issues in its initial proposal for amendment of the Chapter Puc 200 Rules of Practice and Procedure. Please excuse the fact that these comments are submitted shortly after the date specified for filing.

Pursuant to current Commission policy, this filing is being made electronically only.

Sincerely,

/s/ David Wiesner

David K. Wiesner
Legal Director/Sr. Hearings Examiner

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