

STATE OF NEW HAMPSHIRE



OFFICE OF LEGISLATIVE SERVICES

STATE HOUSE
107 NORTH MAIN STREET, ROOM 109
CONCORD, NEW HAMPSHIRE 03301-4951

March 27, 2020

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

Re: Denial of 2nd Waiver of 150-day Deadline for Filing Final Proposal 2019-162

Dear Commissioners:

In a letter dated March 24, 2020, Diane Martin, Chairwoman of the Public Utilities Commission (Commission), requested, on the Commission's behalf, a second waiver pursuant to RSA 541-A:40, IV of the 150-day deadline after notice publication for filing Final Proposal 2019-162. This Final Proposal contains a readoption with amendments of Puc 900 on net metering for customer-owned renewable energy generation resources of 1,000 kilowatts or less. Based on the publication of the rulemaking notice on September 26, 2019, the original 150-day deadline pursuant to RSA 541-A:12, I and RSA 541-A:16, IV to file this Final Proposal had been Monday, February 24, 2020, but that had been waived to March 24 at the Commission's request. Chairwoman Martin requests a second waiver with a new deadline of April 23, 2020. Unfortunately I will have to deny the request for the reasons stated.

As provided by RSA 541-A:40, IV, as the Director of the Office of Legislative Services (OLS) I have the authority to waive, for good cause shown, any deadline contained in RSA 541-A after consultation with the Chair and Vice-Chair of the Joint Legislative Committee on Administrative Rules (JLCAR). I understand from the request for the first waiver that the proposal is designed to implement SB 165 from the 2019 legislative session (Chapter 271 of the Laws of 2019), and the complexity of implementation of SB 165 required more stakeholder input and a Draft Final Proposal in a second public hearing. But the request of March 24 states that the Final Proposal was established on March 11, with an amended fiscal impact statement requested on March 12 and received on March 23. It is not clear what is meant by further delays in obtaining necessary documentary materials to be incorporated by reference, as only Incorporation by Reference Statements pursuant to RSA 541-A:12, III would have to be filed for 3rd party documents incorporated by reference in the rules. Agency forms incorporated by reference do not have to be filed with the Final Proposal to have a valid filing.

The request also states that the Commission "believes the delays experienced may be related to, and further impacted by, the current state of emergency based on the novel corona virus". There are no facts in support of this. In recent days the OLS has been receiving waiver requests from agencies with good cause outlined in specific facts related to the Governor's declaration of a state of emergency, such as the inability to meet with stakeholders in an open public meeting and the absence of rules staff otherwise assigned to manage the state's response to the pandemic.

I have consulted with the JLCAR Chair and Vice-Chair. The Vice-Chair Senator Reagan in particular did not believe a waiver was warranted because he felt that the Commission has enough staff to produce a set of rules with what had been adequate preparation time, and “there was no justification where they blame the COVID 19 outbreak.” In consideration of the Vice-Chair’s concerns, I cannot agree that good cause exists for waving the Final Proposal filing deadline a second time. This means that the rulemaking proceeding for Final Proposal 2019-162 terminated after March 24.

However, the Chair and Vice-Chair were also informed that existing rules Puc 901 and Puc 903 through Puc 908 in Puc 900 were running on an extension pursuant to RSA 541-A:14-a, I. These rules will expire 30 days after the deadline of March 24, in other words on April 23, 2020, pursuant to RSA 541-A:14-a, II, since a waiver has not been granted. The Chair and Vice-Chair did not raise an objection if the Commission decides to adopt, or readopt, and file the currently existing rules Puc 901 and Puc 903 through Puc 908 as an emergency rule to keep the rules in effect up to 180 days after April 23, provided the Commission finds, pursuant to RSA 541-A:18, I “either that an imminent peril to the public health and safety requires adoption of a rule with less notice than is required by RSA 541-A:6 [regular rulemaking] or that substantial fiscal harm to the state or its citizens could occur if rules are not adopted with less notice than is required under RSA 541-A:6.”

If you have any questions in this regard, please contact Scott Eaton in Administrative Rules at scott.eaton@leg.state.nh.us.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David J. Alukonis', with a stylized flourish at the end.

David J. Alukonis
Director

DJA/SFE

cc: Scott F. Eaton, Administrative Rules Director
David K. Wiesner, Esq., Staff Attorney, Public Utilities Commission