

THE STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

DRM 12-039

RULEMAKING

New Hampshire Code of Administrative Rules  
PART Puc 1900, Rate Case Expenses

**Initial Written Comments of the New Hampshire Office of the Consumer Advocate**

Between 2008 and 2011, the Commission approved more than \$3.4 million in rate case expenses.<sup>1</sup> In a few of these cases, the OCA opposed significant portions of the utilities' proposed recoveries and asked the Commission to open a rulemaking pursuant to RSA 365:8, X, to establish a process and criteria for determining the reasonableness of rate case expenses.<sup>2</sup>

The OCA's position on the Commission's regulation of rate case expenses can be summed up as the realization of the statutory requirement that utilities only recover rate case expenses that are just, reasonable and in the public interest. RSA 365:38-a. To the OCA, implementation of this standard requires a process and criteria that are just, reasonable and in the public interest. Therefore, the process and standards being defined now in this rulemaking should be objective, fair, formal and transparent.

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<sup>1</sup> DW 08-098, Aquarion Water; DW 08-086, Eastman Sewer; DG 08-009, EnergyNorth; DW 08-160, Forest Edge Water; DW 08-065, Hampstead Water Works; DW 08-070, Lakes Region Water; DW 08-073, Pennichuck Water Works; DW 08-052, Pittsfield Aqueduct Co.; DG 09-038, New Hampshire Gas; DG 10-017, EnergyNorth; DW 10-090, Pittsfield Aqueduct Co.; DW 10-091, Pennichuck Water Works; DE 10-055, Unitil Energy Services; DW 10-141, Lakes Region Water Company; DW 10-159, West Swanzey Water Co.; DG 11-069, Northern Utilities.

<sup>2</sup> DG 10-017, EnergyNorth (<http://www.puc.nh.gov/Regulatory/CASEFILE/2010/10-017/LETTERS.%20MEMOS/10-017%202011-08-26%20OCA%20RESPONSE%20TO%20NGRID%20NH%20RATE%20CASE%20EXPENSE%20REQUEST.PDF>); DW 10-090 Pittsfield Aqueduct Co. (<http://www.puc.nh.gov/Regulatory/CASEFILE/2010/10-090/LETTERS.%20MEMOS/10-090%202011-08-09%20OCA%20RESPONSE%20TO%20COMPANY'S%20RATE%20CASE%20EXPENSE%20REQUEST.PDF>); DW 10-091, Pennichuck Water Works (<http://www.puc.nh.gov/Regulatory/CASEFILE/2010/10-091/LETTERS.%20MEMOS/10-091%202011-08-12%20OCA%20RESPONSE%20TO%20COMPANY'S%20RATE%20CASE%20EXPENSE%20REQUEST.PDF>)

A number of the proposed rules in the Initial Proposal reflect those characteristics:

- Puc 1907.01 sets out “Expenses Not Allowed.” This rule codifies objective measures by which certain rate case expenses will be disallowed. Creating this rule of general applicability is efficient in that it avoids the need for repeated litigation over the recovery of certain historically-contested expenses (e.g., first-class airfare, alcohol). This rule is consistent with the OCA’s prior rate case expense advocacy.
- Fairness is reflected in the requirements of Puc 1905.04. The Commission and the OCA are required to use competitive bidding in order to retain experts for rate cases. Doing so is intended to ensure that customers pay no more than is necessary for the services received; that the resulting cost is a product of the competitive market. In the past, utilities have used sole-source contracting to hire consultants for rate cases. In addition to enabling the utility to hire more costly experts, this practice begged the question of whether the consultants costs were just and reasonable in that they had not been tested against the bids of other consultants. Thus, requiring the utility to use competitive bidding for expenses over a certain level provides ratepayers some assurance that the utility’s consultant’s rate is market-based and fair. This rule is consistent with the OCA’s prior rate case expense advocacy.
- Puc 1905.02, “Deadline for Filing Recovery Request,” makes it clear that rate case expense recovery requests shall be filed “with the commission.” The OCA interprets this rule as requiring a formal filing (i.e., pleading) with the Commission’s Executive

DRM 12-039 Puc 1900 – Rate Case Expenses  
OCA Initial Comments

Director, within the context of the rate case. As a formal filing, the Commission’s review is more transparent. For example, the utility is required to provide copies to the parties in the rate case and, as a matter of practice, the Commission will post the utility’s filing on its website. This rule is consistent with the OCA’s prior rate case expense advocacy.

There may be refinements that the OCA will seek as part of the rulemaking process. For example:

- Puc 1905.02 could be clarified to confirm the OCA’s understanding that its intention is to require rate case expense recovery filings to be made pursuant to the rules that apply to adjudicative filings at the Commission.<sup>3</sup> The addition of the words “pursuant to Parts Puc 202 and 203” could achieve that goal.
- There may be other types of expenses which could be included within the Puc 1907.01 list of non-recoverable expenses. In the past, for instance, the OCA has advocated for the exclusion of private limousine services, courier services, overnight mail, and entertainment costs.
- There may be other types of documentation that could be required by Puc 1905.03. In the past, for example, the OCA has advocated for the requirement that utilities retain and produce itemized receipts, particularly for meals expenses as this would better reveal the purchasing of non-recoverable expenses such as alcohol.

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<sup>3</sup> See, e.g., Puc 203.02 (Filing Requirements); Puc 203.03 (Electronic Copies); Puc 203.04 (Form); Puc 203.05 (Pleadings).

DRM 12-039 Puc 1900 – Rate Case Expenses  
OCA Initial Comments

- The OCA may suggest a decrease to the \$10,000 competitive bidding threshold found in Puc 1905.04. A lower threshold would be more consistent with the thresholds that apply to the OCA and the Commission Staff.

Other OCA suggestions may arise in response to comments filed by other stakeholders or during the stakeholder process in this rulemaking. Consistent with other rulemakings, the OCA will discuss its proposed refinements with the stakeholders in an effort to reach consensus on them.

The OCA appreciates the Commission's commencement of this rulemaking proceeding and the effort and thought that went into the drafting of the initial proposal. Overall, the OCA is pleased to see the efforts embodied within the initial proposal to formalize the review and determination of rate case expense recovery and to respond to past rate case expense advocacy and concerns. We look forward to working with the Commission Staff and other stakeholders to finalize a draft for Commission approval and promulgation. Thank you for this opportunity to provide initial comments.

Respectfully submitted,



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