

## Introduction and Disclaimer

This document has been prepared by Staff attorneys in the Commission's legal department as a brief, informal guide to participating in proceedings before the Commission. It is intended to assist those who are unfamiliar with the Commission's procedures. It does not constitute legal advice and is not binding on the Commission. This guide does not cover every aspect of the Commission's procedures, and in the event of any conflict between it and the statutes or rules to which the Commission is subject, the requirements of the statute and/or rule shall govern in every instance. The Commission's procedural rules (N.H. Code Admin. Rules, [Chapter Puc 200](#)) should be consulted with respect to any proceeding before the Commission. These rules contain general provisions and sections regarding operations and requirements, adjudicative proceedings, complaints against public utilities, rulemaking, alternative regulation, and declaratory rulings. In this guide, the designation "Puc" refers to the Commission's rules and the designation "RSA" refers to the [New Hampshire Revised Statutes Annotated](#).

## Appearing Before the Commission

RSA 365:10-a authorizes the Commission, at its discretion, to permit any person to appear before the Commission provided that such person agrees to adhere to the Commission's rules of practice and procedure, as well as any orders of the Commission. Although most utilities are represented by attorneys in Commission proceedings, it is not necessary to be an attorney in order to participate in Commission proceedings either on one's own behalf or on behalf of another party. [Puc 203.16\(a\)](#). Any person appearing before the Commission must adhere to the Commission's rules of practice and procedure and any orders of the commission or agreements between the parties in the docket, including orders or agreements addressing confidentiality. [Puc 203.16 \(b\)](#).

The Commission also allows attorneys in good standing from other states or the District of Columbia to participate in proceedings on behalf of their clients. [Puc 203.16\(a\)\(2\)](#).

## Intervention

Most persons or entities participating in Commission proceedings do so as formal intervenors. Unless limited by the Commission, an intervenor becomes a full party to the case in question, with the right to submit testimony, participate in discovery, cross-examine witnesses at hearings and make arguments to the Commission. To gain intervenor status, one must file a Petition to Intervene that demonstrates that the party's rights, duties, privileges, immunities or other substantial interests may be affected by the case. [RSA 541-A: 32](#), [Puc 203.17](#).

It is the Commission's practice to maximize public participation in Commission proceedings. Therefore, the Commission generally welcomes statements at prehearing conferences and hearings from interested parties, whether or not they have intervened formally. [Puc 203.18](#). However, the Commission does not permit non-intervenors to present sworn testimony at hearings or to cross-examine witnesses.

Often there will be persons who are interested in the Commission's action with respect to a particular docket. Upon request to the Executive Director, such persons will be placed on an ancillary [service list](#) designated to receive the Commission's orders and other written communications in that docket. Persons on this list do not receive copies of pleadings filed with the Commission by parties to the docket. To be placed on such a service list, contact the Executive Director in writing with your request, including the docket number.

## Orders of Notice

Most cases before the Commission that involve discovery and hearings begin with a utility or other person or entity filing a petition with the Commission requesting that the Commission take an action or make a ruling. The Commission may also open a case on its own motion when it believes an inquiry or investigation is necessary. [RSA 365:5](#). In either instance, the Commission will issue an Order of Notice to begin formal proceedings in the case. The Order of Notice is designed to inform the public about the case and the issues it raises. [Puc 203.12\(a\)](#). The Order of Notice typically will appear in at least one newspaper of general circulation within the geographical area affected by the case. [Puc 203.12\(b\)](#).

In the Order of Notice, the Commission explains whether the case will involve a formal hearing or will be conducted in a less formal manner, such as by receiving written comments from interested persons. If the case is to be decided after a formal hearing, the Order of Notice will specify a deadline for intervention petitions and establish a date for a pre-hearing conference to be held before the Commission.

## Prehearing Conferences

A pre-hearing conference is a formal proceeding conducted before the Commissioners or one of the Commission's hearings examiners at the outset of a case. Typically, the pre-hearing conference begins with a summary of the case and consideration of any intervention petitions that have been filed. The Commission then gives each party, including intervenors, an opportunity to state its preliminary position on the issues raised by the case. [Puc 203.15](#). The Commission also hears the parties' positions with respect to the schedule for the remainder of the case. After the pre-hearing conference and a technical session (see "Technical Sessions," below), the Commission will issue an Order or a letter specifying the procedural schedule that will apply for the remainder of the case.

## Technical Session

The Commission typically schedules an initial technical session immediately following the pre-hearing conference, at which the parties and Commission Staff are expected to formulate a proposed procedural schedule and deal with other matters as requested by the Commission in the order of notice or at the pre-hearing conference. The discovery process may also commence during the initial technical session. The procedural schedule in many dockets will include additional technical sessions, in an effort to give the parties and Staff a full and fair opportunity to exchange information in preparation for the hearing. [Puc 203.09\(j\)](#). Technical sessions are generally open to the public. However, it may become necessary to close some or all of a technical session to the public, permitting only parties and the Commission Staff to participate, when there is a need to discuss confidential information or the possibility of settlement. (See "Settlements and Settlement Conferences," below.)

## General Filing Requirements

A number of basic requirements apply to communications filed with the Commission. All of them must (1) be dated, (2) identify the name and address of the person filing the document and the party on whose behalf it is submitted, if any, and (3) identify the docket number, order number, or other pertinent subject matter. [Puc 202.06](#). Commission filings should be addressed to:

Ms. Debra A. Howland  
Executive Director  
New Hampshire Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, New Hampshire 03301-2429

Such filings should not be directed to the Commissioners themselves or to Commission Staff members.

For filings to be effective in an adjudicative proceeding, a party must (1) file 7 paper copies of the documents and an electronic copy with the Commission, and (2) serve an electronic copy, in a file [format compatible with the Commission's computer system](#), on each person listed on the Commission's [service list](#) for the docket (or a written copy on each person identified on the service list as unable to receive e-mail) and the [Office of the Consumer Advocate](#). A party may also submit an additional copy and request that it be date stamped and returned in order to verify the filing. The service requirements are described in more detail below. [Puc 203.02](#) and [203.03](#).

Additional filing requirements apply to petitions, pleadings, motions and briefs. For example, they must be typed or printed on 8-1/2 by 11 inch paper, have margins of at least an inch on all sides, be numbered sequentially, including attachments, be double-spaced and submitted in unbound form, contain on the initial page the heading, "Before the New Hampshire Public Utilities Commission", and the title and the docket number of the proceeding, to the extent known. Such filings must also identify the name of the petitioner, applicant or other party who is the subject of the proceeding and the nature of the document. [Puc 203.04](#); see also [Puc 203.05](#) through [203.08](#) regarding requirements regarding pleadings, petitions and motions.

## **Deadlines and Computation of Time**

Frequently, deadlines and/or specific time periods will apply to the filing of petitions, the submission of written testimony, the conduct of discovery, the filing of pleadings or the taking of other actions in connection with Commission proceedings. Parties and members of the public are expected to observe all deadlines as in many instances it will not be possible for the Commission to excuse a missed deadline.

When the Commission's rules specifies a period of time for submitting a pleading or taking some other action, the day that commences the time period is not counted in the computation. [Puc 202.03\(a\)](#). The last day of the period is included in the computation, unless that date occurs on a day when the Commission offices are closed. In such an instance, the time period runs until the end of the next business day. [Puc 202.03\(b\)](#).

When a period of time for submitting a pleading or taking some other action is less than 6 days, intervening Saturdays, Sundays and/or legal holidays are excluded from the calculation of the time period. [Puc 202.03\(c\)](#). Otherwise, Saturdays, Sundays and legal holidays are included in the calculation of an applicable time period.

Documents filed with the Commission are deemed to be filed on the day the Commission receives a complete executed paper filing with the required number of copies. There is a limited exception to this rule for certain electronic filings by utilities. [Puc 202.05](#). On business days, the Commission's offices are open from 8:00 a.m. to 4:30 p.m. To comply with a filing deadline, the document must reach the Commission's offices by 4:30 p.m. on the date specified as the deadline.

## **Petitions**

A petition is a type of formal request for Commission action on a matter that is not already the subject of an open case before the Commission. Other types of requests initiating a proceeding are listed in [Puc 202.01 \(b\)-\(m\)](#).

All petitions ( and motions) filed with the Commission must contain a cover page identifying the name of the utility and the subject matter, a clear and concise statement of the authorization or relief sought, the statutory authority or legal precedent for the authorization or other relief, and a concise

and explicit statement of the supporting facts and other relevant data. Petitions must also contain the name of the petitioner(s), their address or principal place of business and e-mail address. [Puc 203.05](#). Except for petitions seeking a rate adjustment, petitions are not required to be accompanied by pre-filed written testimony. When submitted, written testimony must set forth the facts relied on, other relevant facts, and policy arguments in support of the result sought. [Puc 203.06](#).

## **Motions and Objections**

A motion is a type of formal request to the Commission that it provide some ruling or relief in a proceeding already pending before the Commission. Except for a motion for rehearing pursuant to [RSA 541:3](#), which may be filed by any person directly affected by a Commission action, only the parties to the case – i.e., the petitioner(s) and any intervenors—may make a motion. Motions must be in writing in the form of a pleading containing the word “motion” and complying with the requirements for petitions described above. (Oral motions may be made at a pre-hearing conference or hearing.) Motions must clearly and concisely state the facts and law supporting the motion and the specific ruling or relief requested. [Puc 203.07 \(a\)-\(d\)](#). Motions are also subject to the filing and service requirements described elsewhere in this guide.

Objections to a motion must be in writing and filed within 10 days of the filing of the motion (5 days in the case of a motion for rehearing). [Puc 203.07 \(e\) and \(f\)](#).

## **Service of Filings**

The Commission’s Executive Director maintains a service list for each docketed case. This list will include Commission staff assigned to the docket as well as the parties to the case, their mailing addresses and their email addresses. If you file a formal document with the Executive Director for the Commission’s consideration (see “Filing Requirements,” above), you must send a copy of the document to each person on the service list at the same time you file the document with the Commission.

Except for motions for rehearing (which are governed by [RSA 541:3](#)), service of documents on the parties must be made electronically, to the email address listed on the service list or by personal delivery, by first class mail or by other expedited delivery service,. [Puc 203.11\(a\)](#). The party serving documents must include in its filing with the Commission a statement that the document was served on all parties identified on the Commission’s service list.

## **Discovery**

“Discovery” is the process by which parties to Commission proceedings obtain information from each other to assist them in preparing for hearing. In Commission proceedings, discovery usually assumes two forms. “Data requests” are written questions or requests for documents made by one party to another. [Puc 203.09 \(b\)](#). “Technical sessions”, another means of discovery, are informal meetings of the parties for the purpose of exchanging information about matters related to the case in question. [Puc 203.09\(j\)](#). The schedule that the Commission approves at the beginning of a case will usually include dates for technical sessions, deadline for the submission of data requests and deadlines for responding to data requests. When responding to a data request, a party must submit the response or responses to all parties to the case. Responses to data requests are not considered formal pleadings and should not be filed with the Executive Director.

In some instances, a party may object to answering a data request. If so, that party must object in writing to the party submitting the data request. Such an objection must be made within 10 days of receiving the request and state the reason for the objection. The objection must be sent to the party that made the request, not the Commission. [Puc 203.09 \(g\)](#)

## **Confidentiality**

Parties to Commission proceedings often find it necessary to submit or disclose confidential information, either in connection with a hearing or in the process of discovery. All documents in the possession of the Commission or its Staff are governed by [RSA 91-A](#), the Right-to-Know Law. Generally, the Right-to-Know law provides that such documents are public – meaning that they may be inspected and/or copied by any member of the public who so requests. However, the Right-to-Know law contains a provision – [RSA 91-A:5](#), that allows the Commission to treat certain documents as confidential – i.e., NOT available for public inspection and/or copying and [RSA 378:43](#) provides for certain information which is not subject to the Right-to-Know law.

Any person submitting a document to the Commission that the person believes should be treated with confidentiality must submit a Motion for Confidentiality. Rule [Puc 203.08](#) contains a detailed set of requirements for the contents of a Motion for Confidentiality, designed to permit the Commission to weigh the potential harms and benefits of confidential treatment as required by the Right-to-Know Law. The document will be treated as confidential until such time as the Commission rules on the Motion.

## **Settlements and Settlement Conferences**

It is the Commission's policy to encourage parties to settle any and all contested issues arising in proceedings before the Commission. As a result, the schedule in most cases will include at least one Settlement Conference. A Settlement Conference is an informal, non-public meeting of the parties to a particular case along with representatives of the Commission Staff. Settlement Conferences are not open to the public; only the parties and Commission Staff may attend.

Any settlement, if reached, may include some or all issues in a case, and involve some or all of the parties to the case. Settlements should be filed at least 5 days before the scheduled hearing. [Puc 203.20](#).

## **Hearings**

A hearing, when scheduled, is an opportunity for each party to a case to submit evidence and argument in support of that party's desired outcome. A hearing is similar to a trial before a judge, except that the Rules of Evidence generally do not apply in Commission proceedings.

A court reporter is present at all hearings and a verbatim transcript of the proceedings is prepared. A party desiring a copy of the transcript may purchase one from the court reporter pursuant to the court reporter's contractual agreement with the Commission.

It is the Commission's practice to focus at hearing on the cross-examination of witnesses based on the pre-filed testimony. The Commission generally finds it helpful if each witness provides a brief oral summary of his or her pre-filed testimony. Each witness is also given an opportunity to make any corrections or updates to his or her pre-filed submission.

Unless the Commission orders otherwise, the petitioner is the first party to present its witnesses at hearing, followed by the other parties and the Commission Staff. The petitioner also receives a final opportunity to present any rebuttal testimony.

The Commission has the authority to limit the number of witnesses or the time allotted to any witness or party at hearing. A party requesting the postponement of a hearing must do so by filing a written request with the Executive Director at least 7 days in advance of the scheduled hearing. See [Puc 203.13](#).

## **Exhibits**

When a party seeks to introduce an exhibit into the record at hearing, the party must provide every other party present, and the Commission Staff, with a copy of the exhibit. See [Puc 203.22](#). The party must also provide a copy of the exhibit to the hearing clerk, the court reporter and each member of the Commission. All testimony and exhibits pre-filed with the Commission must be sequentially paginated in advance to facilitate review by all parties. The pre-filed testimony of each witness is generally treated as an exhibit. Each exhibit, including pre-filed testimony, should be clearly and consecutively paginated from the beginning of the exhibit through the end of any attachments to the exhibit. Whenever possible, to minimize delays at hearing each party should pre-mark the exhibits the party intends to introduce at hearings.

An exhibit, when offered at hearing for inclusion in the record, is marked by the hearing clerk for identification purposes only. At the conclusion of each hearing, the Commission typically entertains a request to “lift the identifications.” This is shorthand for admitting the exhibits as evidence that may be considered by the Commission, as opposed to designating the exhibits purely for purposes of identifying them. Because the Rules of Evidence do not apply in hearings before the Commission, pursuant to [RSA 541-A:33](#), II, only in rare cases does the Commission not admit all exhibits as evidence. The Commission will not consider any exhibit that has not been admitted as evidence.

In appropriate cases, the Commission will authorize the parties to submit written briefs, summarizing their positions, following a hearing. Parties are free to request the opportunity to submit briefs when they believe such filings would be helpful to the Commission.

## **Official Notice**

The Commission will sometimes take official notice (also called “administrative notice”) of facts that are not contained in the testimony of any witness or the exhibits introduced by any party. See, [Puc 203.27](#) and [RSA 541-A:33](#). This usually occurs when the facts in question were fully developed in another case or when the Commission believes such facts to be generally known and accepted. When the Commission takes such action, the Commission must give all parties adequate notice that it is doing so. It must then provide each party an opportunity to challenge and rebut the matters to be officially noticed.

## **Orders, Rehearing and Appeal**

Following the hearing, and after any briefing, the Commission will make its decision. Following deliberations, the Commission will issue a formal, written order setting forth the positions of the parties, any factual findings, the Commission’s legal analysis and its ultimate decision in the case. See [RSA 541-A:35](#).

Pursuant to [RSA 541:3](#), within 30 days of the Commission’s decision, any person directly affected by the decision may file a Motion for Rehearing (see “Motions,” above). The 30-day period runs from the date of the written order, not the Commission’s oral deliberations. The Commission will grant rehearing and issue a new order when the party seeking rehearing has shown good cause for rehearing. In some cases, the Commission may schedule an oral argument or permit the submission of additional evidence prior to ruling on a rehearing motion.

Once the Commission has ruled on the rehearing motion, if the movant remains dissatisfied with the Commission’s decision the movant may petition the New Hampshire Supreme Court to hear an appeal of the Commission’s decision. Note that a Rehearing Motion is an absolute pre-requisite to such an appeal, pursuant to [RSA 541:3-6](#). Such a petition must be submitted within 30 days of the Commission’s written order on the Rehearing Motion. Petitions for appeal of the Commission’s

decisions are governed by the rules and procedures of the New Hampshire Supreme Court and, accordingly, are not covered here. Questions about the appeal process should be directed to the Court.

### **Communicating with Commissioners and Commission Staff**

The three members of the Public Utilities Commission must conduct themselves as a judge would in connection with all open cases. Thus, in connection with any case pending before the Commission, there is only one circumstance in which the individual Commissioners may communicate with a party to that case or any of such party's representatives: when all other parties have been notified in advance and have been given an opportunity to be present. In other words, the Commissioners will only communicate with parties during duly noticed hearings, pre-hearing conferences or other formal proceedings of which all parties have been notified. Any other communication between any Commissioner and a representative of a party is known as *ex parte* communication and is strictly prohibited. Parties and their representatives should never attempt to contact the Commissioners directly, whether by telephone, electronically or in writing.

Unless otherwise ordered by the Commission, these restrictions on *ex parte* communications do not apply to other Commission employees. Parties or their representatives should feel free to contact Commission Staff members directly, particularly if they have questions related to Commission practice and procedure. Attorneys appearing before the Commission should be aware that the Commission and its Staff are represented by counsel for purposes of [Rule 4.2](#) ("Communications with Person Represented by Counsel") of the New Hampshire Rules of Professional Conduct.

In certain cases, the Commission may designate individual members of its staff as "decisional employees" or a "Staff advocates" with respect to that case pursuant to [RSA 363:32](#). The Commission will notify all parties when such a designation has been made. A decisional employee is subject to the same *ex parte* restrictions on contact with parties as are the Commissioners. Conversely, a staff advocate must not have *ex parte* contact with the Commissioners as to the case in question. Parties may file a motion requesting such designations in appropriate circumstances and should consult [RSA 363:32](#) for the applicable standards.

### **Office of Consumer Advocate**

The Office of Consumer Advocate is an independent agency authorized by [RSA 363:28](#) to represent the interests of residential utility customers in proceedings before the Commission and other decision making bodies. The Office of Consumer Advocate is attached to the Commission for administrative purposes, but operates independently of the Commission. The Commission treats the Office of the Consumer Advocate as a full party to any Commission proceeding when notified by the Office of the Consumer Advocate that it intends to participate. Questions about the [Office of Consumer Advocate](#) or its position in any case should be directed to that office. The Consumer Advocate is Meredith A. Hatfield. Ms. Hatfield and her staff can be reached at (603) 271-1172 or at 21 South Fruit Street, Suite 18, Concord, New Hampshire 03301-2429.