

STATE OF NEW HAMPSHIRE



OFFICE OF LEGISLATIVE SERVICES

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April 13, 2020

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

**Re: Reconsideration and 2<sup>nd</sup> 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. Pursuant to RSA 541-A:12, I and RSA 541-A:16, IV, the original deadline 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 requested a second waiver with a new deadline of April 23, 2020.

I had denied that request for the reasons stated in my letter of March 27, 2020. Chairwoman Martin subsequently submitted further information in a letter dated April 8, 2020. 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). After further consultation with them, I have reconsidered my decision and hereby approve the waiver request, but with a new deadline of April 30, 2020 to file Final Proposal 2019-162. The immediate effect of this approval is that the rulemaking proceeding for Final Proposal 2019-162 is no longer deemed terminated after March 24, and the existing rules Puc 901 and Puc 903-908 in Puc 900 will not expire on April 23 as described in my denial letter of March 27. However, if this new deadline of April 30 is not met, these rules will expire May 30, 2020, that is, 30 days after the deadline pursuant to RSA 541-A:14-a, II.

Please be aware that this approval is given not on the grounds the Commission provided in its waiver request of March 24 but for the benefit of the public, after considering the following factors as good cause encouraging a waiver and the continuance of the current rulemaking proceeding:

- The Final Proposal is designed to implement SB 165 from the 2019 legislative session (Chapter 271 of the Laws of 2019, effective July 1, 2019) relative to low-moderate income community solar projects;
- Since emergency rules would not have to be filed to keep Puc 901 and Puc 903-Puc 908 in effect, a second regular rulemaking proceeding pursuant to RSA 541-A would not have to be immediately initiated and conducted for Puc 900 during a pandemic summer, when the resources of the state and the concerns of the public will be directed to more immediate problems;

- The public's input into Final Proposal 2019-162 in this rulemaking proceeding, which began with the filing of the Initial Proposal in our office on September 16, 2019, and involved two rulemaking hearings and multiple stakeholder input sessions, would not have to be repeated as may be the case in a subsequent rulemaking proceeding;
- Chairwoman Martin stated in her letter of April 8 that the Commission had still not received the 2017 National Electrical Code, and it is unclear when that will occur, although the letter indicates that this is necessary to complete the Incorporation by Reference Statements. A filing deadline of April 30, rather than April 23 as requested, may provide more time so the proceeding can continue.

I appreciate the information in Chairwoman Martin's letter of April 8, but please note the following concerns and clarifications about the Commission's rulemaking under RSA 541-A:

- There is no direct response to our concerns in the denial letter of March 27, including those regarding the Commission's reference in its waiver request, without evidence, that the delays in filing "may be related to" the novel coronavirus;
- The statement in the letter of April 8 that the Commission "began this rulemaking proceeding well in advance of expiration of the existing rules" is misleading, as it nearly ran out of time. The rules were scheduled to expire on September 20, 2019, and only by the Commission filing the Initial Proposal 4 days prior to that date were the rules extended pursuant to RSA 541-A:14-a;
- The letter of April 8 does explain more about what the Commission was waiting for and had ready to file on the deadline of March 24. But the letter does not acknowledge the Commission's own misjudgment in how much time it needed when it requested the first waiver or its contribution to the misunderstanding that led to the OLS suggestion on March 23 that the Commission ask for a waiver. This role of the Commission included ambiguous statements about what it was waiting for and why, as indicated in the denial letter. The letter of April 8 refers simply to its waiver request as "consistent with the advice provided by your office;" and
- Pursuant to RSA 541-A:12, III, Incorporation by Reference Statements are required to be filed with, but are not part of, the Final Proposal, whose required elements are specified by RSA 541-A:12, II. The absence of the Statements would be a built-in basis for JLCAR preliminary objection to the Final Proposal under RSA 541-A:13, IV(b) on grounds of being contrary to legislative intent. But the lack of the Statements does not invalidate the filing itself. The Final Proposal could in that sense have been filed by the deadline of March 24, and the Incorporation by Reference Statements filed afterward. Under these circumstances, it would be preferable, if the completion of the Incorporation by Reference Statements remains in doubt as April 30 draws closer, that the Commission file Final Proposal 2019-162 and file the Statements later.

If you have any questions about this approval or the filing of the Final Proposal, please contact Scott Eaton in Administrative Rules at [scott.eaton@leg.state.nh.us](mailto:scott.eaton@leg.state.nh.us).

Very truly yours,



David J. Alukonis  
Director

DJA/SFE

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

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