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STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

October 21, 2009 - 2:04 p.m.  
Concord, New Hampshire

NHPUC NOV04'09 PM 3:45

RE: DRM 08-127  
RULEMAKING:  
Puc Chapter 2600 - Greenhouse Gas  
Emissions Reduction Fund - Interim Rule.

PRESENT: Commissioner Clifton C. Below, Presiding  
Commissioner Amy L. Ignatius

Sandy Deno, Clerk

APPEARANCES: (No appearances taken)

Court Reporter: Steven E. Patnaude, LCR No. 52

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# I N D E X

PAGE NO.

PUBLIC STATEMENTS BY:

Mr. Gelineau

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## P R O C E E D I N G

CMSR. BELOW: I will open the hearing in  
DRM 08-127, concerning a rulemaking for NH Administrative  
Rule Puc 2600 Greenhouse Gas Emissions Reduction Fund.  
Good afternoon. This hearing is being held pursuant to an  
order of notice that was issued on September 8th. On  
September 4th of this year, the Commission voted, pursuant  
to RSA 541-A, to initiate a rulemaking for this Puc 2600  
rule. These rules set forth the procedures and standards  
to be used by the Commission in the administration of the  
Greenhouse Gas Emissions Reduction Fund, the non-lapsing  
special fund established pursuant to RSA 125-O:8, II and  
125-O:23. The proposed rule will replace current Puc  
2600, which has been adopted as interim rules effective  
January 1, 2009 and are due to expire on December 31st,  
2009.

A rulemaking notice form required by RSA  
541-A:6 was filed with the Office of Legislative Services  
on September 16th of this year. It sets forth this public  
hearing date and a deadline for submission of written  
comments, which is in writing or via e-mail to the PUC by  
the end of business on October 27th, which I think is  
sometime next week, not quite the end of next week, but  
it's next week. And, I presume the public notice

1 advertisement was placed?

2 MS. DENO: Yes.

3 CMSR. BELOW: Okay. We do have a record  
4 of that, so this has properly been noticed in that manner,  
5 and on the Commission's calendar and notice. Chairman  
6 Getz is out of the office today, so that's why I'm doing  
7 this.

8 If you would like, we have a fairly  
9 small turnout, but we were prepared today to walk through  
10 why we're proposing the various changes. Let me ask if  
11 the public here would like to have that done?

12 MS. AMIDON: Yes, I think that would be  
13 great to have that information for the record at the  
14 hearing.

15 CMSR. BELOW: Okay. In the initial  
16 proposal, there's an annotated text that shows changes,  
17 which are the changes relative to the current interim  
18 rule. And, the first change is in Puc 2602.05 on  
19 "cost-effective". And, it just changes the word  
20 "measured" to "calculated", talking about "reasonably  
21 projected costs of implementing the measure or program  
22 calculated over its expected life", just because that's a  
23 more accurate term. It's a forward-looking estimate,  
24 rather than something that is measured retroactively.

1           The next proposed change is at Puc  
2       2602.10, which is the definition of "Greenhouse Gas  
3       Emissions Reduction Fund", and it's just to more closely  
4       align it with the statutory description in RSA 125-O:23.

5           The definition of "low-income  
6       residential customers" is changed to make it clear that  
7       its "residents of New Hampshire who are eligible for  
8       either federal, state or utility low-income energy  
9       assistance, energy efficiency or weatherization programs."  
10      I think it's just -- I think we think that's a more  
11      precise, clear definition, and it's actually a bit  
12      broader, because, in essence, it might be that the  
13      weatherization program criteria might be different or  
14      higher than the utility program, in a sense, whatever  
15      eligibility program is the most inclusive would be what is  
16      covered here.

17           In Puc 2602.13, the definition of  
18      "passive solar heating and ventilization systems" is just  
19      really a simplification and clean-up of the definition. I  
20      think it's just simply more neat.

21           The definition of "private entity" is  
22      clarified to make it clear that it includes non-municipal  
23      utilities. The reason municipal utilities are not  
24      referenced in this is because they're governmental-type

1 entities, and later in the rule it's clear that they're  
2 also eligible. But "non-municipal utilities" were I think  
3 included in the definition before, but this just makes it  
4 more express.

5 In Part Puc 2603, there's several  
6 changes. The first one being at 2603.01, concerning  
7 "Energy Efficiency for Low Income Residents, just a  
8 shortening of the title. And, the rest of the definition  
9 -- not definition there, but the proposed rule is -- more  
10 closely conforms with the statutory requirement that's  
11 referenced in that section.

12 I might mention, just for the record,  
13 that at an EESE Board meeting I believe that Alan Linder,  
14 from New Hampshire Legal Assistance, did make a suggestion  
15 that the phrase "no less" be changed to "at least", which  
16 would also make it conform more closely with the statute.  
17 I think they have the same meaning, but that is so noted.

18 In Part Puc 2604, the term "initiatives"  
19 is changed to "programs", which more closely reflects the  
20 statutory language, it refers to "funding programs". Just  
21 for background, "initiatives" is the term that's used in  
22 the Renewable Energy Fund and talks about "funding  
23 initiatives", whereas the statute talks about "funding  
24 programs". The rule was originally modeled after the

1 rules concerning the Renewable Energy Fund.

2 Further down, in Puc 2604.01(b)(2),  
3 there's an express reference to "Puc Part 203", which is  
4 our rules concerning how to conduct adjudicative  
5 proceedings. So, it just ties off the fact that, if we  
6 have an adjudicative proceeding to allocate funds from the  
7 Greenhouse Gas Emissions Reduction Fund, we will do it  
8 pursuant to our standard rules. Likewise, in Subsection  
9 (3), there's also that link to those other rules.

10 Further down, under (b) -- (c)(2),  
11 there's just a dropping of the word "housing", because  
12 it's redundant. It talks about "weatherization of...  
13 residential and commercial building stock." On the next  
14 page, at 24 -- I'm sorry, Puc 2604.01(d) proposed rule,  
15 there's just a clarification that, if we have to do a  
16 rebate of funds, it's to electric ratepayers, which is the  
17 source of the funds indirectly, rather than some other  
18 broader group of ratepayers.

19 In 2604.02, "Solicitation of Proposals",  
20 there's several places where "initiatives" has been  
21 changed to "programs" or "proposals" to make it clearer  
22 and conform more with the statute.

23 In Subsection (b) of that part, there's  
24 an addition of the words "and reduce greenhouse gas

1 emissions". That is, "a proposal shall be designed to  
2 improve energy efficiency, conservation or demand  
3 response, and reduce greenhouse gas emissions", which is  
4 again reflecting the statutory requirement.

5 Further down, under (c)(4), it makes  
6 expressly clear that "State and local government agencies  
7 and instrumentalities, including municipal utilities",  
8 because they're not part of the definition of "private  
9 entities" now, since they're really subdivisions of  
10 government.

11 On the next page, at 2604.02(e) is a  
12 relatively major proposed change. And, rather -- let me  
13 talk in general terms about this. We, "we" meaning the  
14 review committee that consisted of the three Commissioners  
15 at the time and Jack Ruderman, the Director of the  
16 Sustainability Division, Eric Steltzer, from the Office of  
17 Energy & Planning, and Dick Ober, who chairs the EESE  
18 Board, with the 80 plus proposals that we had in front of  
19 us, we often found that there was a need to solicit  
20 additional information to help us review the proposal and  
21 understand what -- to clarify the terms of the proposal,  
22 and help us with evaluating the proposal. We had a  
23 reference to that before, as you can see in this section,  
24 but we wanted to conform more with the rulemaking manual



1 as to a standard when we ask for such information, and  
2 also to make it clear that we might ask for revisions or  
3 recommend collaboration or coordination and allow  
4 submission of revised proposals, if such coordination,  
5 collaboration or revisions would improve the efficient  
6 management of the program, the cost-effectiveness of the  
7 program or the ability of the applicant or applicants to  
8 accomplish the purposes of the underlying statute. And,  
9 the reason for all that is because we often found that  
10 there were proposals that we thought -- or, not "often",  
11 in a number of cases we had a difficulty just sort of  
12 looking at the proposal as it was submitted, and felt that  
13 it would be beneficial or might be beneficial under some  
14 circumstances, such as, you know, or specifically those  
15 outlined here, to be able to suggest that parties  
16 collaborate or perhaps revise their proposals in a way  
17 that would produce a better result and better utilization  
18 of the funds in achieving the purpose of the statute.  
19 And, we wanted to make that express in the rules, so  
20 that's why we're proposing it here. There was, to some  
21 extent, that we, with a few parties, we did ask for some  
22 revisions, but we thought it was important to make it more  
23 express and clear in the permanent or the regular rules  
24 that we're proposing here.

1                   In the next section, Puc 2604.03,  
2       "Selection of Proposals", there's just some clean-up of  
3       the language to make it just more direct and simple.  
4       Likewise, in Subsection (c) of that section, there's just  
5       some clean-up of the language to make it clearer.

6                   In (d), there's a more substantive  
7       change. We dropped some language about us providing the  
8       State Treasurer with the names and a schedule of amounts  
9       to be paid. That doesn't need to be in rules, that's an  
10      internal administrative matter, once a project has been  
11      selected and it's been through the approval process. It's  
12      just something that doesn't need to be part of the rules.  
13      But we have changed this section to expressly reference a  
14      new section in RSA 125-O:23, which is VIII, which was  
15      enacted earlier this year, which expressly provided that  
16      we can "enter into funding agreements for implementation  
17      of programs that are contingent, in whole or in part, on  
18      future proceeds from budget allowance auctions held within  
19      12 months of the date such agreements become effective."  
20      And, that rather precisely, I believe, mirrors the  
21      statutory language and authority that was given to us and  
22      we wanted to reflect that in the rules.

23                   Finally, in Puc 2605.02, on  
24      "Unencumbered Funds", this section of the proposed rule is

1     pursuant to a statutory requirement, and that we rebate  
2     funds periodically if we determine that they're not going  
3     to be needed. And, the original interim rule provided  
4     that, if they're not needed for program purposes, we added  
5     the words "or administrative purposes", which, obviously,  
6     is just simply logical. The "administrative purposes" are  
7     amounts that are budgeted actually through the regular  
8     legislative appropriations process. So, they're budget  
9     amounts for administrative purposes. And, obviously, we  
10    would need to reserve those amounts until the end of the  
11    fiscal year, if in the event that we were in a situation  
12    where we determined that we should be rebating surplus  
13    unencumbered, unneeded funds.

14                 So, that's the extent of the revisions  
15    that we have proposed in the initial proposal. We will  
16    take public comment today, as well as the comments that  
17    may be received in writing, as well as just general  
18    observations that have been done, arisen at the EESE  
19    Board, the Energy Efficiency & Sustainable Energy Board,  
20    where Chairman Getz and Director Ruderman discuss the RFP  
21    process in general, and pursuant to the EESE Board's role  
22    in providing advice to the PUC on the use of this fund,  
23    general observations were made at that last EESE Board  
24    meeting. In fact, at the previous EESE Board meeting,

1 such as what I've noted from the suggestion from Alan  
2 Linder.

3 I should also mention that there were  
4 comments on the initial interim rule proposals that were  
5 made in this same docket late last year by several  
6 parties, including the Retail Merchants, and as well as  
7 the public -- well, there was no public hearing on the  
8 interim rule, but there was at least that one set of  
9 comments earlier in this docket that we will also take  
10 into consideration when we make a final proposal.

11 So, at this point, I'm happy to receive  
12 comments or questions that might arise. And, I believe  
13 Gil Gelineau, from PSNH, would like to make some comments.  
14 Thank you.

15 MR. GELINEAU: It really wasn't my  
16 purpose to have any comments necessarily, but, when I got  
17 here, I was told that it was an opportunity. So, I don't  
18 know if this fits into the rules or not, but I have a  
19 couple of concerns. And, they really have to do with  
20 conflicts of the RGGI Program as it might refer to other  
21 public funds, and specifically I'd reference the CORE  
22 Program funds.

23 And, the first concern I have is whether  
24 or not, and maybe I should preface this as not necessarily

1       -- things that I would like the Commission to be aware of.  
2       And, that is that we have the potential for a project to  
3       be funded from both a CORE source of funding, as well as  
4       RGGI. And, I think that, in the case where the utilities  
5       are doing this, we're only using one of those sources, so  
6       that you don't really have both sources coming to a  
7       particular customer, for example, to fund a particular  
8       project. But, in the case where a grant is issued to --  
9       in other cases, it is possible for an individual project  
10      to receive funds from both the CORE Programs and from  
11      RGGI. And, I guess the point that I want people to be  
12      clear about is that it strikes me that there's a potential  
13      here for more public funds to be put into a project than  
14      are necessary in order for a pending project to go  
15      forward. If the incentives are designed properly on  
16      either side, either RGGI or CORE, it strikes me that there  
17      should be sufficient public funds, when placed with the  
18      customer's funds, to make the project go forward, and  
19      anything else would be a potential where we would not be  
20      making the best use of those public funds.

21                   I think there's also a point that I want  
22      to make is that there's a potential where somebody could  
23      actually have more than 100 percent of the project paid  
24      for by public funds. It's not inconceivable whereby the

1 RGGI dollars, plus the CORE dollars, could add up to more  
2 than what it costs to do the project. From the  
3 perspective of someone who is implementing the CORE  
4 Programs, as well as administering some of the RGGI  
5 dollars, I have a concern that I don't really have any  
6 avenue or recourse if a customer says that "I am entitled  
7 to both of these sets of funds", and I really don't have  
8 any way of saying "well, I really don't" -- you know, I  
9 may have a feeling about it, but I don't really have any  
10 way to say "no, you can't have it."

11 And, so, I just want to make that point  
12 and make sure that the Commission is aware of that. And,  
13 whether or not that needs to be worked into the rules or  
14 into some other forum, is better handled in another forum,  
15 I'll leave that to your decision.

16 The other related point has to do with  
17 how we account for these public dollars. And,  
18 specifically, in the CORE Programs and in the RGGI  
19 Programs, it's a requirement that we will report back the  
20 savings achieved from these various projects. And, I  
21 think that there's a potential for double counting when  
22 you have both of these sources coming to a particular  
23 project. And, it's not clear to implementers in the field  
24 right now as to exactly who should take credit or how the

1 credit should be distributed when we have multiple sources  
2 of funds.

3 And, so, those two, you know, do we have  
4 too many public dollars on the table in some cases or do  
5 we have the potential for that? Do we have the potential  
6 for somebody to actually completely fund the program with  
7 public dollars and have money left in their pocket?" And,  
8 you know, "how do we best report or track these projects?"  
9 are the two concerns that I wanted to make you aware of.  
10 So, I think, if there are questions, --

11 CMSR. BELOW: Is your thought that maybe  
12 some of your concerns should be reflected in the rules as  
13 to criteria for selection of proposals that we're not, in  
14 essence, over funding or providing funds where they're not  
15 needed to make a project happen? Because simply I observe  
16 that one of the criteria is leveraging fund of resources  
17 from other sources to maximize its impact, meaning the  
18 impact of a proposed program, and that seems to -- that  
19 could be read perhaps either way. If you're maximizing  
20 the impact, you're trying to stretch dollars. But, if  
21 you're giving weight to leveraging, you might say "well,  
22 it's good that they're tapping other funds". But your  
23 point is that maybe the other programs are designed such  
24 that they shouldn't need tapping of other funds?

1 MR. GELINEAU: I wouldn't approach it  
2 from that direction. And, I think that it would be a good  
3 idea that we leverage these funds, and I'll give you an  
4 example where that kind of leveraging is a good thing. To  
5 the extent that one set of funds, for example, the CORE  
6 funds might fund a lighting project in this building, and  
7 given that this building is heated with fossil fuel, and  
8 other RGGI funds could be used to fund that project,  
9 there's really no overlap and there's no issue there.

10 So, I think that trying to prejudge and  
11 not allowing somebody to come up with a creative idea  
12 under the RGGI Program I don't think is a good idea. I  
13 think it would be better to try and find a way to address  
14 the problem where we, if it's deemed not appropriate to  
15 double fund these projects, that we make sure that we  
16 don't double fund, so we don't provide RGGI dollars for  
17 the lighting project, as well as CORE dollars for the  
18 lighting project, such that we overfund that particular  
19 project. But, if we're funding the projects, you know, if  
20 it's a large project, and there are different pieces of it  
21 funded by each program, I don't see where that creates a  
22 conflict.

23 CMSR. BELOW: That helps. Thank you.

24 MR. GELINEAU: Thank you.



1 CMSR. BELOW: Any other comments or  
2 questions?

3 (No verbal response)

4 CMSR. BELOW: Seeing no other comments  
5 or questions, at this time I will close this public  
6 hearing, and again note that there's a time until October  
7 27th to provide written comments by e-mail, fax or mail or  
8 delivery to the PUC, at 2:00 p.m. is actually the  
9 deadline. Earlier I said that -- oh, no, that was the  
10 hearing today. So, that will be close of business on  
11 October 27th is the close of the public comment period.  
12 Thank you very much.

13 (Whereupon the hearing ended at 2:28  
14 p.m.)