

**PUBLIC UTILITIES COMMISSION**21 S. Fruit St., Suite 10  
Concord, N.H. 03301-2429**Puc 100, Organizational Rules and Puc 200, Rules of Practice and Procedure****Report on May 2, 2022, Stakeholder Session**

September 12, 2022

**Introduction**

On May 2, 2022, a working session was convened to gather feedback on the Commission's procedural and administrative processes following the legislative reorganization of the Commission and the establishment of the Department of Energy in July 2021. Other everyday practices and norms also changed because of emergency orders during the COVID-19 state of emergency.

Participants at this working session included representatives from: 1) electric, natural gas, and water utilities; 2) the Department of Energy; 3) the Office of the Consumer Advocate; and 4) various law offices, businesses, and non-profit groups that regularly appear or otherwise participate in Commission proceedings. The working session utilized a "start, stop, continue" activity to gather feedback on existing processes and procedures, gauge interest in individual topics, and brainstorm potential changes to organizational rules, procedural rules, and to administrative process generally.

Participants first identified "start, stop, continue" topics and placed those topics into one of five categories: 1) 200 Rules; 2) Pre-Hearing Process; 3) Hearings; 4) Administration; and 5) Other. Next, participants cast eight votes each for the topic or topics they considered most important. These steps were designed to provide a level of anonymity to promote candid feedback. Those topics and votes are as follows:

<b>200 Rules</b>	
Topic:	Votes:
Informal workshops with the Commissioners	12
Address discovery not being part of the record	11
Formalize and increase use of <i>nisi</i> orders/process	9
Formalize remote hearing rules and procedures, continue to offer remote options	6
Formalize briefing process	4
Filing deadline timelines (update/define business day versus calendar day)	3
Update e-filing & physical filing practices, continue e-filing	2
Publication/notice requirements	2
Pre-consult with parties for scheduling matters	1

Confidential Discovery Rule	0
Require that all filings also be made with the DOE	0
Streamline rule waiver processes	0
Evidentiary rules for pre-filed documents	0
Case management and pre-hearing conferences	0
Ordering clauses should be comprehensive	0

<b>Administrative</b>	
Topic:	Votes:
Designated point of contact for cases (including for SEC)	9
Two-way communication regarding rules and regulations	9
Alternative Dispute Resolution/Mediator role available in dockets	7
More resources for small utilities	2
Publish an organizational chart	1
Faster docket book updating	0
Easier e-filing for large docket files	0
Continue noting closed docket status online	0
Ensure filing dates in docket book and in orders are uniform	0
Stop treating all employees as decisional	0
Open online calendar	0

<b>Hearings</b>	
Topic:	Votes:
Provide opportunities for engagement with/education of the Commissioners	14
Formalize/continue remote access/streaming for hearings, pre-hearing conferences, and technical sessions	7
Reduce orders with posting requirements	1
Maintain weekly business/administrative days without hearings (Mondays/Fridays)	0
Do not Google from the bench	0
Time orders to allow more time for implementation	0
Allow more written closings	0

<b>Pre-Hearing Process</b>	
Topic:	Votes:
Use simplified letters/orders for minor matters	12
Staff involvement in discovery	3
Virtual technical sessions	2
Facilitate collaboration, including pre-hearing conferences	1
Have Commission staff at pre-hearing conferences and technical sessions	0
Designated point of contact at Commission	0
Improve scheduling process	0
Pre-hearing conferences in person or on paper	0

<b>Other</b>	
Topic:	Votes:
Informal workshops with the Commissioners	12
Update chart of accounts for water utilities	8
Long-term approvals for certain, routine or otherwise vetted financings	4
Stop using passive voice in orders	2
Publication/notice requirements	2
Too many settlements	0
Post all docket materials	0
Stop resetting work because Commissioners are not present for discussions	0
No new dockets for step adjustments	0
Retain technical experts for review	0
Implement excel file submission requirements	0
Monthly disconnections and account received in docket	0
Case management and pre-hearing conferences	0
Ordering clauses should be comprehensive	0

Following the review of these topics, the participants broke into three sessions of working groups to discuss and make the recommendations.<sup>1</sup> Those recommendations were:

### **200 Rules Recommendations**

- 1) Formalize and increase use of *nisi* order process
  - Use for financing, EAP, special contracts, and other uncontested matters or matters with no rate impact
- 2) Make all discovery part of the record
  - Could avoid record requests
  - Keep the Commission informed throughout the docket
  - Demonstrates the amount of work put in by the parties
  - Could bog down process, confuse the record, create scope-creep by introducing unnoticed issues
  - Keep process where it only comes in if admitted
  - Use clerks as repository of discovery so that any late parties can have access to all discovery
- 3) Update confidentiality process for discovery
  - Default to confidential designation
- 4) Formalize briefing processes
  - Written closings

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<sup>1</sup> Recommendations from working groups have been consolidated and reported, note that any recommendation listed does not necessarily represent a consensus or plurality recommendation.

- Settlement agreements could serve as written closing/brief
- Written closings help parties focus Commissioners on important issues

#### 5) Adopt E-filing

- Sharefile type of software/process to upload documents, request confidential treatment, maintain interconnection of Excel docs
- Make it possible to see all compliance filings on website, not just docket filings and annual reports
- Change filing deadline from 4:30 to midnight
- Clean up calendar day versus business day distinction, consider making all deadlines business days
- Provide for automatic waiver of certain filing deadlines, similar to IRS tax exemptions, if request to extend is timely filed then it can be automatically granted

### **Administrative Recommendations**

#### 1) Point of Contact

- The Commission lacks an interface with the public and parties
- The Commission should create a position for and hire an executive director with substantive and procedural knowledge as point of contact for parties, industry, the public etc.
- The executive director should be non-decisional
- The Commission should, as a starting point for duties of an executive director, reference old job descriptions for the secretary and executive director positions
- The executive director could be the point person not only for answering questions, but for collaborative scheduling (i.e., providing hearing dates etc) and correcting mistakes in orders (as opposed to filing motions for that purpose)
- The executive director should issue procedural letters and any other letter that the executive director was formerly permitted to sign on behalf of commissioners (reports of decisions of the commissioners)
- One participant thought the executive director might do similar work for the SEC.
- One participant thought that a “super clerk” might be able to perform some of these duties.
- One participant thought that the Commission should have more resources
- Doesn’t need to be the executive director for all things
- Participants identified a need for clarity about who to call with different types of questions
- Is it someone in the clerk’s office?

#### 2) Two Way Communication re: Rules and Regulations

- There seems to be some unwritten rules, and you don’t find out about them until you do something wrong. Would be helpful to have a mechanism for communication and questions
- Other agencies have advisory councils or groups that take up different topics that allow for two-way communication re: rules, regulations and issue areas

- Would this be broken down by issue/topic, or would it cover all potential Commission issues/topics
- Could there be informal brown bag lunches on specific topics or issues? Could the Commissioners invite people to present on topics of interest that are not the subject of open dockets?
- Are there challenges to holding informal sessions?
- How do people/stakeholders find out about them?
- Would these be private conversations, or are they open to the public?

### 3) Alternative Dispute Resolution for Dockets

- Might be helpful for someone to guide or facilitate resolution
- Would this make settlement more likely?
- Would all parties have to consent?
- The Commission should provide trained staff for ADR when requested by a party, primarily in complaint cases but in others where appropriate.
- There was some thought that this could be a hearings examiner who helps parties reach agreement and then drafts a report/recommendation for Commission action where necessary.
- Reference made to a historical statutory ombudsman position

## **Hearings Recommendations**

### 1) Start/continue the remote streaming of hearings and pre-hearing conferences

- Increases access and transparency
- Allows flexibility to witnesses based on circumstances to join remotely
- Public being involved is important
- Helps reduce consultant costs
- Include in utility assessment to pay for staff to support technology
- Use for out of state witnesses, especially if they are only adopting testimony

## **Pre-Hearing Process Recommendations**

### 1) Simplified orders and letters

- Create executive director position or clerk
- Not for substantive/procedural matters
- Service list update and change parties

### 2) Commission staff involved in discovery

- Do they have time
- Would it blur ex parte line, formalize process, slow down process?

- Issue Commissioner/Staff questions prior to hearing to avoid after-hearing requests and streamline the process.

3) Virtual technical sessions

- Continue process
- Share screen function for documents is handy
- Saves time and travel expense
- Allows for more productivity

**Other Recommendations**

1) Engagement with and Education of the Commissioners

- The Commissioners have a statutory duty to remain educated about the industries the Commission regulates.
- Commissioners could guide conversations on topics.
- Open workshops for multiple stakeholders: aggregation, cost of gas, etc.
- The utilities want a forum in which to educate Commissioners regarding aspects of their operations, such as upcoming hikes in commodity prices, operating software changes, etc.
- There was general agreement that the Commissioners could do this without running afoul of the *ex parte* statutes in workshop settings, tours, presentations, etc. by having their counsel monitor conversations to make sure they did not drift to issues currently being adjudicated.
- Continuous education outside of open docket, e.g. facility tours, other field trips, informal meetings with regulated companies.
- Utility subject matter experts conduct educational session, with presentation, prior to docket opening.
- Conversational meeting to educate.
- Determine if board, committee, advisory meeting, public/private, is feasible or appropriate to provide an education or Commission inclusion for education.
- Consider consultation with advisory groups to present and provide an education.
- Questions arose about
  - Appearance issue.
  - How these would be communicated/advertised.
  - Whether these would be open to the public.
- Investigatory docket to get around *ex parte* rules.
- Private meetings with Commissioners.

2) Chart of Accounts

- Water utility chart of accounts needs to be updated
  - Are certain charts in the right place?
  - Update for new technology (SCADA, etc.)
- Depreciation expense not necessarily used for ratemaking purposes
- Alignment of descriptions

- Statewide utility tax – what is and is not taxable, align chart of accounts to match new/changing state guidance
  - Transportation/communication equipment treatment
  - Make more granular for accounting and tax treatment
  - Issue: street restoration not an asset of the utility, but taxable and depreciation spreads costs over 80 years
  - Update references to GAAP and USOA
  - Mechanism to update the Chart of Accounts with adaptation of updates to certain standard changes (IRS, State, GAAP, etc.)
    - Rulemaking v. Order? Built in process.
    - Stakeholder group to develop draft for updates/process and provide input on proposed updates and changing standards
  - Could reduce sets of books, and thereby reduce costs for the benefit of ratepayers
- 3) Long-term approval for routine or certain financings, such as: DWTF/SRF or other state backed/low-interest loans
- Will save legal expenses and funding costs associated with separate financing petitions each time compared with a long-term approval for certain classes of financing.
  - Apply by analogy multi-year approval for certain bonds funding
  - Regulatory process can impede best rate opportunities
  - DES vets the projects as shovel-ready, but regulatory process could impact shovel-readiness and construction costs.

## **Conclusion**

The participants provided a large amount of constructive feedback that should be considered in establishing an initial proposal for rulemaking to update both the Puc100 and Puc 200 rules sets. The Commission should take the administrative actions of:

- 1) opening a rulemaking docket to receive this report; and
- 2) filing an Appendix II-A, “Request for Advance Public Comment on Subject Matter of Possible Rulemaking” form with the Office of Legislative Services for publication in the rulemaking register applicable to the Puc 200 rules set, soliciting further comment and scheduling a pre-process hearing on the following rulemaking topics, either as updates to existing rules or new rules relating to:
  - a. Electronic Filing
  - b. Filing and other procedural deadlines
  - c. Processes for scheduling proceedings
  - d. Discovery, evidentiary and confidentiality rules
  - e. Post-hearing briefing
  - f. The rule waiver process
  - g. Publication and notice requirements
  - h. Remote participation at prehearing conferences and hearings

- i. Elimination of portions of rules now applicable to the Department of Energy
- j. Establishment of rules relating to *nisi* orders or other alternative or expedited processes for routine matters
- k. The establishment of a rule part applicable to investigatory dockets or informal workshops with Commissioners or Commission advisors/staff
- l. Communication with advisors or other staff of the Commission
- m. Alternative dispute resolution or mediation

This Request for Advance Public Comment on Subject Matter of Possible Rulemaking form should establish a schedule for the acceptance comments on this report followed by a pre-process hearing before other actions are taken to initiate the formal rulemaking process. A draft of this form is filed with this report. Following this feedback, initial proposals for readoption with amendments of the Puc 100 and Puc 200 rule sets should be prepared.

Finally, the Commission should separately consider the request by stakeholders to update the chart of accounts for water utilities, and initiate a docket to address the request to update the system of accounts for water utilities pursuant to RSA 374:8.