

STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

DRM 24-086

New Hampshire Code of Administrative Rules Puc ch. 200 Procedural Rules

Comments of Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty; Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty; Public Service Company of New Hampshire d/b/a Eversource Energy; Northern Utilities, Inc.; and Until Energy Systems, Inc. on Commission's Final Proposal for the Puc 200 Rules

I. INTRODUCTION

As a general matter, Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”); Until Energy Systems, Inc.; Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty; Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty; and Northern Utilities, Inc. (collectively, the “NH Utilities”) would like to thank the Commission for the thought and consideration that went into the edits thus far, and appreciate the expanded opportunity for participation and process in finalizing these critical rules of practice.

The NH Utilities offer these edits on the final proposal with an eye toward best practices, drawing on decades of collective experience of practicing in front of, and in certain instances, working for, the Commission. The comments address what the NH Utilities view to be the remaining critical issues before the rules get sent to the Joint Legislative Committee on Administrative Rules (“JLCAR”). These comments are provided in the order in which they appear in the final proposal filed to this docket for ease of reference.

II. GENERAL COMMENTS AND PROPOSALS

Page 25, Puc 203.04(c) Address and Filing format: This provision requires the NH File Transfer Protocol for large files, but provides no alternative if the FTP fails. There has been difficulty filing with the FTP in the past, and it would be preferable to have a failsafe such as an ability to deliver a hard copy, either paper or electronic, to Concord, in the event the FTP is unavailable for any reason.¹

Recommendation: The NH Utilities recommend that the rule be expanded to say: “Electronic Submissions Larger than 33 MB shall be submitted via the State of New Hampshire File Transfer Protocol *or other mutually acceptable file transfer process.*”

¹ For example, Eversource notes that when it went to file its current rate case in Docket No. DE 24-070, the outside law firm hired to assist with the case was unable to gain access to the FTP site, saying that the filer was too far from New Hampshire (the firm is located in Massachusetts).

Page 27, Puc 203.08(a)(4), Specific Pleadings: Subsection (a)(4) states that “if the scope of a proceeding is expanded, the commission shall allow the parties to file supplemental testimony or comments on the new or unanticipated issues.”

Recommendation: If the scope of a proceeding is expanded, a new order of notice should be issued that allows for any potentially affected parties to intervene so that proper due process is assured.

Page 29, Puc 203.08(b)(10), Specific Pleadings, Motions: Where it states that the request to issue an order *nisi* state “specific reasons why a hearing is not required”

Recommendation: “required” be changed to “necessary”. It is the NH Utilities’ understanding that orders *nisi* are only needed when a hearing is required, by statute or otherwise. If the matter is not a contested case or controversy, and a hearing is not otherwise required by statute, the Commission is simply free to issue an order without a hearing and such order would not require a *nisi* period.

Page 34, Puc 203.13(c), Motions for Confidential Treatment: The NH Utilities strongly object to this provision as written. The provision currently states that “in adjudicative proceedings the confidential documents shall be provided to all parties to the proceeding.” Only the Commission, the DOE and the OCA have an obligation to keep information confidential, consultants of those parties and intervening parties have no such obligation, and could intervene in a docket just to acquire confidential information. The NH Utilities have an obligation to keep a variety of types of information confidential, some required to be kept confidential by law, such as customer “personally identifiable information” (*See* RSA 363:37 and 363:38). Others have critical security components like details about the electric grid or critical utility system operations; while others are competitively sensitive, the broad sharing of which could hinder the NH Utilities’ ability to secure competitive bids for goods and services in the future.

Recommendation: Add: “to receive confidential information, any party except the DOE and OCA, including consultants for the DOE and OCA, must execute a satisfactory non-disclosure agreement with the disclosing party to receive confidential information in an adjudicated proceeding.”

Page 37, Puc 203.19, Commission Record Requests: this provision still runs afoul of the Administrative Procedures Act, RSA 541-A. The phrase “relevant to the proceedings” is too broad, as arguably anything the Commission asks would likely be considered by the Commission to be relevant but may be outside the noticed scope of the proceeding. Also, the Commission cannot put evidence into the record except through administrative notice, and this would not necessarily be the type of information that could be administratively noticed. The Commission would either have to ask the question at hearing, or a party to the docket would have to enter it as an exhibit at hearing.

Recommendation: change title to “Commission Information Requests”; change “relevant to the proceedings” to “questions pertaining to issues noticed in the proceeding”; and remove “Responses shall be part of the hearing record”.

Page 37, Puc 203.20 Recording: This provision as written could create substantial confusion about what comprises the record. For example, if multiple parties obtained the recording, had them transcribed by different services, and ended up with differing transcripts, there could be

confusion and a dispute as to what constitutes the official record. From a logistical perspective, if different transcription services are used, pagination won't align, words could be different, and all of this would lead to conflicting citations to transcripts. The same issue arises if multiple parties engage stenographers, who may produce differing transcripts. Moreover, it is unclear if a transcript produced by a party's stenographer and provided to the Commission would be made a part of the record. Accepting a transcript produced by a party in a litigated proceeding as the "official" transcript could create fundamental questions of fairness.

Recommendation: Standardize so that one Commission-issued transcript is created for a docket, and that the Commission issue the transcript and can bill the cost to the NH Utilities, which shall be a recoverable expense.

Page 37, Transcripts: This is related to the previous section. It is unclear whether a Commission-ordered transcript would be a transcript of the recording in Puc 203.20, or a transcript produced in real time by a stenographer present at the hearing. The rules should also clarify that a transcript ordered by the Commission would be posted to the docket.

Recommendation: standardize consistent with the previous section so that all dockets have a single Commission-issued transcript available to all parties.

Page 38, Puc 203.22 Testimony Based on Proprietary Models: This rule would be detrimental to the NH Utilities' business operations as written. Being required to disclose proprietary models and instructions on how to use those models to all parties to the docket will erode the NH Utilities' ability to secure consultants for critical work (this will likely be the case for any party that uses consultants, like the DOE and OCA as well, though the NH Utilities do not speak for those parties). This at the very least will increase the costs of securing a consultant contract, but in some instances may make it difficult to secure a consultant at all, which could be disruptive to utility operations.

Recommendation: If the DOE, OCA, or any intervening party who has executed a non-disclosure agreement wishes to access a proprietary model, the NH Utilities should have the option of making proprietary models available at their respective offices for use or examination by the parties.

Page 41, Puc 204.01(i): The provision states "any other docket when the commission determines it would be just and reasonable and in the public interest to conduct the case as an adjudicative proceeding." It is not clear what is intended by this provision, as the Commission already has this authority under the Administrative Procedure Act.

Recommendation: rewrite to say "any other proceeding treated as a contested case consistent with the Administrative Procedure Act RSA Chapter 541-A."

Page 43, Puc 204.05, Failure to Appear or Respond: The passage states "the commission shall review and decide the matter without the party's input." The Commission should clarify that shall decide the matter *without the party's input at that particular hearing or in response to a particular Commission order*. Otherwise a party may miss a single event, e.g., a prehearing conference, or fail to respond to a particular order, and risk having *all* of their docket contributions, including participation at hearing, disqualified from consideration.

Recommendation: Add at the end of the sentence: "...from the failed appearance or response."

Page 44, Puc 204.07(e), Prehearing Conference:

Recommendation: Change “filers” to “petitioner”, as gathering signatures from all parties can be burdensome and may not be practicable ten days before a prehearing conference.

Page 45, Puc 204.10(b), Settlement Agreement: This provision as written could eliminate the efficacy of settlement agreements. Settlements are a negotiated outcome and must be taken as a whole. On balance a settlement must be just and reasonable, but one element cannot be used to reject an entire settlement to be unjust and unreasonable. If one element is sufficiently unjust, it may “tip the scales” and render the whole settlement unreasonable. But to have any single element nullify a settlement agreement is contrary to the preference of the Administrative Procedure Act for matters to be settled.

Recommendation: Remove “all elements of”.

Page 45, Puc 204.10(c), Settlement Agreement: This provision currently only allows for uncontested settlements to become evidence, but contested settlements are also evidence, as they are submitted as exhibits.

Recommendation: Remove provision.

Page 45, Not currently listed – Stipulations: The provision on stipulations does not appear in the rules.

Recommendation: add a provision that states: “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, which will bind all parties and the commission to the facts contained within.”

Page 46, Puc 204.12(a), Exhibits: This requires that exhibits be filed ten business days before hearing. Currently, settlement agreements are also due ten days before hearing. If parties are negotiating settlement, they won't know what exhibits they'll need until after settlement is filed. A party could withdraw from settlement the day before settlement is due, and they would not have time to put their case together and file exhibits.

Recommendation: Reduce this to five business days before hearing.

Page 47, Puc 204.12(h), Exhibits: This provision states the Commission shall review a non-compliant exhibit to see if additional time would be needed to review all exhibits prior to hearing. But one non-compliant exhibit should not delay the hearings and prejudice all the parties that filed compliant exhibits.

Recommendation: Only the non-compliant exhibit should be affected - the Commission could decide whether to admit it into evidence.

Page 47, Puc 204.13(b), Pre-marked Exhibits and Witness Lists: This is currently listed as the same timeframe as exhibits, ten business days.

Recommendation: Reduce to five business days.

Page 47, Puc 204.13(d), Pre-marked Exhibits and Witness Lists: Requires a .pdf version of all spreadsheets to be submitted as an exhibit. But many spreadsheets provided already have a .pdf filed to the docket – the spreadsheet is the supporting background to the .pdf. This would create a second version of many .pdfs, and isn't needed. Furthermore, it is occasionally the case that certain spreadsheets cannot be converted to pdfs for formatting reasons.

Recommendation: Remove provision. If the provision is not removed, clarify that a pdf will be provided “if feasible.”

Page 47, Puc 204.13(e), Pre-marked Exhibits and Witness Lists: This provision requires all excel spreadsheets, *or documents originating as spreadsheets*, to be submitted as exhibits in live format with formulas and links intact as confidential exhibits. The inclusion of “or documents originating as spreadsheets” would have the effect of making almost every hearing a confidential hearing, which would require going off the record and clearing the hearing room of the public any time a confidential exhibit is discussed. The NH Utilities already provide confidential excels to Commission, DOE and OCA, and the .pdfs are in the exhibits. Providing the excels as exhibits adds logistical burden without adding value to the public.

Recommendation: Remove “or documents originating as spreadsheets”.

Page 49, Puc 204.19(a) Briefs: This provision currently “requires” parties to submit briefs, but parties should be permitted, not required, to submit briefs.

Recommendation: Change “require” to “request”.

Page 51, Puc 204.28, Investigations: The numbering is off here. The provision before this one is numbered 204.28, so this should be Puc 204.29, and so on.

III. CONCLUSION

The NH Utilities reiterate their appreciation for the opportunity to provide additional comments to address the remaining salient open issues in this rulemaking.