

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

July 22, 2014 - 10:04 a.m.
Concord, New Hampshire

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RE: DRM 14-149 RULEMAKING:
RULEMAKING - PUC 200, RULES FOR
Practice and Procedure.

PRESENT: Commissioner Martin P. Honigberg, Presiding
Commissioner Robert R. Scott

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.

PRELIMINARY STATEMENT BY MR. SHEEHAN

3

PUBLIC STATEMENTS BY:

Mr. Fossum

5

Mr. Malone

10

QUESTIONS BY CMSR. HONIGBERG

4, 8

P R O C E E D I N G

CMSR. HONIGBERG: We are here this morning for a public hearing to receive comments on proposed rules. The docket is DRM 14-149. And, the rules in question are revisions to Puc 200, the rules of practice and procedure. We filed them as we were required to under the Administrative Procedure Act, RSA 541-A. We noticed this hearing for this morning, at 10 o'clock. And, by golly, here we are. I know the crowd is large out there. I do need two hands to count the number of people sitting.

So, I think, before we invite people to comment -- although, actually, let me back up a second. Is there a sign-in sheet? Are there people here who want to comment? Can I see a show of hands? I see two. Okay, Mr. Sheehan, would you be able, in a couple of minutes, to summarize what's in these proposed rules for people?

MR. SHEEHAN: Certainly. These are, as you said, the 200 rules, which are the Commission's rules of practice and procedure, and there are a handful of amendments. The first most benign is simply some rules needed to be readopted, because they're going to expire, and some of those are being readopted without change.

The proposed changes include the

1 following: There are a list of documents that are filed
2 with the Commission that are presumed confidential under
3 201.06. There have been some changes to that list, some
4 deleted and some added. And, that's the confidential
5 treatment rules.

6 There's a Rule 202.01 that provides
7 guidance for people filing certain documents with the
8 Commission. And, there have been changes regarding
9 requirements for telecommunication providers and renewable
10 energy source certifications.

11 There's a change in the number of copies
12 of documents that need to be filed under 202.06. There's
13 a rule change regarding electronic signatures, that they
14 will be accepted and how.

15 There's a slight change to the rules
16 regarding complaints to utilities or complaints to other
17 entities.

18 And, I think that's a fair summary of
19 what we have in front of us today.

20 CMSR. HONIGBERG: A few years ago there
21 was a statutory change that made it to the 200 rules for
22 agencies never expire. You indicated that we're doing
23 this because some rules are expiring. Are you in a
24 position to explain why is it we have to do that, despite

1 that change in the law?

2 MR. SHEEHAN: The short answer is "no".
3 I think -- I don't know. My guess would be that, once
4 they're readopted now, that would trigger the "never
5 expire" clause, but I can't say that for sure.

6 CMSR. HONIGBERG: That is my
7 understanding as well. Just hoped somebody else shared
8 that understanding.

9 With that, we will take the public
10 comments. I saw Mr. Fossum's hand go up first, when I
11 asked if people were interested in commenting. So, if you
12 could, whoever is going to do it, if you could identify
13 yourself, and then tell us what it is you want to talk
14 about. Make sure your microphone is on, too.

15 MR. FOSSUM: Good morning. Matthew
16 Fossum, and I represent Public Service Company of New
17 Hampshire. And, I don't have a whole lot to say about the
18 proposal that's before the -- well, that's the subject of
19 today's hearing. PSNH has reviewed the proposed changes
20 to the rules and is, I guess a fair summary would be, is
21 fine with what is being proposed.

22 The reason I wanted to comment, though,
23 was that, if the underlying purpose of this particular
24 rulemaking is to clarify certain existing rules, and, as

1 Commissioner Honigberg has noted, these are rules that
2 would never expire. So, it's not clear to me if there
3 might be another invitation for such comments in the
4 future, that this might be a time to clarify some other
5 rules within the 200 rules. And, specifically, other
6 rules having to do with the timing of filings and the
7 deadlines of filings.

8 And, in particular, what I'm thinking of
9 are a couple of things. For example, Rule 203.07 deals
10 with motions, and motions for rehearing specifically.
11 And, it provides that, relative to motions for rehearing,
12 they would be filed in accordance with 541:3, which means
13 30 days following the Commission's order or decision.
14 But, then, any objection to that rehearing is to be filed
15 within five days. And, in light of the recent passage of
16 House Bill 1384, which is actually effective today, I
17 believe, the Commission's timeline for ruling on motions
18 for reconsideration has been extended from 10 days to 30
19 days. So, it may be worthwhile revisiting that five-day
20 requirement. I don't think it's been a great burden on
21 any particular company to comply with the five-day
22 requirement. And, I guess the only reason I raise that is
23 that it may be something the Commission might be
24 interested in revisiting on its own.

1 The other thing that's somewhat related
2 is that, within the context of that rule, there is a
3 requirement that, for example, the -- an objection to a
4 motion for rehearing be filed within five days, but it
5 doesn't specifically say, to my knowledge, "five business
6 days" or "five calendar days". And, that has been not a
7 big issue so far. But, in another rule, 203.09, relative
8 to discovery, that has become an issue in the past, the
9 distinction between "calendar days" and "business days".

10 For example, responses to discovery
11 questions, in general, are to be filed within ten days,
12 under 203.09, or in accordance with a Commission schedule.
13 And, objections are to be filed within ten days. But,
14 then, a motion to compel on any objected to question is to
15 be filed within "15 business days". And, it's not clear
16 to us why there is a distinction between "business days"
17 for one filing and "calendar days" for another.

18 And, so, that, I guess, in a sum, is
19 sort of the big issue that I wanted to raise today. That,
20 as I said, if the underlying purpose of taking comment
21 today is to discuss rules intended to clarify the 200
22 rules, some clarity on the expectations between calendar
23 days or business days in filing requirements might be
24 something worth revisiting at the same time.

1 CMSR. HONIGBERG: Does anyone in the
2 room have a complete set of our rules? Because I think
3 there's a rule that does discuss the "calendar days"
4 versus "business days". That, if it's less than ten, it's
5 business days.

6 MR. FOSSUM: There is a rule --

7 CMSR. HONIGBERG: And, if it's ten or
8 more, it's calendar days.

9 MR. FOSSUM: Rule 202.03 covers the
10 computation of time under the rules.

11 CMSR. HONIGBERG: Uh-huh.

12 MR. FOSSUM: And, what it provides is
13 that "When the period of time prescribed or allowed is
14 less than six days, intermediate Saturdays, Sundays, and
15 legal holidays shall be excluded in the computation of
16 time." So, it does provide for some measure of clarity on
17 that issue.

18 But I would point out that, for example,
19 in Rule 201.07, there is a distinction, it's actually in
20 the rules, between -- and they use the term "business
21 days" and uses the term "calendar days" to refer to
22 different requirements.

23 CMSR. HONIGBERG: I agree that that is
24 probably unnecessary. But, at this point, as I understand

1 the issue, and I also understand that these rules are
2 technically not in front of us or a proposal regarding
3 those rules is not in front of us, but I appreciate you
4 bringing them to our attention. That, as of today, there
5 is nothing ambiguous. It may just be a little silly to
6 have some of the words in there that are in there, or some
7 of the times not being consistent with each other. Is
8 that fair to say?

9 MR. FOSSUM: Well, it may be that. It
10 may also create some larger issues. If, for example, a
11 set of discovery questions is received on Monday, the
12 general requirement is that objections would be due onto
13 that discovery within ten calendar days. So, that would
14 take you to the following Friday. However, then a motion
15 to compel, based on that, would go at 15 business days,
16 which is -- and now you're including intermediate
17 Saturdays, holidays and the like, I mean, you're looking
18 at three full weeks or perhaps even more.

19 So, it may not simply be a silly thing.
20 It may be a measure of an actual ability to either respond
21 or object in a timely manner, as measured against
22 somebody's desire to compel a response. And, whether
23 that's resulted in particular -- I won't say that it's
24 resulted in due process violations, I don't think it's

1 raised to that level certainly. But it may be worth
2 making them -- I simply raise the issue to say that it may
3 be worth making them consistent or more consistent than
4 they are today.

5 CMSR. HONIGBERG: We appreciate the
6 comments. Thank you. Next.

7 MR. MALONE: Thank you. Good morning,
8 Commissioners. My name is Harry Malone, and I'm with the
9 firm of Devine, Millimet. And, I'm here today
10 representing the New Hampshire Telephone Association.

11 Generally, we find the proposed rules to
12 be noncontroversial. But there is one rule that we
13 believe would benefit from some clarification. And, that
14 is actually the changes to Part 204, submission of
15 complaints. Now, we understand that the 200 rules are
16 rules of general application for the Commission's
17 proceedings, and that it's assumed that they would be
18 qualified by any more specific rules.

19 The way this rule is written, it says "a
20 customer with a complaint that concerns the customer's
21 service or payment for such service shall submit the
22 complaint to the Commission." And, then, I won't read
23 through all of them, but they continue on with how the
24 Commission handles complaints and how it escalates the

1 matter.

2 And, I would just like to remind the
3 Commission that a couple of years ago the Legislature
4 passed SB 48, which created a class of telecom carriers
5 called "excepted local exchange carriers", who were
6 subject to a lighter touch regulation by the Commission,
7 and part of that had to do with end-user services and
8 end-users of excepted local exchange carriers, or ELECs.

9 And, in its Part 400 rules, the
10 Commission has a rule, and that's Rule 405.06, that
11 specifies the range of complaints that the Commission can
12 accept and resolve. And, I think that the 200 rules might
13 benefit if there was some clarification that indicated
14 that the -- that ELECs are not subject to all of the 204
15 rules, but only as they are qualified by the specific rule
16 in Part 400 or Chapter 400, part -- or, Puc 405.06. Thank
17 you.

18 CMSR. HONIGBERG: Okay. Thank you. Is
19 there anyone else who wishes to comment on the rules that
20 have been proposed?

21 (No verbal response)

22 CMSR. HONIGBERG: Seeing none, is there
23 any other business we need to transact this morning?

24 CMSR. SCOTT: Written comments.

1 CMSR. HONIGBERG: That's correct. We
2 will be leaving the comment period open for the submission
3 of written comments, as stated in our notice regarding
4 this matter, until August 4th of 2014. August 4th is a
5 Monday, as I recall.

6 CMSR. SCOTT: It's a business day.

7 CMSR. HONIGBERG: Yes. So, that's two
8 weeks from yesterday for folks who want to submit written
9 comments.

10 And, with that, I believe we are done.
11 I thank you all for your comments.

12 **(Whereupon the hearing was adjourned at**
13 **10:18 a.m.)**

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