

Adopt Dec 200, previously effective 9-18-00 (Doc. # 7366), and expired 3-17-01, to read as follows:

CHAPTER Dec 200 PROCEDURAL RULES

PART Dec 201 PROCEEDINGS BEFORE THE COMMITTEE

Dec 201.01 Governing Procedure.

(a) These rules shall govern practice before the committee in its formal and informal proceedings and in accordance with the applicable laws of the State of New Hampshire. .

Dec 201.02 Nature of Proceedings.

(a) The proceedings before the committee concerning the establishment of a nuclear decommissioning financing fund, changes to the projected cost of decommissioning and monthly payment schedule for payment of money into the fund by the owner or owners are conducted in the form of an adjudicatory proceeding under RSA 541-A:31-36 and as provided in RSA 162-162-F:22, V.

(b) Notwithstanding (a) above, prior to a transfer of ownership interest, funding assurances may be approved and changed by the committee in a non-adjudicative proceeding, as provided in RSA 162-F, 22, V.

(c) All other proceedings before the committee shall be governed by applicable statutes and by these rules to the extent applicable.

Dec 201.03 Practice Before the Committee.

(a) Any person may appear before the committee:

- (1) In one's own behalf;
- (2) By an attorney authorized to practice in any state or the District of Columbia and in good standing; or
- (3) By an employee or authorized agent.

(b) Any person appearing before the committee shall adhere to:

- (1) These rules; and
- (2) Any orders of the committee or agreements among parties including orders or agreements concerning confidentiality.

(c) Nothing in these rules shall be interpreted in such a way as to permit the unauthorized practice of law, nor shall this rule in any way be construed to restrict or limit the right of any person to conduct his or her own representation with or before the committee.

Dec 201.04 Waiver of Rules.

(a) Upon its own motion, or upon written request, the committee shall waive the provisions of any rule, except where precluded by statute, provided that:

- (1) Such waiver will enable the committee to either expedite the proceeding or complete the proceeding in a more orderly manner;
- (2) Compliance with the rule would be onerous or inapplicable given the circumstances of the affected person; or
- (3) A specifically defined alternative procedure is proposed which shall result in a substantially equivalent result consistent with the principles embodied in said rule.

Dec 201.05 Withdrawal of Presiding Officer or Committee Member.

(a) Upon his or her own initiative or upon the motion of any party, the presiding officer or committee member shall, for good cause, withdraw from any adjudicative proceeding or other matter.

(b) Good cause shall exist if a presiding officer or committee member:

- (1) Has a direct interest in the outcome of a proceeding, including, but not limited to, a financial or family relationship with any party;
- (2) Has made statements or engaged in behavior which objectively demonstrates that he or she has prejudged the facts of a case;
- (3) Personally believes that he or she cannot fairly judge the facts of a case;
- (4) Is obligated to withdraw because his or her impartiality might reasonably be questioned; or
- (5) Is otherwise required to withdraw pursuant to applicable law.

(c) Mere knowledge of the issues, the parties or any witness shall not constitute good cause for withdrawal, nor shall the fact that the presiding officer or committee member is a customer of a nuclear electric generating facility that is a party to the proceeding.

Dec 201.06 Staff Participation. The committee is assisted by counsel who participates in an advisory basis only.

PART Dec 202 FILINGS WITH COMMITTEE

Dec 202.01 Establishment of Fund. A separate nuclear decommissioning financing fund shall be established in the office of the state treasurer for each nuclear facility in the state.

Dec 202.02 Annual Review Filing Requirements.

(a) Each year the committee shall review the cumulative nuclear decommissioning fund and each funding assurance in place pursuant to an order of the committee as provided in RSA 162-F:22, II.

(b) For each annual review, the owner shall file:

- (1) A proposed schedule of payment for the subsequent years;
- (2) A description of each funding assurance;
- (3) The balance of each nuclear decommissioning fund;
- (4) Any changes in ownership, law, decommissioning standards, the projected date of beginning or ending decommissioning the nuclear electric generating facility, and all other matters that could affect the projected cost of decommissioning; and
- (5) Testimony and exhibits supporting the filing.

(c) No less than every 4 years, the committee shall review the projected cost of decommissioning the nuclear generating electric facility in addition to the annual review that is conducted each year.

(d) For each such review required in (c) above, the owner shall file a detailed study of the process and cost of decommissioning the nuclear electric generating facility including:

- (1) A detailed description, cost and timetable of each known decommissioning methods currently available;
- (2) The method proposed by the owner;
- (3) The cost of the method proposed by the owner;
- (4) The cost and duration of storage of spent nuclear fuel and high level radioactive waste at the facility;
- (5) The proposed schedule of payments; and
- (6) All methods and inputs utilized in developing the cost of the proposed decommissioning method.

Dec 202.03 Notice of Hearings.

(a) Upon receipt of the information identified in Dec 202.02, the committee shall hold a meeting at the location established in Dec 203.01 and with the proper notice as required by RSA 162-F:21 and Dec 204.02.

(b) In a contested case, the committee shall afford an opportunity for an adjudicative proceeding after notice.

(c) The notice required by (a) above shall include:

- (1) A statement of the time, place and nature of the hearing;
- (2) A statement of the legal authority under which the hearing is to be held;
- (3) A reference to the particular sections of the statutes and rules involved;
- (4) A short and plain statement of the issues involved; and
- (5) That each party has the right to have an attorney present.

Dec 202.04 Opportunity to Respond. The committee shall afford the opportunity to all parties to respond and present evidence, to cross-examine witnesses, and to submit argument on all issues involved.

Dec 202.05 Format of Filing.

(a) Testimony, exhibits and other documents filed with the committee shall be prepared on standard 8-1/2" x 11" sheets, and plans shall be folded to that size.

(b) The documents shall also be filed in electronic format and using a program or programs compatible with the software used by the committee.

PART Dec 203 FORMAL REQUIREMENTS

Dec 203.01 Place of Hearings. Except as provided in RSA 162-F:21, IV and RSA 162-F:22, V, which requires public hearings to be held in the city or town where the nuclear electric generating facility is located, all hearings before the committee shall be held at the hearing rooms at the offices of the public utilities commission, located at 21 South Fruit Street, Concord, New Hampshire, or at another location in Concord, New Hampshire.

Dec 203.02 Computation of Time.

(a) Computation of any period of time referred to in these rules shall begin with the first day following the act that initiates such period of time.

(b) The last day of the period so computed shall be included unless it is a day on which the office of the committee is closed, in which event the period shall run until the end of the next following business day.

(c) Only when such period of time, with the intervening Saturdays, Sundays and legal holidays counted, is 5 days or less, shall Saturdays, Sundays, and legal holidays be excluded from the computation.

Dec 203.03 Extensions of Time.

(a) Except for postponements of hearings pursuant to Dec 204.10, a party requesting an extension of time shall make such request in writing before the expiration of the period originally prescribed.

(b) A party requesting an extension shall make a good faith attempt to gain the consent of the other parties for the extension.

(c) The committee shall grant a request for extension of time if:

(1) The party making the request has demonstrated that circumstances would cause undue hardship or inconvenience unless the request were granted; and

(2) The extension would not unduly delay the proceeding or adversely affect the rights of any party.

(d) The presiding officer shall notify all parties of any extension of time granted.

Dec 203.04 Date of Filing.

(a) All orders, decisions, findings of fact, correspondence, motions, petitions, applications and any other documents filed with the committee shall be deemed to have been issued, made or received:

(1) On the issue date for orders, communications or other material issued by the committee; and

(2) On the date of receipt of paper copies by the committee for petitions, applications or material filed by petitioners, applicants, or other persons.

(b) Parties shall follow any electronic copies with paper copies in accordance with these procedural rules.

Dec 203.05 Identification of Written Communications. Written communications to the committee shall contain the name and address of the communicator and the appropriate docket number, order number or other pertinent subject matter identification.

Dec 203.06 Advance Filing of Exhibits and Testimony.

(a) All parties shall:

- (1) File an original and 9 copies of their direct testimony and exhibits with the committee; and
- (2) Serve a copy on all other parties at such times and in accordance with a procedural order issued by the committee.

Dec 203.07 Exhibits.

(a) The party offering an exhibit shall file the original and 9 copies thereof with the committee and shall serve a copy on all other parties.

(b) Multi-page documents shall be paginated sequentially.

Dec 203.08 Reopening the Record.

(a) The committee shall, on its own motion or at the request of a party, authorize filing of exhibits after the close of a hearing if the committee finds that late submission of additional evidence will enhance its ability to resolve the matter in dispute.

(b) Any party requesting authorization to file an exhibit after the close of a hearing shall make its request:

- (1) Orally before the close of the hearing; or
- (2) If the hearing has concluded, by motion.

(c) In determining whether to admit the late filed exhibit into the record, the commission shall consider:

- (1) The probative value of the exhibit; and
- (2) Whether the opportunity to submit a document impeaching or rebutting the late filed exhibit without further hearing shall adequately protect the parties' right of cross examination pursuant to RSA 541-A:33, IV.

Dec 203.09 Transcripts.

(a) As provided in RSA 162-F:21, III and IV, and RSA 162-F:22, V, the committee shall publish a transcript of all proceedings during which the information was presented or offered into testimony.

(b) Such transcripts shall be available for public review in the clerk's office of the city or town where the nuclear electric generating facility is located and in the office of the public utilities commission.

Dec 203.10 Signatures. Every application, notice, motion, petition, brief or memorandum shall be signed by the person filing the document or by one or more attorneys in their individual names on behalf of such person.

Dec 203.11 Amendments.

(a) The committee shall permit the amendment of any document filed with the committee provided:

(1) The party requesting the amendment shall give notice of the request to all persons on the service list for the proceeding; and

(2) The committee determines that the amendment shall encourage the just resolution of the proceeding and will not cause undue delay.

(b) The committee shall not allow any amendment that has the effect of broadening the scope of the proceeding unless it provides notice to those affected and an opportunity to comment prior to final committee action.

(c) The committee shall allow the correction of typographical errors in any document filed with the commission at any time.

Dec 203.12 Service.

(a) Except as agreed to by the parties and approved by the committee, service of all documents relating to any proceeding, including but not limited to, applications, petitions, motions, prepared testimony, exhibits, briefs, orders, notices, and written communications shall be made by personal delivery or first class mail.

(b) Electronic filings made with the committee shall be made electronically with all parties and shall be followed by paper copies in accordance with these procedural rules.

(c) Any party may elect to receive any document electronically, including orders and notices, without also receiving paper copies.

(d) Service of motions for rehearing filed pursuant to RSA 541 shall be received by the parties on the same day as they are filed with the committee.

(e) All such documents shall be served by the person filing the same on every other party.

(f) If a person becomes a party after the document has been filed, a copy of all documents previously filed shall be furnished to such person, if he or she so requests.

(g) Proof of service shall accompany all documents filed.

PART Dec 204 HEARINGS AND PROCEDURE

Dec 204.01 Presiding Officer.

(a) The chairman of the committee shall be the presiding officer at the hearings, except as provided in (b) below.

(b) In his or her absence at a particular hearing, the presiding officer shall appoint one of the committee members to be the presiding officer.

Dec 204.02 Notice of Hearing.

(a) The committee shall give 14 days notice of a hearing to:

(1) The parties on the service list of a proceeding as established by a procedural hearing;

(2) To persons required by statute to be notified; and

(3) To such other additional persons who request the committee to include them on the service list.

(b) Notice shall be provided pursuant to Dec 203.12 and shall contain the information set forth in Dec 202.03.

(c) The owner shall notify the general public of the commencement of each public hearing of the committee, as identified in RSA 162-F:21, and of the final hearing as identified in RSA 162-F:21, IV by posting such notice in 2 appropriate public places where the nuclear electric generating facility is located and publishing such notice in a newspaper of state-wide circulation at least 2 weeks prior to each hearing.

Dec 204.03 Intervention.

(a) Persons seeking to intervene in a proceeding shall file motions with the committee, with copies served on all parties identified in the committee's notice of hearing at least 3 days before the first hearing conducted pursuant to RSA 162-F:21.

(b) The committee shall grant a motion to intervene if:

(1) The motion states facts demonstrating that the movant's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the movant qualifies as an intervenor under any provision of law; and

(2) The committee determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

(c) The committee shall grant one or more motions to intervene at any time upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the hearings.

(d) The committee shall impose conditions upon such party's participation in the proceedings, either at the time that intervention is granted or at any subsequent time, including the following:

(1) Limitation of such party's participation to designated issues in which the intervenor has a particular interest demonstrated by the motion;

(2) Limitation of such party's use of cross-examination and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(3) Requiring 2 or more such parties to combine their presentations of evidence and argument, cross-examination and other participation in the proceedings.

(e) Limitations imposed in accordance with paragraph (e) shall not be so extensive as to prevent such a party from protecting the interest that formed the basis of the intervention.

Dec 204.04 Motions.

(a) A motion may be filed at any time by a party to a proceeding or by a person who has filed a motion to intervene which has not been denied.

(b) All motions shall be filed in writing.

(c) A motion shall clearly and concisely state:

(1) The facts and law that support the motion and the specific relief or ruling requested; and

(2). Certification that the party has made a good faith attempt to obtain the concurrence of the other parties in the relief sought.

(d) Objections to a motion, except for motions for rehearing, shall be in writing and filed within 10 days of the date on which the motion is filed, unless otherwise ordered.

(e) Objections to a motion for rehearing pursuant to RSA 541:3 shall be filed within 3 days of the date on which the motion for rehearing is filed.

Dec 204.05 Prehearing Conference.

(a) Pursuant to RSA 541-A:31,V (b), the committee shall, upon motion of any party, or upon its own motion, schedule one or more informal prehearing conferences prior to the beginning of the formal proceedings in order to facilitate proceedings and encourage informal disposition.

(b) The committee shall provide notice to all parties prior to holding any prehearing conference.

(c) Prehearing conferences may include, but shall not be limited to, consideration of one or more of the following:

- (1) Offers of settlement;
- (2) Simplification of the issues;
- (3) Stipulations or admissions as to issues of fact or proof;
- (4) Limitations on the number of witnesses;
- (5) Changes to standard procedures desired during the hearing, by consent of the parties;
- (6) Procedural schedule;
- (7) Consolidation of examination of witnesses by the parties; and
- (8) Any other matters that will aid in the disposition of the proceeding.

(d) The committee shall issue and serve upon all parties a prehearing order incorporating the matters determined at the prehearing conference.

Dec 204.06 Order of Procedure at Hearing. In hearings in an adjudicative proceeding, the owner of the nuclear electric generating facility subject to decommissioning shall be afforded the opportunity to open and close any part of the presentation.

Dec 204.07 Settlement and Stipulation of Facts.

(a) As provided in RSA 541-A:31,V (a), unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

(b) The parties to any adjudicative proceeding before the committee may, by stipulation in writing filed with the committee or entered in the record at the hearing, agree upon the facts or any portion thereof involved in the hearing.

(c) The committee shall consider the stipulation as evidence in the decision of the matter.

Dec 204.08 Evidence; Official Notice in Contested Cases.

- (a) All testimony of parties and witnesses shall be made under oath or affirmation.
- (b) As provided in RSA 541-A:33, II, the rules of evidence shall not apply in adjudicative proceedings before the committee.
- (c) Any oral or documentary evidence may be received, but the committee shall exclude irrelevant, immaterial or unduly repetitious evidence. I.
- (d) The committee shall give effect to the rules of privilege recognized by law.
- (e) Objections to evidence offered may be made and shall be noted in the record.
- (f) Any party shall be permitted to conduct cross-examination required for a full and true disclosure of the facts.
- (g) As provided in RSA 541-A:33,V, official notice may be taken of any one or more of the following:
 - (1) Any fact that could be judicially noticed in the courts of this state;
 - (2) The record of other proceedings before the committee;
 - (3) Generally recognized technical or scientific facts within the committee's specialized knowledge;
 - (4) Codes, regulations, requirements, or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association; and
 - (5) The record of proceedings before the Nuclear Regulatory Commission or other federal agencies, commissions, or boards, and publications of the United States.
- (h) The committee shall notify parties either before or during the hearing, or by reference in preliminary notices or otherwise, of the material given official notice.
- (i) The committee shall afford parties an opportunity to contest the material so noticed.
- (j) The committee's experience, technical competence and specialized knowledge shall be used in the evaluation of the evidence pursuant to RSA 541-A:33, VI.

Dec 204.09 Limiting Number of Witnesses. The committee shall limit the number of witnesses or the time for testimony upon a particular issue in the course of any hearing to avoid unnecessary cumulative evidence.

Dec 204.10 Postponement of Hearing.

(a) A party requesting postponement of a hearing shall file a request in writing at least 7 days prior to the date of hearing.

(b) The party requesting postponement shall make a good faith attempt to seek the concurrence of the other parties to the request.

(c) The committee shall grant a request for postponement of a hearing if it finds that to do so would promote the orderly and efficient conduct of the proceeding.

Dec 204.11 Recess and Adjournment.

(a) The committee shall recess, adjourn or continue any hearing if to do so will promote the orderly and efficient conduct of the proceeding.

(b) The committee shall give notice of a continued session to those parties present at the continued session, and shall not be required to issue public notice.

Dec 204.12 Briefs.

(a) Upon the request of a party or on its own motion, the committee shall allow parties to submit briefs at any point in an adjudicative proceeding if the committee determines that such briefing would assist the committee in its determination of the issues presented.

(b) The committee shall set any briefing deadline or deadlines so as to permit the parties adequate time to draft their briefs and without causing undue delay in the conclusion of the proceeding.

(c) The committee shall establish a briefing schedule that allows one or more parties to submit briefs in rebuttal or reply to the brief or briefs of one or more other parties when such a sequential schedule is necessary to assure due process, fairness or full discussion of the issues presented.

(d) The committee shall establish a page limit for briefs when it determines that such a limit would promote the efficient resolution of issues without adversely affecting the rights of any party.

(e) The committee shall encourage joint filing of briefs when there is more than one party advocating the same result and the same arguments and individual briefs would be duplicative.

Dec 204.13 Quorum.

(a) Five members of the committee shall constitute a quorum for the purpose of holding and conducting a hearing.

(b) If a quorum of 5 members of the committee is lacking, then 4 members of the committee shall constitute a quorum for the purpose of holding and conducting the hearing, provided that a decision of the committee shall be made by a quorum of the committee after a review of the transcript and exhibits presented at the hearing by the committee members who did not attend the hearing.

Dec 204.14 Burden of Proof. Unless otherwise specified by law, the party seeking relief through a petition, application, motion or complaint shall bear the burden of proving the truth of any factual proposition by a preponderance of the evidence.

Dec 204.15 Motion for Rehearing.

(a) The rules in this part are intended to supplement any statutory provisions, including RSA 541, that require or allow a person to request a rehearing of a decision of the committee prior to appealing the decision.

(b) The rules in this part shall apply whenever any person has a right under applicable law to request a rehearing of a decision prior to filing an appeal of the decision with the court having appellate jurisdiction.

(c) A motion for rehearing shall be filed within 30 days of the date of a committee decision or order.

(d) A motion for rehearing shall:

(1) Identify each error of fact, error of reasoning, or error of law which the moving party wishes to have reconsidered;

(2) Describe how each error causes the committee's decision to be unlawful, unjust or unreasonable, or illegal in respect to jurisdiction, authority or observance of the law, an abuse of discretion or arbitrary unreasonable or capricious;

(3) State concisely the factual findings, reasoning or legal conclusion proposed by the moving party; and

(4) Include any argument or memorandum of law the moving party wishes to file.

(e) A motion for rehearing in a case subject to appeal under RSA 541 shall be granted if it demonstrates that the committee's decision is unlawful, unjust or unreasonable.

(f) A motion for rehearing in a case subject to appeal by petition for writ of certiorari shall be granted if it demonstrates that the committee's decision is illegal in respect to jurisdiction, authority or observance of law, an abuse of discretion or arbitrary, unreasonable or capricious.

(g) The committee shall grant or deny a motion for rehearing, or suspend the order or decision pending further consideration within 10 days of the filing of the motion for rehearing.

Dec 204.16. Retention of Records. The committee shall keep a decision on file in its records for at least 50 years following the date of the final decision or the date of the decision on any appeal, unless the director of the division of records management and archives of the department of state sets a different retention period pursuant to rules adopted under RSA 5:40

PART Dec 205 DECLARATORY RULINGS

Dec 205.01 Declaratory Rulings.

(a) A person seeking a declaratory ruling on any matter within the jurisdiction of the committee shall request such ruling by filing a written petition.

(b) Such a petition shall be verified under oath or affirmation by an authorized representative of the petitioner with knowledge of the relevant facts.

(c) The committee shall dismiss a petition for declaratory ruling that:

(1) Fails to set forth factual allegations that are definite and concrete;

(2) Involves a hypothetical situation or otherwise seeks advice as to how the committee would decide a future case; or

(3) Does not implicate the legal rights or responsibilities of the petitioner.

(d) Except for a petition dismissed pursuant to subsection (c), the committee shall conduct an adjudicative proceeding on a petition for declaratory ruling in accordance with Dec 203.

PART Dec 206 RULEMAKING

Dec 206.01 Requests for Rulemaking.

(a) Requests from interested persons requesting adoption, amendment or repeal of a rule shall be received and disposed of in the following manner.

(b) Requests shall be in writing and submitted to the committee by letter addressed to the chairman.

(c) Requests shall contain the following:

(1) The date of the request;

(2) The name, address and telephone number of the person making the request; and

(3) Name and address of any other person or organization represented by the person making the request.

(d) The person making the request shall sign the request.

(e) The request shall be typed or printed in a legible fashion.

(f) The person making the request shall cite the rule and its provisions and specify any changes desired if repeal or amendment is sought, and shall provide the text or approximate text of the proposed rule if promulgation is sought.

(g) The person making the request shall include a detailed and complete statement of the reasons offered by such person in support of the requested action.

(h) If the committee determines that any rulemaking petition is deficient in any respect, the committee shall, within 10 working days of receipt of said petition, notify the person making the request, in writing, of the specific deficiencies and allow such person to amend the petition.

Dec 206.02 Disposition of Petition for Rulemaking.

(a) The committee shall consider all petitions for rulemaking and proceed pursuant to RSA 541-A-4.

(b) The committee shall grant the petition if the petition is consistent with statute and case law and will assist the committee with its statutory duties.

Dec 206.03 Explanation of Proposed Rule.

(a) If requested by an interested person at any time before 30 days after final adoption of a rule, the committee shall issue a written explanation of the rule pursuant to RSA 541-A:11, VII.

(b) An explanation issued pursuant to this section shall include:

(1) A concise statement of the principal reasons for and against the adoption of the rule in its final form; and

(2) An explanation of why the committee overruled the arguments and considerations against the rule.