

THE STATE OF NEW HAMPSHIRE

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September 19, 2013

Scott F. Eaton, Director
Administrative Rules Division
Office of Legislative Services
State House Annex, Room 219
25 Capitol Street
Concord, New Hampshire 03301

NHPUC 20SEP13PM2:44

Re: Notice No. 2013-65 – Final Proposal
Puc 1900 – Rate Case Expenses
Commission Docket No. DRM 12-039

Dear Attorney Eaton:

On April 11, 2013, the Commission voted pursuant to RSA 541-A to initiate a rulemaking to adopt the Puc 1900 Rate Case Expenses. A rulemaking notice was filed with the Office of Legislative Services on May 13, 2013 as required by RSA 541-A:6. A public hearing was held on June 17, 2013, pursuant to RSA 541-A:11. The Commission received editorial comments from the Office of Legislative Services and has edited the text of the rules accordingly. The Commission received substantive comments from Office of the Consumer Advocate, Unitil, and Liberty Utilities (attached) and has changed the text of the rules to accommodate their concerns.

Specifically, Liberty expressed concern regarding the definition of "service provider" and the Commission struck "authorized to do business in New Hampshire" because the definition is still clear without the clause. Next, Liberty and Unitil expressed concern in Puc 1905.01(a) and the requirement that utilities file updated estimates of their rate case expenses every sixty days. The Commission understands this concern and has changed the updates to every ninety days. The Commission is not inclined to eliminate this requirement since the utilities are already required to keep the Commission informed pursuant to RSA 374:4, Commission Staff can request updates through discovery in the pending rate proceeding, and the Commission is interested in investigating rate case expenses as part of the rate proceeding rather than leaving the investigation to the end, which is what generally occurs now. The Commission believes incorporating the rate case expense issue earlier in the rate case review will simplify its review. Utilities do not usually have many consultants on any given rate case and the task of updating those costs should not be onerous.

With respect to Puc 1905.04 and the requirement of competitive bidding when services are estimated to be \$10,000 or greater, the OCA recommended that the Commission

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lower the threshold to the threshold applicable to OCA. The OCA believes this threshold to be about \$2,500. The Commission considered that threshold but seeks to maintain a balance between overseeing utilities' expenses and allowing the utility to manage its contracts. Therefore, this provision is unchanged.

With respect to Puc 1907.01(a), Unital and Liberty objected to the language that expenses that "could have been performed by utility management and staff." The Commission disagrees that the exception is too broad and will keep the proposed language, unchanged. The Commission seeks to avoid, for example, situations where a utility has multiple rate cases in different states, uses its in-house accountants for one state rate case and then hires outside accountants who perform the otherwise in-house accounting functions for its New Hampshire rate case. Under that fact pattern, New Hampshire customers unfairly face rate case expenses that the customers in the other state do not. In the event expenses are in dispute, the utilities will have an opportunity to make their case; the Commission will use the criteria in Puc 1904.02 in evaluating whether the expense is allowed. The Commission disagrees that Puc 1907.01(a) is a blanket prohibition; it merely identifies categories of expenses that are not allowed. The specific facts will determine whether the expense falls within that category.

On September 19, 2013, the Commission voted to establish the attached Final Proposal for the adoption of Puc 1900.

The Commission asks that the JLCAR consider this proposal for approval.

As required by the Rulemaking Manual, enclosed please find one copy of the following:

- A completed Appendix II-G Cover Sheet for Final Proposal;
- The established text of the Final Proposed rule as the "Final Proposal—Fixed Text", including the cross-reference table required by RSA 541-A:3-a, II as an appendix; and
- The established text of the Final Proposed rule as the "Final Proposal—Annotated".

Thank you in advance for your assistance.

Sincerely,



Amy L. Ignatius
Chairman

Attachments
cc: Service List

COVER SHEET FOR FINAL PROPOSAL

Notice Number 2013-65Rule Number Puc 1900

1. Agency Name & Address:

**Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, New Hampshire 03301**

2. RSA Authority:

RSA 365:8, X

3. Federal Authority: _____

4. Type of Action:

- Adopt
 Amendment
 Repeal
 Readoption
 Readoption w/amendment

5. Short Title: **Puc 1900 Rate Case Expenses**

6. Contact person for copies and questions:

Name: **Marcia Brown**Title: **Staff Attorney**

Address: **New Hampshire Public Utilities
Commission
21 South Fruit Street Suite 10
Concord NH 03301**

Phone #: **603-271-2431**

7. Yes No Agency requests review by Committee legal staff in the Office of Legislative Services and delayed Committee review pursuant to RSA 541-A:12, I-a.

8. The rulemaking notice appeared in the Rulemaking Register on May 23, 2013

9. Yes N/A Agency notified policy committees, or House Speaker and Senate President, pursuant to RSA 541-A:10, I because this is the first time this rule or its amendments have been proposed to implement newly-enacted state authority.

**SEE THE INSTRUCTIONS--PLEASE SUBMIT ONE COPY OF THIS COVER SHEET
AND ONE COPY OF THE FOLLOWING:
(optional to number correspondingly)**

10. The "Final Proposal-Fixed Text," including the cross-reference table required by RSA 541-A:3-a, II as an appendix.

11.- Yes N/A Incorporation by Reference Statement(s) because this rule incorporates a document or Internet content by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.

12. Yes N/A The "Final Proposal-Annotated Text," indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(e).

13. Yes N/A The amended fiscal impact statement because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS) pursuant to RSA 541-A:5, VI.

INSTRUCTIONS FOR THE COVER SHEET FOR FINAL PROPOSAL

The first and second unnumbered items, and Items 1 through 5, shall be completed with the same information as appeared in the “Rulemaking Notice Form” (Appendix II-C) as published for the Initial Proposal in the Rulemaking Register. Item 6 shall identify the name, title, address, and telephone number of the person in the agency who can answer questions about the proposed rule and supply copies.

The agency shall then indicate, by checking the appropriate box on Item 7, whether it is requesting that it receive and respond to comments of the Committee legal staff prior to the Committee meeting that is at least 28 days, but not more than 60 days, after the proposal is filed. In effect, this would be a request for postponement of Committee action. See RSA 541-A:12, I-a and Section 2.14 of Chapter 3 in the Drafting and Procedure Manual for Administrative Rules (Manual).

In Item 8 the agency shall list the full date, by month, day, and year, on which the “Rulemaking Notice Form” was published in the Rulemaking Register.

In Item 9 the agency shall indicate, by checking either the “Yes” box or the “N/A” (not applicable) box, whether it had notified the House and Senate policy committees, or the House Speaker and Senate President, pursuant to RSA 541-A:10, I because the Initial Proposal was the first time the rule or its amendments had been proposed to implement newly-enacted state authority.

Items 10 through 13 all relate to required attachments to the “Final Proposal Cover Sheet”. PROVIDE ONE COPY OF EVERYTHING SUBMITTED. IT IS OPTIONAL TO NUMBER THEM ACCORDINGLY. Item 10 is required in every filing, and therefore is listed without a check-box. Items 11 through 13 will be required only under the circumstances set forth in the description of the items listed below. The agency shall determine whether such attachment is required and then check either the “Yes” box to indicate that the document is required and has been attached or the “N/A” box if the document is not required and therefore not applicable:

- Item 10. The “Final Proposal—Fixed Text,” required by RSA 541-A:12, II(b). See also Section 2.12 of Chapter 3 in the Manual. Include the cross-reference table required by RSA 541-A:3-a, II as was done for the Initial Proposal. See Section 2.4 of Chapter 3 in the Manual.
- Item 11. An “Incorporation by Reference Statement” (Appendix II-H) if the agency has incorporated a third-party document or Internet content by reference for which such a statement is required pursuant to RSA 541-A: 12, III. See Section 3.12 of Chapter 4 in the Manual.
- Item 12. The text of the final proposal annotated to reflect how the text of the Final Proposal differs from the text of the Initial Proposal, if the text has changed during the public hearing and comment process. See RSA 541-A:12, II(e) and Section 5.4 of Chapter 4 in the Manual.
- Item 13. The amended fiscal impact statement obtained from the Legislative Budget Assistant if, as a result of the public hearing and comment process, a change has been made to the rule which affects the original fiscal impact statement. See RSA 541-A:5, VI and Section 2.11 of Chapter 3 in the Manual.

Adopt Puc 1900 to read as follows:

CHAPTER Puc 1900 RATE CASE EXPENSES

PART Puc 1901 PURPOSE

Puc 1901.01 Purpose.

(a) The purpose of this chapter, pursuant to RSA 365:8, X, and consistent with the intent of RSA 363:17-a, is to ensure equitable reimbursement of rate case expenses, to establish requirements for utilities to properly document and control rate case expenses, and to limit the impact of rate case expenses on ratepayers.

(b) This chapter establishes criteria for determining whether the rate case expenses that have been incurred by a utility are just and reasonable and are in the public interest.

PART Puc 1902 APPLICATION OF RULES

Puc 1902.01 Application of Rules

Chapter Puc 1900 shall apply to any “utility” as defined in Puc 1903.07.

PART Puc 1903 DEFINITIONS

Puc 1903.01 “Commission” means the New Hampshire public utilities commission.

Puc 1903.02 “Final order” means an order of the commission, issued pursuant to RSA 541-A:35, rendering its final determination on permanent rates.

Puc 1903.03 “Full rate case” means a proceeding in which a revenue requirement is established for a utility and rates are set to meet that revenue requirement pursuant to Puc 1604.

Puc 1903.04 “Non-recurring expenses” means those expenses not regularly recurring as part of a utility’s operating costs.

Puc 1903.05 “Rate case expenses” means those non-recurring expenses incurred by a utility in the preparation or presentation of a full rate case proceeding before the commission, necessary for the conduct of the rate case.

Puc 1903.06 “Service provider” means any natural person or legal entity who provides expert, consulting, administrative, or legal services to a utility and whose services are not already included in the utility’s revenue requirement.

Puc 1903.07 “Utility” means any public utility as defined in RSA 362:2 and RSA 362:4.

PART Puc 1904 APPROVAL BY COMMISSION

Puc 1904.01 Approval Required Prior to Recovery. No utility shall recover from its ratepayers any rate case expense unless such expense has first been found by the commission to be just and reasonable and in the public interest and otherwise conforms to the requirements of Chapter Puc 1900.

Puc 1904.02 Criteria for Determining Allowed Rate Case Expenses.

- (a) In ruling upon rate case expenses the commission shall determine whether:
 - (1) An expense is properly recoverable as an allowed rate case expense pursuant to Puc 1906;
 - (2) The expense is an actual, known, and measurable expense associated with a full rate case proceeding, defined in Puc 1903.03; and
 - (3) Recovery of the expense is just, reasonable, and in the public interest.
- (b) In making the above determinations, the commission shall consider:
 - (1) Whether the issues presented are novel or complex;
 - (2) The cost of the service provided to prepare and present the rate case;
 - (3) Where appropriate, any information concerning the customary fee for similar services, including the fees rendered in the relevant market to companies of similar size in matters of similar importance to the client;
 - (4) Whether the work was relevant and reasonably necessary to the rate case proceeding and the extent to which the services contributed to the efficient resolution of matters presented;
 - (5) Whether the utility used a competitive bidding process, when required, pursuant to Puc 1905.03 and Puc 1905.04, and in selecting a winning bidder considered information concerning the availability, experience, quality and cost of services provided;
 - (6) The experience and ability of the service provider;
 - (7) Whether the request for a rate change was just and reasonable; and
 - (8) Other factors as may be considered relevant to a particular rate case proceeding.

PART Puc 1905 PROCEDURES FOR FILING FOR RECOVERY OF EXPENSES

Puc 1905.01 Estimated Rate Case Expenses.

(a) Consistent with the utility’s duty to keep the commission informed pursuant to RSA 374:4, at the time a utility files the materials required for a full rate case pursuant to Puc 1604, and every 90 days thereafter during the pendency of the rate case, the utility shall also file with the commission items (1) through (3) below:

(1) A detailed description of rate case expenses actually incurred as of the date of the filing and projected total rate case expenses that include:

- a. The name of the service provider;
- b. The procurement process;
- c. The amount of the expense; and
- d. A description of the charge or service rendered;

(2) A list of all services to be rendered on behalf of the utility in the full rate case by any vendor; and

(3) The total estimated costs of each service.

(b) The filing of the information listed in (a) above shall not constitute or imply commission approval of the expenses.

Puc 1905.02 Deadline for Filing Recovery Request. A utility seeking recovery of rate case expenses shall file its request for recovery pursuant to Parts Puc 202 and 203 along with all supporting documentation, with the commission no later than 30 days after the commission’s final order pursuant to Puc 1903.02.

Puc 1905.03 Documentation of Expenses Required. For each expense filed with the commission for recovery as a rate case expense, the utility shall provide detailed evidence of all rate case expenses and any related allocations including:

- (a) All invoices paid or to be paid;
- (b) Name of each vendor;
- (c) The amount of the expense to be included as part of rate case expenses;
- (d) A description and date of the charge or service rendered;
- (e) A statement that the expense is consistent with the utility’s written procurement policy;
- (f) The utility’s procurement policy in place at the time the expenses were incurred;

- (g) The contract entered into that generated the expense; and
- (h) A statement of whether the contract was obtained after negotiations or competitive bid.

Puc 1905.04 Additional Requirements for Service Providers.

(a) All utilities serving 600 customers or more and hiring service providers for use in a full rate case shall acquire such services through a competitive bidding process if the expense for such service is estimated to be or is \$10,000 or greater.

(b) Except if not necessary under (a), for each service provider used, the utility shall also include a certification that:

- (1) The utility used a competitive bidding process, and in selecting the winning bidder, considered information concerning the availability, experience, customary fees for similar services, quality, and cost of the service provider; and
- (2) The time spent on the rate case by the service provider was undertaken in an efficient and cost effective manner.

(c) If a utility is required to use a competitive bidding process pursuant to Puc 1905.04(a) and engages a service provider who is not the lowest bidder in a competitive bidding process, the utility shall provide clear and convincing justification of its decision to do so.

PART Puc 1906 EXPENSES RECOVERABLE AS RATE CASE EXPENSES

Puc 1906.01 Allowed Expenses. The commission shall determine pursuant to Puc 1904 the recovery of actual, known, and measurable rate case expenses from a full rate case, defined in Puc 1903.03, provided the expenses are related to the rate case, just and reasonable and in the public interest, Such rate case expenses may include as follows:

- (a) Costs related to the preparation of items required as part of a full rate case, pursuant to PART Puc 1604;
- (b) Expert consultant fees;
- (c) Legal and accounting fees;
- (d) Expenses associated with changing billing systems to reflect temporary and permanent rate changes;
- (e) Travel expenses;

(f) Administrative costs such as postage costs, publication costs, photocopying expenses, and transcription costs; and

(g) Such other similar expenses that are related to the preparation or presentation of a full rate case, defined by Puc 1903.03, as determined by the commission after its review.

PART Puc 1907 EXPENSES NOT RECOVERABLE AS RATE CASE EXPENSES

Puc 1907.01 Expenses Not Allowed. Expenses not recoverable as rate case expenses shall include:

(a) Expenses for matters handled by service providers that are typically performed by utility management and staff of the utility, based on their experience, expertise, and availability;

(b) Expenses typically included in a utility's test-year revenue requirement or any expense for which recovery is prohibited by other commission rule.

(c) Expenses related to responding to commission audit inquiries;

(d) Expenses for first class airfare, gifts, or alcohol;

(e) Lobbying expenses;

(f) Interest charges on rate case expenses; and

(g) Such other similar expenses that are not related or material to the preparation or presentation of a full rate case, as determined by the commission after its review.

PART Puc 1908 SURCHARGES FOR THE RECOVERY OF RATE CASE EXPENSES

Puc 1908.01 Recovery through Rate Surcharge. Approved rate case expenses shall be included in rates through the imposition of a surcharge to rates.

APPENDIX

Rule	Specific State Statute the Rule Implements
Puc 1900	RSA 365:8, X

Adopt Puc 1900 to read as follows:

CHAPTER Puc 1900 RATE CASE EXPENSES

PART Puc 1901 PURPOSE

Puc 1901.01 Purpose.

(a) The purpose of this chapter ~~is~~, pursuant to RSA 365:8, X, and consistent with the intent of RSA 363:17-a, is to ensure equitable reimbursement of rate case expenses, to establish requirements for utilities to properly document and control rate case expenses, and to limit the impact of rate case expenses on ratepayers.

(b) This chapter establishes criteria for determining whether the rate case expenses that have been incurred by a utility are just and reasonable and are in the public interest.

PART Puc 1902 APPLICATION OF RULES

Puc 1902.01 Application of Rules

Chapter Puc 1900 shall apply to any “Utility” as defined in Puc 1903.07.

PART Puc 1903 DEFINITIONS

Puc 1903.01 “Commission” means the New Hampshire public utilities commission.

Puc 1903.02 “~~F~~inal ~~O~~order” means an order of the commission, issued pursuant to RSA 541-A:35, rendering its final determination on permanent rates.

Puc 1903.03 “~~F~~ull ~~R~~ate ~~C~~ase” means a proceeding in which a revenue requirement is established for a utility and rates are set to meet that revenue requirement pursuant to ~~PART~~ Puc 1604.

Puc 1903.04 “Non-recurring expenses” means those expenses not regularly recurring as part of a utility’s operating costs.

Puc 1903.05 “~~R~~ate ~~C~~ase ~~E~~xpenses” means those non-recurring expenses incurred by a utility in the preparation or presentation of a full rate case proceeding before the ~~C~~ommission, necessary for the conduct of the rate case.

Puc 1903.06 “~~S~~ervice ~~P~~rovider” means any natural person or legal entity ~~authorized to do business in New Hampshire~~ who provides expert, consulting, administrative, or legal services to a utility and whose services are not already included in the utility’s revenue requirement.

Puc 1903.07 “Utility” means any public utility as defined in RSA 362:2 and RSA 362:4.

PART Puc 1904 APPROVAL BY COMMISSION

Puc 1904.01 Approval Required Prior to Recovery. No utility shall recover from its ratepayers any rate case expense unless such expense has first been found by the commission to be just and reasonable and in the public interest and otherwise conforms to the requirements of Chapter Puc 1900.

Puc 1904.02 Criteria for Determining Allowed Rate Case Expenses.

- (a) In ruling upon rate case expenses the commission shall determine whether:
 - (1) An expense is properly recoverable as an allowed rate case expense pursuant to PART Puc 1906;
 - (2) The expense is an actual, known, and measurable expense associated with a full rate case proceeding, as defined in Puc 1903.03; and
 - (3) Recovery of the expense is just, reasonable, and in the public interest.
- (b) In making the above determinations, the commission shall consider:
 - (1) Whether the issues presented are novel or complex;
 - (2) The cost of the service provided to prepare and present the rate case;
 - (3) Where appropriate, any information concerning the customary fee for similar services, including the fees rendered in the relevant market to companies of similar size in matters of similar importance to the client;
 - (4) Whether the work was relevant and reasonably necessary to the rate case proceeding and the extent to which the services contributed to the efficient resolution of matters presented;
 - (5) Whether the utility used a competitive bidding process, when required, pursuant to Puc 1905.03 and Puc 1905.04, and in selecting a winning bidder considered information concerning the availability, experience, quality and cost of services provided;
 - (6) The experience and ability of the service provider;
 - (7) Whether the request for a rate change was just and reasonable; and
 - (8) Other factors as may be considered relevant to a particular rate case proceeding.

PART Puc 1905 PROCEDURES FOR FILING FOR RECOVERY OF EXPENSES

Puc 1905.01 Estimated Rate Case Expenses.

(a) Consistent with the utility’s duty to keep the Commission informed pursuant to RSA 374:4, at the time a utility files the materials required for a full rate case pursuant to ~~PART~~ Puc 1604, and every ~~sixty (60)~~ 90 days thereafter during the pendency of the rate case, the utility shall also file with the Commission items (1) through (3) below:

(1) A detailed description of rate case expenses actually incurred as of the date of the filing and projected total rate case expenses that include:

- a. The name of the service provider;
- b. The procurement process;
- c. The amount of the expense; and
- d. A description of the charge or service rendered;

(2) A list of all services to be rendered on behalf of the utility in the full rate case by any vendor; and

(3) The total estimated costs of each service.

(b) The filing of the information listed in (a) above shall not constitute or imply Commission approval of the expenses.

Puc 1905.02 Deadline for Filing Recovery Request. A utility seeking recovery of rate case expenses shall file its request for recovery pursuant to Parts Puc 202 and 203 along with all supporting documentation, with the commission no later than ~~thirty (30)~~ days after the commission’s final order pursuant to Puc 1903.02.

Puc 1905.03 Documentation of Expenses Required. For each expense filed with the commission for recovery as a rate case expense, the utility shall provide detailed evidence of all rate case expenses and any related allocations including:

- (a) All invoices paid or to be paid;
- (b) Name of each vendor;
- (c) The amount of the expense to be included as part of rate case expenses;
- (d) A description and date of the charge or service rendered;
- (e) A statement that the expense is consistent with the utility’s written procurement policy;

- (f) The utility’s procurement policy in place at the time the expenses were incurred;
- (g) The contract entered into that generated the expense; and
- (h) A statement of whether the contract was obtained after negotiations or competitive bid.

Puc 1905.04 Additional Requirements for Service Providers.

(a) All utilities serving 600 customers or more and hiring service providers for use in a full rate case shall acquire such services through a competitive bidding process if the expense for such service is estimated to be or is \$10,000 or greater.

(b) Except if not necessary under (a), for each service provider used, the utility shall also include a certification that:

- (1) The utility used a competitive bidding process, and in selecting the winning bidder, considered information concerning the availability, experience, customary fees for similar services, quality, and cost of the service provider; and
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(c) If a utility is required to use a competitive bidding process pursuant to Puc 1905.04(a) and engages a service provider who is not the lowest bidder in a competitive bidding process, the utility shall provide clear and convincing justification of its decision to do so.

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Puc 1906.01 Allowed Expenses. The commission shall determine pursuant to ~~PART~~ Puc 1904 the recovery of actual, known, and measurable rate case expenses from a full rate case, as defined in Puc 1903.03, provided the expenses are related to the rate case, just and reasonable and in the public interest. Such rate case expenses may include as follows:

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- (b) Expert consultant fees;
- (c) Legal and accounting fees;
- (d) Expenses associated with changing billing systems to reflect temporary and permanent rate changes;
- (e) Travel expenses;

(f) Administrative costs such as postage costs, publication costs, photocopying expenses, and transcription costs; and

(g) Such other similar expenses that are related to the preparation or presentation of a full rate case, as defined by Puc 1903.03, as determined by the commission after its review.

PART Puc 1907 EXPENSES NOT RECOVERABLE AS RATE CASE EXPENSES

Puc 1907.01 Expenses Not Allowed. Expenses not recoverable as rate case expenses shall include:

(a) Expenses for matters handled by service providers that ~~are typically could have been~~ performed by utility management and staff of the utility, based on their experience, ~~and~~ expertise, and availability;

(b) Expenses typically included in a utility's test-year revenue requirement or any expense for which recovery is prohibited by other ~~C~~commission rule.

(c) Expenses related to responding to commission audit inquiries;

(d) Expenses for first class airfare, gifts, or alcohol;

(e) Lobbying expenses;

(f) Interest charges on rate case expenses; and

(g) Such other similar expenses that are not related or material to the preparation or presentation of a full rate case, as determined by the commission after its review.

PART Puc 1908 SURCHARGES FOR THE RECOVERY OF RATE CASE EXPENSES

Puc 1908.01 Recovery through Rate Surcharge. Approved rate case expenses shall be included in rates through the imposition of a surcharge to rates.

APPENDIX

Rule	Specific State Statute the Rule Implements
Puc 1900	RSA 365:8, X