

STATE OF NEW HAMPSHIRE



OFFICE OF LEGISLATIVE SERVICES

STATE HOUSE
107 NORTH MAIN STREET, ROOM 109
CONCORD, NEW HAMPSHIRE 03301-4951

May 17, 2017

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

Re: Waiver of 150-day Deadline for Filing Final Proposal 2016-233

Dear Commission Members:

In a letter dated May 8, 2017, Martin P. Honigberg, as Chairman of the Public Utilities Commission (PUC), requested on behalf of the PUC a waiver pursuant to RSA 541-A:40, IV of the 150-day deadline for establishing and filing Final Proposal 2016-233. The Final Proposal would contain rules Puc 2000 on competitive electric power supplier and aggregator rules. The original 150-day deadline pursuant to RSA 541-A:12, I and RSA 541-A:16, IV for this Final Proposal is May 22, 2017. The waiver request asked for a new deadline of July 20, 2017. I have approved the waiver as requested, but with an understanding as explained below.

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). Chairman Honigberg's request had explained why the rulemaking proceeding for Final Proposal 2016-233 had taken longer than usual because of the number and complexity of substantive comments, other significant issues, and the effects of the Governor's rulemaking moratorium request of January 5, 2017. However, the Chairman's letter did not also explain why this particular rulemaking proceeding should continue, as compared with the PUC simply stopping and starting over with a new rulemaking proceeding, including a hearing and public comment period.

In response to a request to the PUC for more clarification on that issue, David Wiesner, Staff Attorney to the PUC, described in an e-mail to OLS on May 11 why the amendments to Puc 2000 are important in the PUC's view, and that the PUC was concerned about the amount of time involved in another rulemaking proceeding. Attorney Wiesner outlined the PUC's interest "in completing the current rulemaking before the Fall in order to achieve" the listed results "in the nearer term." However, although the rule amendments were "an important priority", he also conceded that "adoption of the Puc 2000 rules amendments in the nearer term might not be characterized as 'urgent'."

I have consulted with Senator John Reagan, the JLCAR Chair, and Representative Carol McGuire, the JLCAR Vice-Chair. Senator Reagan had concerns that agency waivers in general are becoming routine and that many, such as the waiver of the 150-day deadline, would be unnecessary if the agency simply started a rulemaking proceeding sooner or otherwise planned more effectively in

order to be able to adjust to unexpected delays and avoid reliance on waivers. While not minimizing the importance of the rule amendments proposed for PUC 2000, Senator Reagan also wished to emphasize that this would be the last time that the moratorium should be considered by an agency as an adequate reason for a delay in meeting the deadlines under RSA 541-A.

In light of the circumstances explained by Attorney Wiesner, I agree that good cause exists for waiving the 150-day deadline, and hereby grant the waiver request and set a new deadline of July 20, 2017 to establish and file Final Proposal 2016-233. However, in consideration of the Senator Reagan's concerns, this waiver is granted with the understanding that the PUC should plan its rulemaking proceedings so that waivers do not become necessary. That is especially true if it believes, as in the case of Final Proposal 2016-233, that the rules are an important priority. The PUC should create a safety margin of time when undertaking a proceeding so that it can accommodate unexpected delays such as those due to the Governor's moratorium or the complexity of substantive comments, and not see a waiver as a routine option. Otherwise requests for waivers may be denied.

If you have any questions in this regard, please contact legal staff in Administrative Rules at 271-3680.

Very truly yours,



David J. Alukonis
Interim Director

DJK/SFE

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