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CHAPTER Puc 200 PROCEDURAL RULES

Readopt with amendment Puc 201.01, effective 6-10-06 (Document #8657-A), cited and to read as follows:

PART Puc 201-~~GENERAL REQUIREMENTS~~ **SCOPE AND PURPOSE**

Puc 201.01-~~Applicability~~. This chapter shall apply to all matters that come before the commission. ***Scope. The rules in this chapter govern all communications with the commission and all matters before the commission.***

Adopt Puc 201.02 to read as follows:

Puc 201.02 **Purpose**. The purpose of the rules in this chapter is to ensure the fair and efficient processing of all filings submitted to the commission and the just and timely disposition of all matters before the commission.

Adopt Puc 202 to read as follows:

PART Puc 202 DEFINITIONS.

Puc 202.01 “Adjudicative proceeding” means a proceeding conducted pursuant to the procedure followed in contested cases, as set forth in RSA 541-A:31 through RSA 541-A:36 and the rules of the commission.

Puc 202.02 “Applicable law” means any duly promulgated federal, state, or local law, regulation, rule, ordinance, code, directive, decree, judgment, order, permit, or other duly authorized and valid action of any Governmental Authority, including any binding interpretation of any of the foregoing by any Governmental Authority, which is applicable to a Person, including, without limitation, its property, business, a transaction, or any other matter of any kind concerning or related to the Person.

Puc 202.03 “Business day” means any Monday through Friday, excluding state holidays.

Puc 202.04 “Data Request” means a discovery procedure in which the requesting party asks another person for specified information or requests the production of documents.

Puc 202.05 “File” as a verb means to deliver an electronic or paper copy of a document to the commission.

Puc 202.06 “File electronically” means to file a document, excluding reports and related documents filed using the online commission ~~or Department~~ portals, by:

(a) Using the electronic filing system if available at <https://www.puc.nh.gov>; or

(b) Sending an email with documents attached in a file format accepted by the commission in accordance with Puc 203.04.

Puc 202.07 “Governmental Authority” means any government or agency or other political subdivision thereof, including the United States of America, the State of New Hampshire, any other state, municipality, or any other governmental, quasi-governmental, judicial, executive, legislative, administrative, regulatory, public, or statutory instrumentality, authority, body, agency, commission, department, board, bureau, or entity exercising judicial, executive, legislative, administrative, or regulatory functions, any court or arbitrator with authority to bind a party at law or any self-regulated organization or other quasi- or non-governmental regulatory authority to the extent that its rules, regulations, or orders have the force or effect of law.

Puc 202.08 “Hearing” means a publicly noticed session held in a matter before the commission or its designee, which provides for an opportunity for any participant, party, or intervenor to present evidence, conduct cross-examination, or otherwise participate. ~~“Hearing” also includes any prehearing conferences, or status conferences, conducted pursuant to Puc 204.05 and Puc 204.06.~~

Witnesses do not get sworn in at prehearing or status conferences and since prehearing conferences typically happen early in a docket, and the status conference could occur at any time during a docket, the timing wouldn't be ripe for presenting evidence or cross-examining witnesses, as party positions would not be finalized.

Created separate definition to address prehearing conferences.

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Puc 202.09 “Motion” means a request for an order or ruling by the commission directing some act to be done in favor of the party making the motion, and shall include a statement of justification or reasons for the request.

Puc 202.10 “Non-adjudicative proceeding” means any proceeding that is not included under Puc 202.01 and is not governed by RSA 541:31 through RSA 541:36, specifically, investigations and rulemakings.

Puc 202.11 “Participant” means any person with standing and subsequently granted the right to participate by the commission that chooses to engage in a non-adjudicative proceeding.

Puc 202.12 “Party” means “party” as defined by RSA 541-A:1, XII, namely, “each person or agency named or admitted as a party, or properly seeking and entitled as a right to be admitted as a party in an adjudicative proceeding.”

Puc 202.13 “Person” means any legal person, including, without limitation, any natural person, association, corporation, estate, ~~G~~governmental ~~A~~authority, joint stock company, joint venture, limited liability company, partnership, public utility, trust, ~~unincorporated organization~~, or any other legal or commercial entity.

Puc 202.14 “Petition” means the initial pleading filed with the commission to commence a proceeding for the purpose of seeking commission action pursuant to Puc 203.08(a).

Puc 202.15 “Pleading” means a written request for commission action or a written response to a written request for commission action in the form of a petition, motion, objection, reply, etc. A pleading does not include communications in the form of correspondence, such as a letter or email.

Puc 202.16 “Prehearing conference” means a convening by the presiding officer, consistent with RSA 541-A:V(b-c).

Puc 202.176 “Presiding officer” means the chairman of the public utilities commission, or the person designated to act on his behalf of the chair at a hearing pursuant to Puc 204.04, or an individual conducting a hearing pursuant to RSA 363:16.

Puc 202.187 “Proceeding” means a docket on the commission’s website an adjudicated or non-adjudicated matter within the purview of the statutory authority of the commission.

Puc 202.198 “Public statement hearing” means a meeting of the commission convened in a proceeding for the sole purpose of receiving public comment that will not be entered into evidence but may be considered by the commission in its decision in the proceeding.

Puc 202.2049 “Remote participation” means participating in an in-person hearing via electronic means that enable participants to communicate with each other contemporaneously from a location other than that at which the hearing is being conducted.

Puc 202.2120 “Routine filings” means documents submitted, on a recurrent basis, by a utility to the commission, and as specified in Puc 203.12(a).

Puc 202.2221 “Status conference” means a hearing convening required by the commission in order to inform the commission of the status and progress of issues presented in a proceeding.

Puc 202.22 “Standing” means a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged rights, duties, obligations, and privileges of the party are implicated.

A person does not need standing for investigations or rulemakings - anyone can participate in the former because rights, duties and obligations are not at stake, and the latter has historically encouraged broad participation by anyone interested.

This definition is very narrow - most parties appearing before the Commission are not addressing an injury. Additionally, standing is not necessary to appear before the Commission - RSA 541-A:32 governs intervention.

Adopt Puc 203 to read as follows:

PART Puc 203 GENERAL REQUIREMENTS

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Puc 203.01 Waiver of Rules.

(a) The commission or presiding officer may waive the provisions of any of the commission's administrative rules, except when precluded by statute, in response to a motion filed by an interested party, or on the presiding officer's own motion, if it is found that:

- (1) The waiver serves the public interest; and
- (2) The waiver will not disrupt the orderly and efficient resolution of matters before the commission.

(b) In determining the public interest, the presiding officer shall waive a rule if:

- (1) Compliance with the rule would be onerous or inapplicable given the circumstances of the affected person; or
- (2) The purpose of the rule would be satisfied by an alternative method proposed.

(c) Any ~~interested party~~ person affected by a rule and seeking a waiver shall file a written motion, except as provided in (d) below.

One shouldn't need party status to seek a rule waiver.

(d) The presiding officer may consider any waiver request made orally during a hearing or prehearing conference.

(e) A request for a waiver shall specify the basis for the waiver and proposed alternative, if any.

Puc 203.02 Computation of Time.

(a) Unless otherwise specified, all time periods referenced in this chapter shall be in calendar days.

(b) Computation of any period of time established in these rules shall begin with the first day after the action that triggers the time period and shall include the last day of the period so computed.

- (1) For time periods not established in statute, if the last day of the period so computed does not fall on a business day, then the time period shall be extended to include the first business day following.
- (2) When the period of time prescribed or allowed is less than 6 days, intermediate Saturdays, Sundays and New Hampshire state holidays shall be excluded in the computation of time.

(c) Time periods established in statute shall be determined as specified in the statute.

Puc 203.03 ~~Enforcement~~ Acceptance of filings. A filing will be deemed filed on the day it was filed, consistent with Puc 203.10. A filing will not be deemed filed unless may be rejected if it does not comply with the commission's administrative rules. Within 540 business days of receipt, the commission or a its designee designated commission staff member shall provide written notification when a filing is non-compliant, and stating the reason for non-compliance. Non-compliant documents will not be deemed filed until they are resubmitted and accepted. The filer will have five business days to remedy the filing and refile the document. If the filer fails to do this in that time, the filing shall be deemed rejected and the filing requirement unmet.

A 10-day period to accept or reject any filing isn't practically workable, as it could interfere with subsequent deadlines that are less than 10 days (objections to motions for rehearing, for example). Also, any filing with a deadline would inherently have to be filed at least 10 days before it's otherwise due to be considered filed, but if rejected could still miss the filing deadline. An option to reject rather than a period before a filing is deemed filed resolves this issue.

Puc 203.04 Address and Filing Format.

(a) All correspondence intended for the commission shall be addressed to the commission chairman. All written communications should be sent to the commission's clerk's office at ClerksOffice@puc.nh.gov or

NH Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, N.H. 03301-2429

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(b) Electronic filings must be made in searchable portable document format (PDF) and Excel files and reflect the same text and pagination as any submitted hardcopies.

(c) Electronic submissions larger than 33 MB shall be submitted via the State of New Hampshire File Transfer protocol. Instructions for the New Hampshire File Transfer protocol shall be listed on the Commission's website. ~~USB Flash drives and other electronic storage devices will be rejected pursuant to Puc 203.03 shall only be used in the event that the File Transfer protocol is not available or a viable option for the filing in question.~~

On rare occasions, the FTP site cannot accommodate a large filing. There could also be a technical problem with the site, requiring some kind of "hard copy".

(d) The Business hours of the Commission s Monday through Friday, except for State Holidays, from 8 am to 4:30pm.

Puc 203.05 Number of Copies. No paper filings are required if filed electronically. If the filing is not made electronically, then a single original paper filing shall be submitted pursuant to Puc 203.04 (a).

Puc 203.06 General Requirements for Written Communications.

(a) All written communications submitted to the commission shall:

- (1) Be dated;
- (2) Be signed. An electronic signature, or “/s/” mark, with the full name of the signing person provided with the electronic signature or “/s/” mark, shall be an acceptable means of signing the filing.
- (3) Identify the name and mailing address, email address and telephone number of the person submitting the document and the party or parties on whose behalf it is submitted, if any;
- (4) Identify the appropriate docket number, order number or other pertinent subject matter;
- (5) Be typed on 8-1/2 by 11 inches sized paper;
- (6) Have no less than one inch margins on all sides;
- (7) Contain sequentially numbered pages; and
- (8) ~~All pleadings and testimony shall b~~Be double-spaced.
- (9) ~~Each type of document should be filed separately. For example, pleadings and testimony should not be filed as a combined document. Pleadings shall be filed as a separate document from any supporting materials, such as testimony and supporting attachments. All materials supporting pleadings shall be combined into one document with a single series of numerical page designations (i.e. Bates numbering).~~

This is meant to exclude letters and cover letters, which do not need to be double spaced.

Filing each attachment that accompanies testimony separately could get unwieldy, and attachments have to be combined to be Bates Numbered, so separate filing requirements would require combining documents, Bates numbering them, then splitting them all up again. This would add unnecessary work to filings.

Puc 203.07 Pleading Requirements. All requests for commission action must be made in the form of a pleading that complies with the commission's administrative rules.

(a) All pleadings filed with the commission shall comply with the following requirements in addition to those contained in Puc 203.06:

- (1) They shall contain a certification that the filer has sent a copy of the filing to all participants and parties on the docket service list ~~and the service list must be attached to the cover letter~~; and
- (2) Contain on the initial sheet a heading across the top thereof reading “Before the New Hampshire Public Utilities Commission”;
- (3) Identify the legal name of each person seeking the authorization or relief and the address or principal place of business of such person; and

This is a leftover practice from the days of paper filings. Now, with electronic filings, everyone sees who is served because the email lists everyone receiving the filing.

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- (4) Identify the nature of the document, including the name of the utility and the subject matter of the pleading;
- (5) A clear and concise statement of the authorization or other relief sought;
- (6) The statutory provision or legal precedent under which the authority or other relief is sought;
- (7) The electronic mail address of the person making the filing or a statement that the person making the filing is unable to receive electronic mail;
- (8) A concise statement of the facts supporting the request for authorization or relief; and
- (9) Such other data as the filer considers relevant to the request for authority or relief.

(b) Service of all pleadings shall be made:

- (1) Electronically to the email addresses contained on the commission's service list for the docket; or
- (2) By first class mail or other expedited delivery service to such persons identified on the commission's service list for the docket as unable to receive electronic mail.

(c) All participants or parties in a commission docket are responsible for notifying the commission in a timely manner pursuant to Puc 203.06 of any changes to their contact information. Notice sent using the information contained in the commission's current service list shall be deemed sufficient.

Puc 203.08 Specific Pleadings

(a) Petitions.

- (1) The initial request for relief in a commission proceeding should be in the form of a petition, which may be accompanied by prefiled testimony and supporting materials.

(a) All petitions shall state the relief requested, the legal authorities upon which the petition relies for such relief, and briefly summarize any relevant material supporting facts for granting the relief.

(a)(b) If a petitioner wishes to submit testimony with a petition in the interest of expediting the proceedings, the commission shall accept such testimony.

(b)(c) All petitions seeking a rate adjustment shall be filed in compliance with Chapter Puc 1600, if applicable, and shall be accompanied by prefiled testimony and supporting documents.

(e)(d) If a witness's written testimony exceeds 20 pages, the testimony shall include a detailed table of contents.

(d)(e) If the scope of a proceeding is expanded or issues arise which were not reasonably anticipated by the petitioner, the commission shall allow the petitioner to file supplemental direct testimony or comments on the new or unanticipated issues.

(e)(f) All petitions shall include a statement of the financial impact the petition will have if granted.

- (2) Intervention. Requests to intervene shall be in the form of a petition, in which the petitioner states the reasons why intervention in a specific docket should be granted. The commission will rule on petitions to intervene in accordance with the standards of RSA 541-A:32. In exercising its discretion, the Commission shall consider whether the intervention will unduly delay or prejudice the adjudication of the petition.

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(b) Motions. All non-dispositive motions shall contain a ~~certification statement as to whether or not the parties to the docket assent to the motion, that a good faith effort has been made to seek the concurrence of all other parties in the docket to the request. If the opposing party has not assented, a declaratory statement shall be included.~~

- (1) Oral motions. The presiding officer may permit an oral motion to be made on the record during a hearing ~~or, prehearing conference, or status conference.~~
- (2) Motions to continue. Motions to continue shall be filed at least 7 days prior to the date of the noticed hearing.
- (3) Motions to extend deadline(s). Motions to extend deadline(s) shall be filed as soon as possible and, absent unforeseeable circumstances, at least 3 business days prior to the expiration of the deadline in question. The commission shall grant a request for extension of time if:
 - (a) The party making the request has demonstrated that circumstances would cause undue hardship or inconvenience unless the request were granted; and
 - (b) The extension would not unduly delay the proceeding or adversely affect the rights of any party.
 - (c) Motions to extend deadline(s) that are not filed at least 3 business days prior to the expiration of the deadline will be granted at the discretion of the Presiding Officer.
- (4) Motions to amend a petition. The Presiding Officer may grant a motion to amend a previously filed petition that will promote the just resolution of the proceeding and will not cause undue delay.
- (5) Motions for rehearing may be filed by any party or person directly affected by a commission action pursuant to RSA 541:3 and RSA 365:21.
- (6) Motions for confidential treatment. See Puc 203.14.
- (7) Motion for remote participation. A written motion for a particular individual to appear remotely, which explains why ~~that individual is unable to participate in person~~ remote participation is justified, shall be filed with the commission's clerk's office no later than fifteen (15) days prior to the hearing date.
- (8) Motion for decision by order nisi. Any party or participant may request a commission decision by order nisi and shall state specific reasons why a hearing is not required in the proceeding.

(c) Objections.

- (1) Objections to a motion, except for motions for rehearing, shall be in writing and filed within 10 days of the date on which the motion is filed.
- (2) Objections to a motion for rehearing pursuant to RSA 365:21 shall be filed within 10 days of the date on which the motion for rehearing is filed.

(d) Complaints. See Puc 204.27.

Puc 203.09 Department Position Statements. The Department shall file a statement of its position and an explanation of the basis of its position regarding the petition at least fourteen days prior to the scheduled hearing. If an audit has been performed by the Department a copy of the audit report shall be filed with the Department's position statement.

Often, motions are filed specifically because parties disagree on an issue or how to proceed or simply have differing positions. In nearly every instance, parties have discussed the issues in a motion, and so party positions are known and could be stated in the motion so the Commission is aware of party dispositions. As a general rule, the parties already make all efforts to reach consensus on procedural issues.

No one should have reason to make a motion at a status conference.

There are witnesses that could attend hearings in person, but have legitimate reason to participate remotely (e.g., travel costs, health issues).

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Puc 203.10 Date of Filing. Filings shall be deemed filed on the date that the commission receives it, if submitted during the Commission's business hours listed in Puc 203.04. A filing submitted after hours shall be deemed to have been filed on the next ensuing business day. In the event the Commission rejects a filing pursuant to Puc 203.03, the person submitting the filing shall have five days thereafter to submit a corrected filing. Any time periods contingent upon a rejected filing, such as an objection to a motion or the commission issuing an order within a certain time period, shall be tolled until a corrected filing is submitted.

This provision is to further resolve and harmonize issues raised in Puc 203.03.

~~original filing. A document in compliance with the commission's administrative rules shall be deemed filed on the date that the commission receives a compliant filing during its business hours as defined by Puc 203.04(d).~~

Puc 203.11 Public Records.

(a) Subject to RSA 91-A, all documents submitted to the commission shall become matters of public record as of the day and time of the submission, with the following exceptions:

- (1) Accident reports under RSA 374:40;
- (2) Information about individual residential customers, the disclosure of which would constitute an invasion of privacy within the meaning of RSA 91-A:5, IV;
- (3) Documents submitted in connection with any proceeding in which confidential treatment has been requested pursuant to Puc 203.12;
- (4) Documents subject to a protective order of the commission issued pursuant to Puc 203.12;
- (5) Documents granted confidential treatment pursuant to Puc 203.12 and Puc 203.13; or
- (6) Other documents entitled to confidential treatment pursuant to RSA chapter 91-A or other applicable law.

(b) All information within documents described in section (a) above, and submitted to the commission and asserted to be confidential by the person making the submission, shall be redacted prior to submission. Redactions in the version for public release and all redactions shall be made in a way that, within the redacted version of the document(s), preserves the line sequencing and pagination of the unredacted version of the document(s) to the greatest practicable extent, and:

- (1) Bears the legend "REDACTED" at the upper-right-hand corner of the first page, and every redacted page; and
- (2) Indicates all confidential segments with either:
 - a. The legend "BEGIN CONFIDENTIAL," in all capital letters, at the beginning of the redacted segment, followed by a left bracket. Following the left bracket, the confidential segment shall be replaced by a blank space of approximately equal length to the material being redacted. The end of the redacted segment shall be indicated with a right bracket, followed by the legend "END CONFIDENTIAL," in all capital letters, as follows:
"BEGIN CONFIDENTIAL[blank space]END CONFIDENTIAL;" or
 - b. Indication of redacted material by blacking it out or highlighting it with a solid black line in the following manner: redacted material; or
 - c. Any other method that clearly indicates the scope of the material redacted.

(c) For each redacted document submitted, the person submitting the document shall also provide an unredacted version of the confidential document(s) to the commission that:

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(1) Bears the legend "CONFIDENTIAL" at the upper-right-hand corner of the first page, and every page with confidential material; and

(2) Indicates all redactions with either:-

a. The legend "BEGIN CONFIDENTIAL," in all capital letters, at the beginning of the confidential segment, followed by a left bracket. The end of the confidential segment shall be indicated with a right bracket, followed by the legend "END CONFIDENTIAL," in all capital letters, as follows:

"BEGIN CONFIDENTIAL[confidential segment]END CONFIDENTIAL;" or

b. Indication of all redactions made by highlighting the confidential segment in light gray in the following manner: confidential segment; or

c. Any other method that clearly indicates the material redacted in the redacted version.

(d) The public version(s) of any discovery-related submissions made pursuant to Puc 203.12 shall be filed with the commission no later than 3 days after the submission of the confidential version(s) of such discovery-related material.

Puc 203.12 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 203.12 and Puc 203.13 applies:

(1) Preliminary and final Wholesale Performance Plan Reports for telecommunications companies containing carrier-specific performance and bill credit calculations;

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- (2) NHPUC Form T-8 Exchange Eligibility Report;
- (3) 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; and
 - g. Responses to data requests related to a. through f. above;
- (4) NHPUC Form E-5, Accident Reports;
- (5) If electric default service solicitations from 3rd parties are sought:
 - 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. Contact lists used during the requests for proposals process;
 - j. Financial security, pricing and quantity terms of master power agreements and amendments;
 - k. Transaction confirmations;
 - l. Retail meter commodity cost calculations;
 - m. Wholesale power purchase prices until made public by other governmental agencies; and
 - n. Responses to data requests related to a. through m. above.
- (6) Utilities' cybersecurity plans; RSA 91-A:5, XI
- (7) Utilities' physical security plans; RSA 91-A:5, VI

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(b) Those parties submitting documents pursuant to Puc 203.12 shall indicate that they are relying on Puc 203.12 and Puc 203.13 in their request for confidential treatment.

(c) For electronic filings, both a public and confidential version shall be prepared and submitted. For paper filings made pursuant to this rule outside of an adjudicative proceeding, parties shall file one public copy and one confidential copy. Filings made in an adjudicative proceeding shall comply with Puc 204.

(d) The commission shall make a determination regarding requests for confidential treatment of documents or portions of documents submitted pursuant to Puc 203.12 upon request for release of those documents to the public submitted pursuant to Puc 203.13.

(e) Prior to commission determination regarding confidential treatment, documents submitted to the commission pursuant to Puc 203.12 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.

Puc 203.13 Requests for Release to the Public of Confidential Documents Submitted in Routine Filings.

(a) Puc 203.13 shall apply to all routine filings subject to Puc 203.12. All references to written communications in this rule also refer to documents filed via electronic means.

(b) Puc 203.13 shall govern the commission's consideration of requests submitted pursuant to Puc 104.01 for public release of one or more documents for which confidential treatment has been requested pursuant to Puc 201.12.

(c) The commission, within 5 business days of the receipt of a request made pursuant to Puc 203.12, shall send a written acknowledgment to the person requesting public release that includes:

- (1) A statement that confidential treatment has been requested for the document(s);
- (2) A statement of the time reasonably necessary to determine whether the request for release shall be granted or denied; and
- (3) A statement that the request for release is subject to the provisions of Puc 203.13.

(d) The commission shall provide the person who submitted the document(s) with written notice of the request for release within 5 business days of the receipt of the request for release.

(e) The notice in (d) above shall:

- (1) Describe the request for release; and
- (2) Afford the person who submitted the document(s) 10 calendar days from the date of the notice to submit to the commission a written objection to release of the document(s) to the public, pursuant to (f) below.

(f) Objections to release shall comply with Puc 203.08 and contain:

- (1) A specific description of the document(s) or specific portions of documents for which confidentiality is sought;

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(2) Specific facts showing how release of the requested document(s) would constitute an invasion of privacy under RSA 91-A:5, including a description of how the requested material includes confidential, commercial, or financial information, or other information subject to the exemptions of RSA 91-A:5;

(3) A specific description of the harm that would result from release; and

(4) A representation that the information contained in the document(s) or portions of documents for which confidentiality is sought is not already available to the public.

(g) The commission shall take one of the following actions pursuant to RSA 91-A:5 and other applicable law:

(1) Approve the public release of the requested documents in their entirety;

(2) Approve the partial release of the requested documents, subject to redactions approved by the commission; or

(3) Deny the request for release in its entirety.

(h) In making its determination pursuant to (g) above, the commission shall consider:

(1) The written request for release;

(2) The original request for confidential treatment pursuant to Puc 203.12;

(3) Written objections filed with the commission;

(4) Additional information that the commission requests; and

(5) Any applicable law.

(i) In determining the proper action under (g) above, the commission shall:

(1) Consider whether there is a privacy interest at stake that would be invaded by the disclosure of the requested documents;

(2) Consider whether the public has an interest in disclosure of the requested documents; and

(3) Decide whether any public interest in disclosure is outweighed by the state's interest in non-disclosure and any privacy interest in non-disclosure.

(j) The commission shall provide written notice of its decision.

Puc 203.14 Motions for Confidential Treatment.

(a) The commission shall grant a motion for confidential treatment and issue a protective order providing for the confidential treatment of one or more documents upon a finding that the document or documents are entitled to such treatment pursuant to RSA 91-A:5, or other applicable law, based upon the information submitted pursuant to (b) below.

(b) A motion for confidential treatment submitted pursuant to this rule shall contain:

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- (1) The documents, specific portions of documents, or a detailed description of the types of information for which confidentiality is sought;
- (2) Specific reference to the statutory or common law support for confidentiality; and
- (3) A detailed statement of the harm that would result from disclosure and any other facts relevant to the request for confidential treatment.

(c) Documents submitted to the commission accompanied by a motion for confidential treatment shall not be disclosed to the public until the commission rules on the motion. However, in adjudicative proceedings the confidential documents ~~shall be provided to all parties to the proceeding~~ may be provided to any requesting party to the docket who would be properly covered by and has successfully executed a non-disclosure agreement with the producing party. Parties for whom a non-disclosure agreement will not sufficiently mitigate the risk of the adverse effect of disclosure or who have an irresolvable conflict of interest in receiving the documents shall be ineligible to receive or view such documents.

Confidential materials should not be provided to parties to the docket other than the DOE and OCA without a non-disclosure agreement in place. The DOE and OCA are required to keep confidential material confidential, intervening parties have no such obligation.

(d) In lieu of immediately filing a motion for confidential treatment, a party providing a document to the Department, the OCA or any other governmental entity in discovery that the party wishes to remain confidential shall accompany the submission with a written statement that:

- (1) The party submitting such documents has a good faith basis for seeking confidential treatment of the documents pursuant to this rule; and
- (2) Such party intends to submit a motion for confidential treatment regarding such documents at or before the commencement of the hearing in such proceedings.

(e) Documents submitted to the commission, ~~the Department, the OCA, or any other governmental entity~~ the Department, the OCA, or any other governmental entity accompanied by a written statement pursuant to ~~the Department, the OCA or any other governmental entity~~ (d) shall be treated as confidential, provided that the party submitting the documents thereafter files a motion for confidential treatment at or prior to the commencement of the hearing in the proceeding.

(f) The commission shall maintain confidential copies in a secure location.

(g) If the commission grants a motion for confidential treatment, the confidential information shall not be subject to public disclosure, and the document shall be treated according to such conditions as the commission determines are necessary to preserve such confidentiality.

(h) If the commission denies a motion for confidential treatment or modifies a previously issued protective order so that information previously held confidential is no longer entitled to such treatment, the information shall not be disclosed until all rights to request rehearing and to appeal have been exhausted or waived.

(i) When necessary to protect the confidentiality of material entitled to such treatment under this section, the commission shall include in its protective order a directive that all parties receiving the material shall also treat it as confidential.

(j) The granting of a motion for confidential treatment shall be subject to the ongoing authority of the commission on its own motion, or on the motion of any party or member of the public to reconsider the determination.

(k) If any information entitled to confidential treatment under this rule is thereafter released or made public by the party who sought its protection, any confidential treatment shall cease with respect to the released information but shall remain in full force and effect as to the information not so released or made public.

Puc 203.15 Place of Hearings.

(a) Except as provided in (b) below, the commission shall conduct all hearings in person at its offices in Concord.

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(b) The commission shall conduct one or more public statement hearings within the meaning of Puc 202.18 in the service territory of an affected utility or municipal district if:

- (1) Required by law to do so; or
- (2) It would assist the commission to ascertain the views of the utility's customers by conducting such a hearing in a particular location other than Concord.
- (3) The commission may require a view in any proceeding when it deems that a view would assist the commission in reaching a decision in a matter.

Puc 203.16 Docket and Calendar of Hearings.

(a) The commission shall:

- (1) Maintain a docket of all proceedings pending before the commission;
- (2) Keep a complete record of all the proceedings of the commission, including all books, maps, documents, and papers filed with the commission, and orders issued by the commission;
- (3) Maintain a record of all petitions, complaints, applications, rulemakings, investigations, and any other matters before the commission;
- (4) Maintain a calendar of all hearings scheduled before the commission; and
- (5) Maintain a service list for each proceeding of parties or participants to the proceeding.

Puc 203.17 Requirements ~~for~~ Appearing Before the Commission.

(a) Any person may appear before the commission:

- (1) On one's own behalf;
- (2) By an attorney authorized to practice in any state or the District of Columbia and in good standing;
- (3) By an employee or authorized agent; or
- (4) By any person the commission authorizes, pursuant to RSA 365:10-a, to act as a representative of the person before the commission.

(b) Any person appearing before the commission shall file a "Notice of Appearance", form 200A (05/2024) and adhere to:

- (1) The commission's administrative rules; and
- (2) Any orders of the commission or agreements between the parties in the docket, including orders or agreements addressing confidentiality.

(4) The following information shall be contained in the "Notice of Appearance" form.

- a. Name and contact information for attorney representatives.

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- b. Name and contact information for any person, other than the attorney representative, that the attorney representative is requesting to be added to the docket service list.
- c. Name and contact information for Pro Se individuals;
- d. A signed affidavit from Pro Se Individuals of their obligation to keep the Commission up to date with their contact information and adhere to all Commission procedural rules.

(c) The commission shall prohibit the appearance of any person described in (a) above if it finds that person to have demonstrated a disregard for commission practices and procedures or otherwise disrupted commission proceedings.

Puc 203.18 Public Comment. The commission may allow Persons who do not have intervenor status in a proceeding, but having interest in the subject matter, with an opportunity at a hearing to state their position.

Puc 203.19 Orders nisi. In a docketed matter, ~~when a hearing is required by statute,~~ the commission may elect to issue an ~~final~~ order with a delayed effective date referred to as an order *nisi*, ~~if permitted under New Hampshire law and~~ the commission determines that the record is sufficient to support a commission decision without further process. Any order *nisi* shall include a notice and publication requirement to allow interested parties an opportunity to object or request a further hearing for good cause shown.

In a docket not requiring a hearing, the Commission has the authority to simply issue an order. Orders *nisi* are a means of complying with the hearing requirement when, as a practical matter, a hearing is not necessary.

Puc 203.20 Commission record-information requests. At any time during a proceeding, the commission may ask ~~questions of~~ participants, parties, or regulated utilities participating in the proceeding, questions pertaining to the filings and issues presented in the proceeding and that are of the nature that could be asked of a witness on the stand, to be answered in writing or orally within a time period determined by the commission. Responses to commission ~~record-information requests shall be part of~~ may be offered as an exhibit at hearing the record and by a party and admitted to the record to allow may be considered by the commission to consider the information in its decision on the matter.

This is understood and need not be mentioned. The added reference above to "when a hearing is required by statute" gets to what it seems the intention is here, which seems to be when an order *nisi* is permitted and appropriate.

Puc 203.21 Status conference. At any time during a proceeding and, if needed, multiple times during a proceeding, the commission may require the parties or participants to attend a status conference ~~which shall be conducted as a hearing~~ during which the commission may request the participants or parties to provide information concerning the status of any issues presented in the docket. A status conference shall be scheduled, if requested by a party or participant, or on the commission's own motion, if the commission determines that a status conference will assist in the efficient resolution of ~~issues in~~ the docket.

Further definition is helpful here, since this would be a new function and a record request has never been defined. Requests for information should be in the properly noticed scope of the docket (otherwise it would be more of an investigative function, not adjudicative) and it should be of the nature that a witness could answer if on the stand (i.e. something the witness already knows and has expertise in; asking witnesses for input on unfamiliar topics would also be an investigative function). Under the Administrative Procedure Act, parties create the administrative record, so "Information Request" seems a more appropriate designation.

Puc 203.22 Briefs.

(a) The commission may ~~require or~~ allow ~~parties or participants~~ to submit briefs at any point in an adjudicated proceeding if the commission determines that such briefing would assist the commission in its determination of the legal issues presented.

Briefing in an adjudication is used for legal issues, since testimony, discovery, and rebuttal is used for substantive issues. If substantive issues are briefed after hearing, parties could raise substantive issues that the other parties would never be able to cross examine. Substantive briefs would be more like comments in a rulemaking or investigation.

- (b) The commission shall set any briefing deadline or deadlines so as to permit the parties adequate time to draft their briefs and without causing undue delay in the conclusion of the proceeding.
- (c) The commission shall establish a briefing schedule that allows one or more parties to submit briefs in rebuttal or reply to the brief or briefs of one or more other parties when such a sequential schedule is necessary to assure due process, fairness or full discussion of the legal issues presented.
- (d) The commission shall establish a page limit for briefs when it determines that such a limit would promote the efficient resolution of issues without adversely affecting the rights of any party.
- (e) The commission shall encourage joint filing of briefs when there is more than one party advocating the same result and the same ~~arguments-legal positions~~ and individual briefs would be duplicative.
- (f) The commission may at its discretion schedule an oral argument to assist the commission in reviewing legal issues presented in the briefs. ~~An o~~Oral arguments ~~which~~ shall be conducted ~~as a hearing~~ at the

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date and time determined by the commission, and shall be included in the administrative record of an adjudicated proceeding.

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~~Puc 203.23 Testimony based on proprietary models. In any proceeding in which a party or participant presents testimony relying upon a proprietary model, the party or participant shall make the model available for use by the commission and other parties or participants and provide clear instructions as to the use of the model. To the extent parties or participants require confidential treatment of proprietary models they shall file a motion for confidential treatment pursuant to Puc 203.14.~~

This would damage the ability of utilities to obtain competitive consulting and other expert services. If consultants and vendors know that their models will be disseminated along with instructions on how to use them, they will be less likely to bid on utility work. Both the quality of bids and bidders and the competitiveness of the bid prices will suffer. The utilities currently provide the Commission with access to proprietary models developed by expert consultants hired by the utilities and can continue to do so, but recommend against formalizing public disclosure of such models. Even with confidential treatment, automatic disclosure of proprietary models to the Commission and all parties to a docket will negatively impact the ability of the utilities to acquire competitively bid expert consultants.

Puc 203.24 Obstructing Justice. The commission shall refer for prosecution, pursuant to RSA 641:1 and RSA 641:2, any person who:

- (1) Testifies falsely to any material matter wherein he has given his oath or affirmation, ~~believing~~ and knows the testimony to be untrue; or
- (2) Willfully and knowingly falsifies any account, book, record, financial statement or other information regarding any material matter, ~~believing the content to be untrue~~, with the intent to mislead or deceive any commissioner, ~~or~~ presiding officer or commission staff member.

Puc 203.25 Withdrawal of Presiding Officer or Commissioner.

- (a) Upon his or her own initiative or upon the motion of any party, a presiding officer or commissioner shall, for good cause, withdraw from any ~~adjudicative proceeding or other matter~~.
- (b) Good cause shall exist if a presiding officer or commissioner:
 - (1) Has a direct interest in the outcome of a proceeding, including, but not limited to, a financial or family relationship, within the third degree of relationship, with any party;
 - (2) Has made statements or engaged in behavior which objectively demonstrates that he or she has prejudged the facts of a case;
 - (3) Personally believes that he or she cannot fairly judge the facts of a case;
 - (4) Is obligated to withdraw because his or her impartiality might reasonably be questioned; or
 - (5) Is otherwise required to withdraw pursuant to applicable law.
- (~~c~~**b**) Mere knowledge of the issues, the parties or any witness shall not constitute good cause for withdrawal, nor shall the fact that the presiding officer or commissioner is a customer of a utility that is a party to the proceeding.

Puc 203.26 Control of Hearing.

- (a) In cases of disorder or refusal to comply with the rules of the hearing, the presiding officer, ~~may~~ use reasonable means to control the hearing.
- (b) During commission proceedings no person shall engage in bitter exchanges, vulgarities, or abuse or make offensive or insulting comments. When such an act is committed, the presiding officer, ~~may~~ admonish the offender reminding the offender that such behavior does not contribute to a fair hearing and impedes the orderly disposition of a case.
- (c) If the offense is repeated and further admonition appears fruitless, the presiding officer, ~~may~~ exclude a disorderly person from the hearing.

The Commission already has the ability to control hearings, and expressly prohibiting "bitter exchanges" by rule would potentially chill advocacy and subject participants to a subjective standard.

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Adopt Puc 204 to read as follows:

PART Puc 204 ADJUDICATIVE PROCEEDINGS AND HEARINGS

Puc 204.01 Discovery.

(a) The petitioner, the staff of the Department, the OCA (if a party to the matter), and any person granted intervenor status shall have the right to conduct discovery in an adjudicative proceeding pursuant to this rule. Discovery requests and responses served on parties or participants in a commission proceeding must also be filed with the commission pursuant to Puc 203.04.

(b) Within 30 days of filing of a Petition, pursuant to Puc 203.08 (a), the petitioner shall complete and file with the Commission "Petitioner's Automatic Disclosures", form 200B (05/2024).

1. The "Petitioner's Automatic Disclosures" shall include the following information:

- a. List all statutes and rules that govern on which the Petition relies;
- b. Any statutory deadlines are required to be met by the Commission;
- c. Whether the petition requests approval of any new rate or tariff feature;
- d. The estimated rate impact of requested Commission action (including, if applicable:
 - i. Fixed or Volumetric dollar value of new/increased/decreased rates per kWh, therm, cubic ft. of water etc.
 - ii. Rate impacts on residential customers using average use (monthly and annually); and
 - iii. Rate impacts on each customer group in monthly and annual whole dollar figures.
- e. Whether the Petitioner has consulted with the Department and OCA regarding its proposals.

(c) Petitions to review Community Power Electric Aggregation Plans that are being submitted for review pursuant to RSA 53-E are exempt from the requirements of Puc 204.01(b).

Recommend placing this between Puc 203.08(a) and (b) - leaving it here for ease of reviewing these edits.

(d) Unless inconsistent with an applicable procedural order, any person covered by this rule shall have the right to serve upon any party, data requests, which may consist of a written interrogatory or request for production of documents.

(e) Data requests shall identify with specificity the information or materials sought.

(f) A copy of each data request, each objection to data requests and each response to data requests shall be served upon every person designated for discovery filings on the commission's official service list pursuant to Puc 203.16.

(g) Responses to data requests shall be ~~made pursuant to~~ provided according to the schedule established by the order approving the procedural schedule for the proceeding, structuring statement established described in Puc 204.05(e) or within 10 business days if no other timeframe is specific in any such procedural order(=)© and the discovery deadlines established in that order.

(h) Objections to data requests shall:

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(1) Be served in writing on the propounder of the requests within 10 days following receipt of the request unless the commission specifies a different time period in a procedural schedule order; and

(2) Clearly state the grounds on which they are based.

(i) Failure to object to a data request or requests for documents within 10 days of its receipt without good cause shall be deemed a waiver of the right to object.

(j) Motions to compel responses to data requests shall:

(1) Be made pursuant to Puc 203.08(b);

(2) Be made within 10 days of receiving the applicable response or objection, or 10 days of the deadline for providing the response, whichever is sooner;

(3) Specify the basis of the motion; and

(4) Certify that the movant has made a good faith effort to resolve the dispute informally.

(j) ~~(k)~~ The commission shall authorize other forms of discovery, including technical sessions, depositions and any other discovery method permissible in civil judicial proceedings before a state court when such discovery is necessary to enable the parties to acquire evidence admissible in a proceeding.

(k) ~~(l)~~ When a party has provided a response to a data request, and prior to the issuance of a final order in the proceeding, the party shall have a duty to reasonably and promptly amend or supplement the response if the party obtains information which the party would have been required to provide in such response had the information been available to the party at the time the party served the response.

Puc 204.02 Notice of Proceeding

(a) The commission shall give notice of a prehearing conference, status conference, or hearing, which shall contain the information required by RSA 541-A:31, III.

(1) Notice shall include a statement of the date, time, place and nature of the hearing ~~or prehearing conference proceeding;~~

(2) A statement of the legal authority under which the ~~hearing proceeding~~ is to be held;

(3) A reference to the particular statutes and rules involved, including this chapter;

(4) A short and plain statement of the issues presented; and

(5) A statement that each party has the right to have an attorney represent them at the party's own expense.

(b) The commission shall direct the petitioner or other party to the docket to disseminate a notice issued pursuant to this section to the general public by causing the notice to be published ~~in a newspaper of general circulation serving the area affected by the petition or by such other method as the commission deems appropriate and advisable in order~~ on the websites of the participating utilities to ensure reasonable notification to interested parties. ~~The commission shall likewise publish the notice on its website.~~

(c) The cost of publication required by (b) above shall be borne by the petitioner, or the party being investigated.

This reflects the current practice that's been in place since COVID.

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(d) A petitioner required by the commission to publish notice shall file an affidavit of compliance, with a copy of the notice as published appended thereto, by a date specified in the notice.

Puc 204.03 Failure to Appear or Respond. If a party to a commission proceeding fails to appear at a hearing or respond when required to a commission order, the commission may review and decide the matter without the party's input ~~at that hearing or in response to such commission directive~~ proceeding.

Puc 204.04 Presiding Officer. Except as provided in (a) or (b) below, the chair~~man~~ of the commission shall serve as presiding officer.

(a) When the chair~~man~~ is absent but one or more commissioners are present at a hearing or prehearing conference, the most senior commissioner present shall designate the presiding officer.

(b) A qualified member of the commission staff shall serve as presiding officer when authorized pursuant to RSA 363:17.

(c) The duties of a presiding officer shall include, but are not limited to:

- (1) Presiding over the prehearing conferences, status conferences, and hearings; and
- (2) Ruling on discovery disputes, confidentiality requests, and procedural matters which may arise during the course of a hearing .

Puc 204.05 Prehearing Conferences.

(a) In order to facilitate proceedings and encourage informal disposition, the presiding officer shall, upon motion of any party, or upon the presiding officer's own motion, schedule one or more prehearing conferences.

(b) The commission shall provide notice to all parties prior to holding any prehearing conference.

(c) ~~10 days prior to~~ Within three business days after the prehearing conference, the petitioner, or the participating utility or utilities in proceedings initiated on the Commission's own motion, ~~parties~~ shall file a "Structuring Statement", form 200C (05/2024).

(d) The "Structuring Statement" shall provide the following information:

- (1) Name of case and docket number;
- (2) List of the Parties to the hearing;
- (3) Identification of any Petitions to Intervene that are known at the time of filing;
- (3) An estimation of the time needed to conduct the hearing;
- (4) Proposed procedural schedule including proposed hearing dates, time needed for hearing and discovery deadlines;
- (5) Confirmation of whether an audit has been performed or will be performed by the Department and timeline for filing the audit with the Commission;
- (6) A preliminary listing of all witnesses to be called; and
- (7) All procedural issues and motions.

(e) Prehearing conferences shall include consideration of any of the following:

Clarifying that the rest of the party's contributions to the docket will still be considered, it's just the proceeding in which the party did not participate where it will have no input.

Much of the following information is not known until the prehearing conference is held.

This will be known in routine dockets, but some other matters this will be unknown at the outset of the proceeding

The procedural schedule cannot be created until all petitions for intervention have been ruled upon and all parties are known.

The DOE typically makes determinations regarding audits, so the petitioner may not always have this information.

These will not be known at the outset of the proceeding.

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- (1) ~~Settlement track;~~
- (2) Simplification of the issues;
- (3) Stipulations or admissions as to issues of fact or proof, by consent of the parties;
- (4) Limitations on the number of witnesses;
- (5) Consolidation of examination of witnesses by the parties;
- (6) Consideration of any petitions for intervention and any objection filed thereto;
- (7) Establishment of a procedural schedule to govern the remainder of the proceeding;
- (8) Whether or not a full audit is necessary and who will provide the audit to the Commission;
- (8) Motions for confidential treatment of matters raised in the proceeding and otherwise to facilitate discovery; and
- (9) Any other matters which aid in the disposition of the proceeding.

Puc 204.06 Status Conference. At any time during a proceeding the presiding officer may schedule one or more status conferences to assess the progress of a matter or to resolve any interim procedural ~~or substantive issues~~ that the Commission finds will promote a more efficient conduct of the proceeding.

Puc 204.07 Consolidation of Hearings.

- (a) When more than one application or petition seeks the same or similar relief, the commission shall consolidate the cases to be heard on a common record if it determines that to do so will promote the orderly and efficient conduct of the proceeding.
- (b) The commission shall note any such consolidation in the docket record of each affected proceeding.
- (c) The cost of consolidated hearings shall be borne equitably by the parties.
- (d) In determining an equitable sharing of costs pursuant to (c) above, the commission shall consider:
 - (1) A utility's number of customers; and
 - (2) A utility's New Hampshire revenue.
- (e) If a party objects to consolidation, such consolidation shall not occur until after the party has had an opportunity to be heard on the issue.

Puc 204.08 Settlement

- (a) All ~~participants~~ parties to the docket that participate in settlement discussions shall treat such discussions as confidential and shall not disclose the contents of such discussions ~~to third parties.~~
- (b) The commission shall approve a disposition of any contested case by settlement, if it determines that the result is consistent with applicable law, is just and reasonable, and serves the public interest.

Substantive issues should not be resolved at status conferences, as all parties may not be in attendance, witnesses aren't sworn in, and status conferences are intended more to brief on the current disposition of the issues, rather than resolution of the issues, which is more of a merits hearing.

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~~(c) If a settlement is filed and is not contested by any party, the commission may consider the settlement as evidence in the proceeding. Settlements shall be considered as evidence in the proceeding.~~

All settlements (not just uncontested ones) are submitted as exhibits, so they are evidence.

~~(d) Settlements shall be filed no less than 145 business days prior to the hearing unless otherwise ordered, except as provided in (e). If the settlement is filed late, the Commission may reschedule the hearing.~~

3 weeks will be very difficult. 2 weeks may be challenging as well, but is more doable.

~~(d) The parties to any proceeding before the commission shall, by stipulation in writing filed with the commission or entered in the record at the hearing, agree upon the facts or any portion thereof involved in the hearing when such facts are not in dispute among the parties.~~

~~(e) If a stipulation is filed and is not contested by any party, the stipulation shall bind the commission as to the facts in question, and the commission shall consider the stipulation as evidence in the decision of the matter.~~

This provision was removed, but aids the parties in the prompt resolution of proceedings by settling issues among the parties, and so recommend it remain in the rules.

~~(e)(f) The commission may accept late-filed settlements when such acceptance:~~

- (1) Promotes the orderly and efficient conduct of the proceeding; and
- (2) Will not impair the rights of any party to the proceeding

~~(f) When the Department is a party to the proceeding, settlements must contain a certification from the department that pursuant to RSA 12 P:2, III the settlement is just and reasonable and serves the public interest.~~

This is duplicative - if the Department signs the settlement they are saying it is just, reasonable and in the public interest. If it doesn't, it's implied that at least part of the settlement is not just, reasonable and in the public interest in the opinion of the DOE. This provision also implies that the just and reasonable determination is made by the Department, when it is the Commission that makes this determination. This would render any settlement not entered into by the Department seemingly meaningless.

Puc 204.09 Limiting Number of Witnesses or Time. The commission may limit the number of witnesses or the time for testimony or oral argument upon a particular issue, as needed, to avoid unnecessary or cumulative evidence.

Puc 204.10 Exhibits.

- (a) Shall be filed 5 business days prior to hearing;
- (b) A party presenting evidence at a hearing shall present such evidence in exhibit form.

(c) Exhibits shall:

- (1) Be sequentially numbered by page throughout the multiple parts of an exhibit, if applicable, and lines shall be sequentially numbered on each page.
- (2) Be Bates stamped in the lower right hand corner with Arabic numerals.
- (3) Be pre-marked in the upper right hand corner of each page with the docket number and the exhibit number, and named with the docket number without the prefix, date of hearing, exhibit number.
Example: Docket No. _Hearing_Date_exh. #.
- (4) Confidential exhibits shall be so marked.

(d) Exhibits may contain a summary in an accompanying text or caption section.

~~(e) Parties filing exhibits shall:~~

- ~~(1) Provide on the first page of each exhibit a space approximately 2 1/2 inches wide by 1 1/2 inches long in the upper right hand corner; and~~
- ~~(2) Provide that each subsequent page shall have no less than one inch margins on all sides.~~

This was more applicable to paper filings.

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~~(f)(e)~~ A party presenting an exhibit at hearing with any material that has not been previously submitted to the commission shall provide a copy to the hearing clerk, each commissioner, the court reporter, any witness or witnesses then testifying and each party present at the hearing. Late submitted evidence may result in a cancelled or rescheduled.

~~(g)(f)~~ Any party offering an exhibit other than a document or photograph shall:

- (1) Produce the exhibit for evaluation during a hearing; and
- (2) Submit a photographic representation of the exhibit for inclusion in the record.

~~(h) Upon receipt of exhibits that do not comply with Puc 204.10 (a) - (g), the Commission may reschedule the hearing so that the parties and the Commission have an opportunity to review all exhibits prior to hearing.~~

Puc 204.11 Pre-marked Exhibits and Witness Lists

(a) The parties shall confer for the purposes of identifying and numbering exhibits and nominating one party to submit a complete list of exhibits with the proposed numbering and document title.

(b) ~~Five (5)~~ business days before a hearing the parties shall file with the commission pre-marked hearing exhibits and proposed lists of witnesses to appear at hearing.

(c) Parties shall present new exhibits at hearing based on a showing that the material is new or was otherwise unavailable by the applicable deadline, and after considering the probative value of the exhibit and whether the opportunity to submit a document impeaching or rebutting the late filed exhibit without further hearing shall adequately protect the parties' right of cross examination, the commission may admit such additional exhibits.

~~Evidence in the form of any spreadsheets or documents originating as spreadsheets shall be submitted in live format with formulae and links intact.~~

Puc 204.12 Evidence.

(a) The parties entitled to offer evidence at hearing in an adjudicative proceeding shall be the petitioner, the Department and any intervenor.

(b) All testimony of parties and witnesses, including any pre-filed written testimony adopted by a witness at hearing, shall be made under oath or affirmation.

(c) Pursuant to RSA 365:9 and RSA 541-A:33, II, the rules of evidence shall not apply in proceedings before the commission.

(d) The commission shall exclude irrelevant, immaterial or unduly repetitious evidence, by their own determination or by objection made a party.

(e) The commission shall give effect to the rules of privilege recognized by law.

(f) The commission shall entertain objections to evidence at hearing and note them in the record.

(g) A party shall submit documentary evidence in the form of copies or excerpts unless the commission finds that the authenticity of the submission is questioned or the copy is not legible.

(h) Excerpts of documents shall include the proper citation to the complete document.

(i) A response to a data request posed pursuant to Puc 204.01, when offered into evidence by a party other than the party that provided the response, shall be treated as an admission of the party that provided the data response.

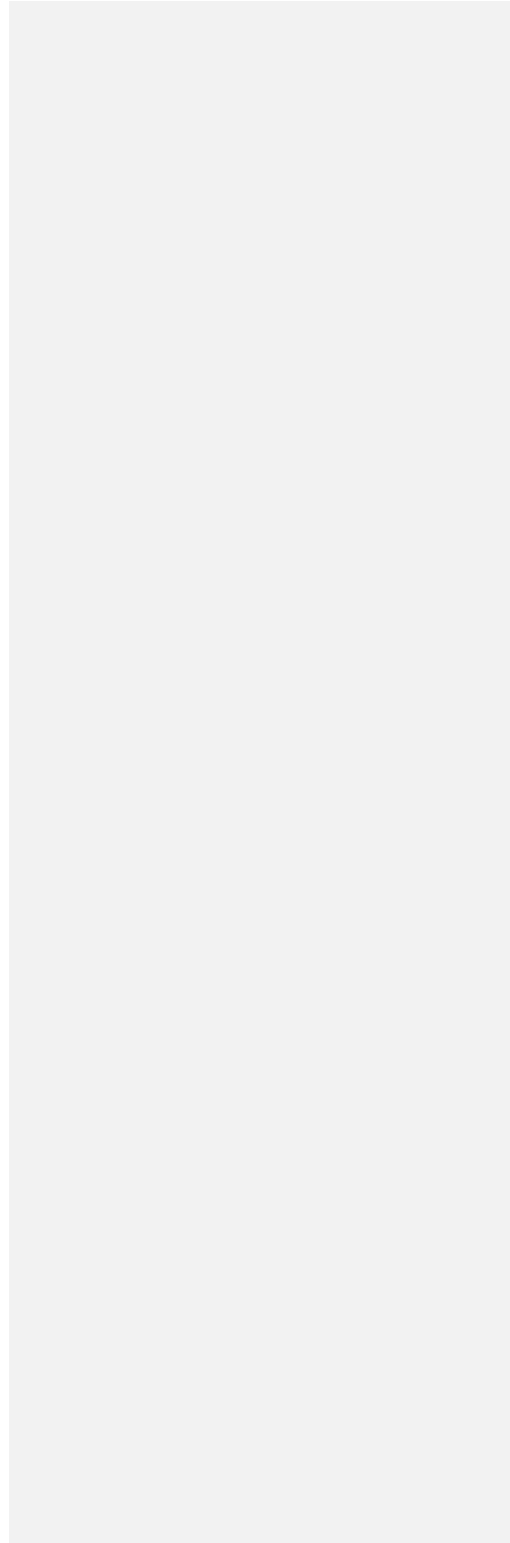
The Commission already has discretion to reschedule hearings. This provision could result in one party (in a docket with many parties) making a small formatting error and pushing out hearings by weeks or more, depending on schedules of all parties and the Commission

Puc 204.10 says 5 business days, which is more workable than three weeks.

Spreadsheets are currently provided to the Commission, the DOE and OCA for reference. Submitting all exhibits in excel form will make them part of the public record, which causes both logistical and confidentiality problems. The utilities have a large quantity of exhibits that originate as excels, and a large percentage of them are confidential. This would make the majority of exhibits and hearings confidential, which would be burdensome on all parties, as the parties have to go off record to discuss confidential information, the public must leave the hearing room, and the hearing has to stop and start again. The public .pdf versions should remain the exhibits, and the utilities can continue to provide the live excel models to the regulators for reference purposes.

Puc 204.13 Cross-Examination.

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(a) Consistent with any conditions imposed pursuant to RSA 541-A:32, III the petitioner, the Department and any persons granted intervenor status may conduct cross-examination of a witness in order to develop a full and true disclosure of the facts.

Puc 204.14 Burden and Standard of Proof. Unless otherwise specified by law, the party seeking relief through a petition, application, motion or complaint shall bear the burden of proving the truth of any factual proposition by a preponderance of the evidence.

Puc 204.15 Order of Proceeding. In hearings on petitions, the petitioner shall have the opportunity to open and close any part of the proceeding

Puc 204.16 Official Notice. The commission, if requested by a party, or on its own initiative, shall take official notice of one or more of the following:

- (a) Any fact which could be judicially noticed in the courts of New Hampshire;
- (b) The relevant portion of the record of other proceedings before the commission;
- (c) Generally recognized technical or scientific facts within the commission's specialized knowledge; and
- (d) Codes or standards that have been adopted by an agency of the United States, of New Hampshire or of another state, or by a nationally recognized organization or association.
- (e) Prior Commission orders ~~or motions relevant to the adjudicatory matter.~~
- (f) The commission shall notify parties either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed.
- (g) The commission shall afford parties an opportunity to contest the material so noticed.

Motions are automatically a part of the record pursuant to the Administrative Procedure Act, RSA 541-A:31, VI(b).

Puc 204.17 Views and Inspections. The commission shall take a view or conduct an inspection of any property which is the subject of a hearing before the commission if requested by a party, or on its own motion, if the commission shall have determined that the view or inspection will assist the commission in reaching a determination in the hearing or assessing a matter under investigation.

Puc 204.18 Recess and Adjournment. The commission shall recess, adjourn or continue any hearing if to do so will promote the orderly and efficient conduct of the proceeding.

Puc 204.19 Record for Decision. The Commission shall decide the matter before it based upon the whole administrative record.

Puc 204.20 Reopening the Record.

(a) The commission shall, on its own motion or at the request of a party, authorize filing of exhibits after the close of ~~a hearing~~the record, and before a decision is made, if the commission finds that late submission of additional evidence will enhance its ability to resolve the matter in dispute.

- (b) Any party requesting authorization to file an exhibit after the close of the record shall make its request:
 - (1) Orally before the close of the hearing; or
 - (2) If the hearing has concluded, by motion, pursuant to Puc 203.08 (b).

(c) In determining whether to admit the late filed exhibit into the record, the commission shall consider:

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- (1) There are reasonable grounds for failure to submit such exhibit previously;
- (1) The probative value of the exhibit; and
- (2) Whether the opportunity to submit a document impeaching or rebutting the late filed exhibit without further hearing shall adequately protect the parties' right of cross examination pursuant to RSA 541-A:33, IV.

Puc 204.21 Recording. A sound recording of the hearing shall be made and the recording shall be maintained for ~~a period of 60 days following the order or ruling by commission on the issues presented the duration of the proceeding and any subsequent appeals, if applicable.~~ Copies of recordings may be requested in writing to the commission. A reasonable fee to cover the cost of the recording and processing fee, shall be included with the request. Any party may have a stenographer present at a hearing provided that that party bears the cost of the stenographer and provides a copy of the transcript to the commission.

Parties need to have access to the complete record for the duration of the docket and any subsequent appeals to ensure due process.

Recommend a fixed dollar amount.

Puc 204.22 Transcripts.

(a) ~~When the~~ The commission shall have a verbatim written ~~desires a~~ transcript taken of each hearing and ~~or prehearing conference in any proceeding before it the evidence of any hearing, to assist in its deliberation thereon, it shall order a transcript.~~

(b) The charge for production of the transcription shall be paid by the petitioning utility or as otherwise directed pursuant to RSA 365:37 and RSA 365:38.

(c) Hearing and prehearing conference transcripts obtained under (a) above shall be posted to the commission's website.

Puc 204.23 Rehearing. ~~Parties requesting~~ Any person eligible to request rehearing shall do so according to the provisions of RSA Chapter 541 and Chapter 365. Any ~~party-person~~ filing a motion for rehearing may request oral argument. The commission may grant oral argument in its discretion. If the commission provides for oral argument, it shall set a schedule, order of presentation and overall time allotted to the parties.

Persons other than parties can seek rehearing.

Puc 204.24 Final Decisions. If no rehearing has been requested, a decision by the commission shall become final 30 days after issuance. If a decision has been made on a request for rehearing the decision shall be final 30 days after issuance unless a timely appeal of the decision has been filed with a court having appellate jurisdiction over commission decisions.

Puc 204.25 Retention of Decisions. The commission shall keep a decision on file in its records for at least 5 years following the date of the final decision or the date of the decision on any appeal, unless the director of the division of records management and archives of the department of state sets a different retention period pursuant to rules adopted under RSA 5:40.

Puc 204.26 Certifying a Question of Law.

(a) The Commission may, on its own motion or at the request of a party reserve, certify and transfer to the New Hampshire Supreme Court any question of law arising during a Commission proceeding, pursuant to RSA 365:20, if it determines that:

- (1) The decision involves a controlling question of law about which there is substantial ground for difference of opinion; and
- (2) An immediate review will materially advance the completion of the adjudication or subsequent review by the Commission will provide an inadequate remedy.

(b) The Commission may summarily dismiss any request by a party to certify a question of law if it determines that review is not appropriate.

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(c) The Commission may, on its own motion, certify a question of law for judicial review under this rule in its own discretion.

(d) Certifying a question of law does not stay the proceeding before the Commission unless the Commission so orders.

Puc 204.27 Submission of Formal Complaints.

(a) Any person wishing to make a formal complaint to the commission regarding an entity over which the commission has jurisdiction shall do so by first exhausting all remedies pursuant to RSA 365:4 and En 1200 rules concerning the complaint process at the Department.

(b) Following completion by ~~the~~ Department of its review of the complaint and announcement of its decision on the complaint, if the person complaining is not satisfied with the Department's resolution of the complaint, that person may file a petition with the commission requesting further consideration of the complaint.

(c) Upon receipt of a meritorious and legally sufficient petition pursuant to Puc 204.27(b), and over which the commission has ~~jurisdiction~~statutory authority, the commission shall commence an adjudicative proceeding and shall cause a copy of the complaint to be forwarded to the utility named in the complaint.

Puc 204.28 Investigations. If it appears to the commission that any public utility or other matter within its jurisdiction requires investigation, the commission shall conduct an independent investigation pursuant to RSA 365:5.

Puc 204.29 Declaratory Rulings.

(a) A person seeking a declaratory ruling on any matter within the jurisdiction of the commission shall request such ruling by submitting a petition pursuant to Puc 203.

(b) Such a petition shall be verified under oath or affirmation by an authorized representative of the petitioner with knowledge of the relevant facts.

(c) The commission shall dismiss a petition for declaratory ruling that:

- (1) Fails to set forth factual allegations that are definite and concrete;
- (2) Involves a hypothetical situation or otherwise seeks advice as to how the commission would decide a future case; or
- (3) Does not implicate the legal rights or responsibilities of the petitioner; or
- (4) Is not within the commission's jurisdiction.

(d) Except for a petition dismissed pursuant to subsection (c), the commission shall conduct an adjudicative proceeding on a petition for declaratory ruling in accordance with Puc 204.

Readopt with amendment Puc 205.01-Puc 205.03, effective 06-10-06 (Document #8657-A), cited and to read as follows:

PART Puc 205 RULEMAKING

Puc 205.01 How Adopted.

(a) A rule of the commission or any amendment or repeal thereof shall be adopted ~~by the chairman~~ after notice and opportunity for hearing in accordance with this part.

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(b) Rules may be proposed by any person or by the agency.

Puc 205.02 Manner for Adoption.

(a) The commission shall commence a rulemaking proceeding by drafting a proposed rule or by accepting as a proposed rule the draft of a rule proposed by any person.

(b) With respect to any proposed rule, ~~the chairman shall conduct~~ rulemaking and adoption proceedings shall be conducted pursuant to RSA 541-A.

Puc 205.03 Requests to Commission for Rulemaking. Requests from interested persons requesting adoption, amendment or repeal of a rule shall be received and disposed of in the following manner:

(a) Requests shall be submitted to the commission by letter addressed to the ~~executive director~~ **chairman**.

(b) Requests shall contain the following:

- (1) The date of the request;
- (2) The name, address and telephone number of the person making the request; and
- (3) Name and address of any other person or organization represented by the person making the request.

(c) The person making the request shall sign the request.

(d) The request shall be typed or printed in a legible fashion.

(e) ~~If possible,~~ **The** person making the request shall cite the rule and its provisions and specify any changes desired if repeal or amendment is sought, and shall provide the text or approximate text of the proposed rule if promulgation is sought.

(f) The person making the request shall include a detailed and complete statement of the reasons offered by such person in support of the requested action.

(g) If the commission determines that any rulemaking request is deficient in any respect, the commission shall, within 10 working days of receipt of said request, notify the person making the request, in writing, of the specific deficiencies and allow such person to amend the petition.

(h) Within 30 days of receipt of a request or amended request for rulemaking, the commission shall take one of the following actions:

- (1) Initiate the requested rulemaking procedures, in accordance with this part; or
- (2) Deny the request, in writing, stating the reasons for denial.

Readopt Puc 205.04 and Puc 205.05, effective 6-10-06 (Document #8657-A), to read as follows:

Puc 205.04 Request for Notice of Intended Rulemaking Action. Pursuant to the provisions of RSA 541-A, the commission shall maintain a current listing of all persons having made a request for advance notice of the rulemaking proceedings.

Puc 205.05 Public Hearing.

(a) If the commission initiates rulemaking proceedings under RSA 541-A, or if rulemaking is initiated pursuant to a request for rulemaking, the commission shall hold at least one public hearing pursuant to RSA 541-A:11.

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(b) Notice shall be given at least 20 days prior to the public hearing pursuant to RSA 541-A:6, I.

(c) The commission shall limit the time allowed at hearing for each person's comments when necessary to allow all persons with comments to make them.

(d) The commission shall require persons desiring to make comments to so indicate by signing a roster made available for this purpose prior to the commencement of the public comment hearing.

Readopt with amendment Puc 205.06, effective 3-18-15 (Document #10797-A), to read as follows:

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 10-18-23 (Document #13780), 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.

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(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.

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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:

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a. Initiating a proceeding to establish another alternative form of regulation, in accordance with Puc 206.06 and Puc 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) Reinstating 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 201.01- Puc 201.02	RSA 365:8
Puc 202.01	RSA 365:8, I; RSA 363:17-a
Puc 202.02- Puc 202.04	RSA 365:8, I; RSA 363:17-a
Puc 202.05	RSA 365:8, I; RSA 363:17-a; RSA 365:5
Puc 202.06- Puc 202.07	RSA 365:8, I; RSA 363:17-a
Puc 202.08- Puc 202.20	RSA 365:8, I

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Puc 203.01	RSA 365:8, I
Puc 203.02	RSA 365:8, I
Puc 203.03- Puc 203.07	RSA 365:8; RSA 541-A:29-35; 541-A:30-a, III (a)
Puc 203.08	RSA 365:8; RSA 541-A:29-35; 541-A:30-a, III (a)
Puc 203.09	RSA 365:5; RSA 365:8; RSA 12-P:2, III
Puc 203.10	RSA 365:8; RSA 541-A:29-35; 541-A:30-a, III (a)
Puc 203.11	RSA 365:8
Puc 203.12- Puc 203.14	RSA 365:8
Puc 203.15- Puc 203.16	RSA 365:8
Puc 203.17	RSA 365:8; RSA 541-A:32
Puc 203.18	RSA 365:8, I and IV; RSA 365:8, I
Puc 203.19	RSA 365:8
Puc 203.20	RSA 365:8RSA 365:8, I
Puc 203.21- Puc 203.22	RSA 365:8, I; RSA 541-A:31, III; RSA 365:5; RSA 541-A:38
Puc 203.24	RSA 365:8, I; RSA 365:8, RSA 541-A:31, V; 541-A:38; RSA 641:2
Puc 203.25	RSA 365:8; RSA 541-A:31, V (b)-(d)
Puc 203.26	RSA 365:8, I; RSA 641:1;
Puc 204.01	RSA 365:8
Puc 204.02	RSA 365:8; RSA 541-A:29-35
Puc 204.03	RSA 365:8; RSA 541-A:29-35
Puc 204.04	RSA 365:8; RSA 541-A:31, V (b)-(d)
Puc 204.05	RSA 365:8
Puc 204.06	RSA 365:8
Puc 204.07	SA 365:8; RSA 541-A:38
Puc 204.08	RSA 365:8, RSA 541-A:31, V; 541-A:38;
Puc 204.09- Puc 204.10	RSA 365:8
Puc 204.11	RSA 365:8; RSA 541-A:33
Puc 204.12	RSA 365:8, I
Puc 204.13- Puc 204.19	RSA 365:8, I; RSA 541-A:33
Puc 204.20	RSA 365:8, I; RSA 541-A:33
Puc 204.21	RSA 365:8, I
Puc 204.22	RSA 365:8, I; RSA 541-A:31
Puc 204.23	RSA 365:8, I
Puc 204.24	RSA 365:8, I
Puc 204.25- Puc 204.26	RSA 365:8, I
Puc 204.27	RSA 365:20
Puc 204.28	RSA 365:4; RSA 365:8
Puc 204.29	RSA 365:5
Puc 205.01- Puc 205.03	RSA 541-A:16, I (c)
Puc 205.04	RSA 541-A:6, III
Puc 205.05	RSA 541-A:11; RSA 541-A:16, I (b) (3)
Puc 205.06	RSA 541-A:11, VII
Puc 206.01- Puc 206.09	RSA 365:8, III; RSA 365:8, I