

THE STATE OF NEW HAMPSHIRE

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April 8, 2013

Scott F. Eaton, Esq.  
Administrative Rules Director  
N.H. Office of Legislative Services  
Administrative Rules  
State House Annex, Room 219  
25 Capitol Street  
Concord, NH 03301

Re: Public Utilities Commission Adoption and Filing of  
Proposed Rule 2012-136 (Puc 206, Alternative Regulation)

Dear Director Eaton:

I am writing in response to Director Sieveking's letter dated February 15, 2013, informing the Commission that it may adopt and file the proposed rule in Final Proposal 2012-136.

By this letter, the Commission files 2012-136 with your office, and confirms that 2012-136 has been adopted as of March 26, 2013. The Commission also certifies that the enclosed material is a true copy of the rule adopted by the Commission.

Thank you for your attention to this matter.

Sincerely,

Amy L. Ignatius  
Chairman

cc: Jill K. Sieveking, Director

Enclosures (2012-136 Adopted Text)

CHAPTER Puc 200 RULES OF PRACTICE AND PROCEDURE

**Readopt Puc 206, effective 1-27-05 (Document # 8276), to read as follows:**

PART Puc 206 ALTERNATIVE REGULATION

Puc 206.01 Definitions.

(a) "Alternative form of regulation" means a method of utility rate regulation pursuant to RSA 374:3-a other than methods which are based upon cost of service, rate base and rate of return.

(b) "Utility" means "public utility" as defined in RSA 362:2.

Puc 206.02 Utility May Petition. A utility may file with the commission a petition for an alternative form of regulation.

Puc 206.03 Commission Shall Initiate.

(a) The commission shall initiate a proceeding to establish an alternative form of regulation if it finds that alternative regulation is likely to promote or enhance one or more of the following:

- (1) Competition;
- (2) Advancements in development of infrastructure;
- (3) Investment in new technology, plant and equipment;
- (4) Reduction in prices; or
- (5) Efficiency in services.

(b) When the commission initiates a proceeding to establish an alternative form of regulation, it shall issue an order directing the affected utility to submit detailed information consistent with the requirements of Puc 206.05 and any additional information required by Puc 206.06.

Puc 206.04 Adjudicatory Proceedings.

(a) Proceedings initiated pursuant to Puc 206.02 or Puc 206.03 shall be considered adjudicatory.

(b) Puc 200 Procedural Rules shall apply to proceedings for approval, implementation or withdrawal of approval of an alternative form of regulation.

Puc 206.05 Description of Alternative Form of Regulation. When a utility petitions for an alternative form of regulation, it shall describe in detail in its petition or, as to materials requested pursuant to Puc 206.05 (f), it shall provide the following:

- (a) The form of alternative regulation it seeks;
- (b) The extent to which that form of alternative regulation shall apply to its entire operations or to particular portions of its services or operations;
- (c) The term over which the alternative form of regulation shall apply;
- (d) The form of regulation which shall apply after the term of the approved form of alternative regulation expires;

(e) How the rates charged under the alternative form of regulation would compare to rates that would be charged under methods which are based upon cost of service, rate base and rate of return, if the utility were to file a rate case concurrently; and

(f) Any additional information, including but not limited to, rates, pricing, earnings, customer protections, service offerings, expansion of technology, accounting or investments which the commission shall request if the form of alternative regulation and/or the petition raise issues on which the commission needs further information in order to complete the record.

**Puc 206.06 Filing Requirements.**

(a) When a utility seeks an alternative form of regulation, it shall file a petition with the commission which shall contain identifying information including the name of the utility, address of the utility and contact person.

(b) In its petition filed pursuant to Puc 206.02 or in response to a commission-initiated proceeding pursuant to Puc 206.03, the utility shall describe in detail the effects, if any, that the alternative form of regulation will have on the following:

- (1) Competition;
- (2) The safety, adequacy and reliability of public utility service;
- (3) The traditional regulatory balance which does not unfairly benefit or disadvantage utility consumers, utility investors and other stakeholders;
- (4) Administrative efficiency in the regulatory process for the utility and the commission;
- (5) Economic development within New Hampshire;
- (6) Access to basic utility service to residents throughout the state, also known as universal service;
- (7) Innovation of services;
- (8) Infrastructure improvements; and
- (9) Environmental and conservation safeguards and incentives.

(c) Where the utility concludes that the alternative form of regulation will have no effect on any factor listed in Puc 206.06 (b), the utility shall describe in detail in its petition the basis for its conclusion that there is no effect.

**Puc 206.07 Standards for Approval.**

(a) After notice and hearing, and after considering the materials submitted by the utility, other interested parties and commission staff, and the factors required by Puc 206.06, the commission shall approve an alternative form of regulation if it determines that such alternative:

- (1) Results in rates that are not unduly discriminatory and are at a level that allows those to whom a service is being marketed to obtain such service;
- (2) Provides the utility the opportunity to realize a return on its investment which falls within a range that is neither confiscatory nor unduly profitable and that reflects the utility's investment risk; and

- (3) Serves the public interest in light of the considerations described in Puc 206.06(b)(1) through (9).

**Puc 206.08 Reporting Requirements.**

(a) Any utility regulated under an alternative form of regulation which maintains its books on a calendar year basis shall report to the commission no later than March 31 of each year the following information:

- (1) Changes in prices of services under an alternative form of regulation during the calendar year just concluded;
- (2) New services introduced under an alternative form of regulation during the calendar year just concluded;
- (3) The rate of return realized on services under an alternative form of regulation during the calendar year just concluded;
- (4) New construction or improvement to infrastructure introduced under an alternative form of regulation during the calendar year just concluded; and
- (5) Any further information which the commission determines is necessary to confirm that the original bases for approval under Puc 206.07 have still been met.

(b) Any utility regulated under an alternative form of regulation that maintains its books on a fiscal year that does not coincide with a calendar year shall report to the commission no later than 90 days following the close of each fiscal year the information listed in Puc 206.08(a)(1) through (5).

(c) Reporting requirements under this section shall be in addition to and shall not supersede or negate the necessity to comply with any other applicable reporting requirements established under rulemaking authority of the commission.

(d) For any utility in which some services are subject to rate of return regulation and some services are subject to an alternative form of regulation, the utility shall maintain accounting records which demonstrate that the costs and revenues of rate of return regulated services are not commingled with the costs and revenues of services under an alternative form of regulation.

**Puc 206.09 Withdrawal of Approval.**

(a) When the commission determines, after notice and an opportunity for hearing pursuant to Puc 200, that a utility's performance under an alternative form of regulation no longer complies with the standards for approval established by Puc 206.07, and therefore no longer serves the public interest, the commission shall issue an order:

- (1) Withdrawing approval of the alternative form of regulation and:

- a. Initiating a proceeding to establish another alternative form of regulation, in accordance with Puc 206.06 and 206.07; or

- b. Reinstating regulation based upon cost of service, rate base and rate of return.

(b) During the pendency of a proceeding to consider withdrawal of approval of an alternative form of regulation or a proceeding to consider another alternative form of regulation, the commission shall either:

- (1) Maintain the form of regulation last approved for the affected utility; or
  - (2) Reinstitute regulation based upon cost of service, rate base and rate of return.
- (c) In determining the method of regulation to apply during the pendency of a proceeding pursuant to Puc 206.09(a), the commission shall order the form of regulation that best assures:
- (1) Safe, adequate and reliable utility operation;
  - (2) Financial stability of the utility; and
  - (3) Limited financial impact, if any, on ratepayers.

**APPENDIX**

<b>Rule</b>	<b>Statute</b>
Puc 206.01 - 206.09	RSA 365:8, III; RSA 365:8, XII