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August 26, 2024

Daniel C. Goldner
Chairman
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301

Re: Docket No. DRM 24-085, New Hampshire Code of Administrative Rules
Puc ch.100, Organizational Rules

Dear Chairman Goldner:

When the Public Utilities Commission (“Commission” or “PUC”) was reorganized in 2021, the position of Executive Director was eliminated, leaving the Commission without a dedicated individual to interface with the regulated community and the public regarding the types of administrative and procedural matters that regularly arise. This issue was identified by a number of parties and addressed in a variety of ways in Docket No. DRM 22-055, including by the Department of Energy, the Consumer Advocate, Eversource, Unitil, Liberty Utilities, and Pennichuck. As a general matter, they pointed out the efficiencies that accrue when procedural questions can be resolved without having to file motions and they noted that court clerks routinely communicate with parties to a case without violating *ex parte* rules.¹

The proposed changes to the Commission’s Organizational Rules include a new definition of Clerk’s Office at Puc 101.02, namely:

“Clerk’s Office” is the office designated by the commission to receive all filings and to maintain the commission docket system.

¹ The New Hampshire Superior Court’s Administrative Rule 1-6, Authority of Clerks, though likely much more expansive than would be applicable to the Commission, may be instructive. See attached, in particular, section I. <https://www.courts.nh.gov/new-hampshire-superior-court-administrative-rules/rule-1-6-authority-clerks>

To address the void created by the elimination of the Executive Director position, Puc 101.02 could be expanded to include language providing for assistance and support to the Clerk's Office from a designated Commission attorney, for example:

The chairman shall designate an attorney to assist and support the Clerk's Office in answering, orally or in writing, including by email, inquiries about administrative and procedural matters from parties to a proceeding or the public.

Insofar as there are budgetary or personnel issues related to the implementation of such a step, or the Commission were to pursue creation of a new clerk-of-court type position, I would expect that there would be strong support for any necessary action in the regulated community.

To the extent there is any concern about whether communications with Commission staff may be problematic in terms of violating prohibitions on *ex parte* communications, RSA 541-A:36 provides the relevant guidepost.

541-A:36 Ex Parte Communications. –

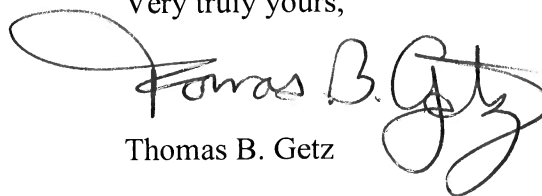
Unless required for the disposition of *ex parte* matters authorized by law, officials or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue before the agency, with any person or party, except upon notice and opportunity for all parties to participate. This notice requirement shall not apply to:

- I. Communications between or among agency personnel, or between the agency and legal counsel.
- II. Communications between or among the presiding officer and one or more personal assistants. (Emphasis supplied.)

As emphasized above, the prohibition on *ex parte* communications is specifically limited in two ways, that is, to decision-making employees and in connection with those issues being decided. Accordingly, an attorney designated to assist and support the Clerk's Office in responding to administrative and procedural questions would not be engaging in a prohibited *ex parte* communication.

Thank you for your consideration of these comments.

Very truly yours,


Thomas B. Getz

TBG:nld