

STATE OF NEW HAMPSHIRE



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April 28, 2000

Mr. Michael W. Holmes, Esq.
Office of the Consumer Advocate
117 Manchester Street
Concord, NH 03301

Re: Notice of OCA Participation in Commission Proceedings
Inter-Agency Memorandum of Understanding

Dear Mr. Holmes:

This letter is intended to memorialize discussions we have had in search of an administrative solution to concerns we shared regarding the OCA's need to flexibly monitor proceedings before the Commission, and Staff and Intervenors' need to know when and to what extent the OCA is participating in a proceeding. As we discussed, there is a difference of opinion as to the interpretation of the requirements of RSA 363:28, II and the need for a motion to intervene as opposed to the acceptance of automatic party status. However, I think we both believe that further pursuit of that difference will not achieve the mutually satisfactory administrative result that we seek.

You explained that the OCA's goal is to have sufficient information and notice to determine when it is appropriate to participate in a proceeding in order to protect residential customers' interests. As you know, pursuant to Puc 202.07 (a) (4), parties are required to provide the OCA with filings while Orders of Notice require parties to file a copy of their motions to intervene with the OCA. Moreover, copies of procedural as well as all other Commission orders are routinely provided to the OCA. Consequently, it would seem the OCA has sufficient information to determine when to participate.

I explained that it is important for Staff and Intervenors to know when and to what extent the OCA is participating in a proceeding. Staff and Intervenors must know when the OCA is participating so they can, among other things, seek concurrence for motions, attempt to resolve discovery disputes, schedule settlement discussions and efficiently distribute documents.

Requiring a formal Motion to Intervene in every proceeding, or making the OCA an automatic party, both have administrative drawbacks. The former requires extra paperwork for the OCA without necessarily providing relevant information about the OCA's participation to

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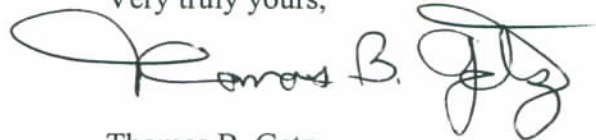
Staff and Intervenors. The latter may initially save paperwork for the OCA but would still require the Commission to take some action to acquire the necessary information regarding the degree of OCA participation.

In lieu of formal motions to intervene, the Commission proposes that, in cases where the OCA intends to take action beyond its ongoing monitoring function, the OCA file a "Notice of Intent to Participate". The Notice will be treated as the functional equivalent of a motion to intervene and may be submitted at any time during the proceeding, although in the case of filings late in the process the OCA will be subject to the same constraints faced by any party making a late filing. The Notice is intended to be brief and will be placed in the docket file. Prior to the filing of a Notice, Staff and Intervenors will have no obligation to contact the OCA regarding, among other things, concurrences, discovery, settlement or distribution of documents.

Under this procedure, the OCA continues to have all the relevant information it would need to determine when to participate in a proceeding while Staff and Intervenors would be able to efficiently carry out their responsibilities with respect to the OCA. In addition, in all matters where the OCA has filed a Notice of Intent to Participate, it will have the right as a party to pursue rehearing of a final order of the Commission. In dockets where the OCA has not filed such Notice, it will be required to demonstrate that it is a "person directly affected thereby" in order to request a rehearing. This is consistent with RSA 541:3, which provides, in part, "any party to the action or proceeding before the Commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding."

I suggest that we execute this in the form of an inter-agency memorandum of understanding. Accordingly, I have provided below a signature space to memorialize your agreement.

Very truly yours,



Thomas B. Getz
Executive Director & Secretary

The above-described Inter-Agency Memorandum of Understanding has been seen and agreed to by Michael W. Holmes, Esq. on behalf of the Office of Consumer Advocate.



Michael W. Holmes, Esq.

April 28, 2000

Date: