

THE STATE OF NEW HAMPSHIRE

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PUBLIC UTILITIES COMMISSION

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May 12, 2009

Scott F. Eaton, Director
Administrative Rules Division
Office of Legislative Services
State House Annex, Room 219
25 Capitol Street
Concord, New Hampshire 03301

Re: Puc 1300 – Utility Pole Attachments
PUC Docket: DRM 08-004

Dear Mr. Eaton:

Enclosed please find documents to be filed with your office regarding the above-referenced docket:

- 1) Appendix II-C, Rulemaking Notice Form;
- 2) Fiscal Impact Statement – FIS 09:074 (2 copies);
- 3) Puc 1300 - Initial Proposal – Annotated Text (Showing Changes from Current Interim Rules) (2 copies).
- 4) Puc 1300 - Initial Proposal – Fixed Text
- 5) Cross Reference Table of Applicable Statutes (2 copies);

Please include the Rulemaking Notice Form in the next available Rulemaking Register.

Thank you.

Sincerely,

Thomas B. Getz
Chairman

Enclosures

APPENDIX II-C

RULEMAKING NOTICE FORM

Notice Number _____

Rule Number **Puc 1300**

<p>1. Agency Name & Address:</p> <p>Public Utilities Commission 21 South Fruit Street Suite 10 Concord, NH 03301</p>	<p>2. RSA Authority: <u>RSA 374:3, RSA 374:34-a</u></p> <p>3. Federal Authority: <u>47 U.S.C. § 224(c)</u></p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Amendment _____</p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment <u>X</u></p>
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5. Short Title: **Puc 1300 – POLE ATTACHMENTS**

6. (a) Summary of what the rule says and the effect of the rule on those regulated:

Puc 1300, pursuant to the mandate of RSA 374:34-a, provides for regulation of rates, charges, terms and conditions of utility pole attachments that are just, reasonable and in the public interest as regulated by the State Public Utilities Commission rather than the Federal Communications Commission.

Section 224 of the Federal Telecommunications Act, 47 U.S.C. § 224, authorizes states to assume jurisdiction over disputes between the owners of utility poles and persons attaching or seeking to attach facilities to those poles. The Legislature authorized the New Hampshire Public Utilities Commission (PUC) to assume jurisdiction, thereby regulating and enforcing the rates, charges, terms and conditions for such attachments, in 2007 N.H. Laws Ch. 340, codified as RSA 374:34-a. Interim rules, Chapter Puc 1300, went into effect and, thus, disputes over utility pole attachments in New Hampshire are now properly brought before the NH PUC as opposed to the Federal Communications Commission.

6. (b) Brief description of the groups affected: **Public utilities that own or co-own utility poles; or facilities attached to such poles and/or that seek such attachments.**

APPENDIX II-C (Continued)

RULEMAKING NOTICE FORM - Page 2

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule	Applicable Statute
Puc 1300	RSA 374:3; RSA 374:34-a,III

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Lynn Fabrizio, Esq.** Title: **Staff Attorney**
Address: **21 South Fruit Street** Phone #: **603-271-6030**
Suite 10 Fax#: **603-271-3878**
Concord, NH 03301 E-mail: **lynn.fabrizio@puc.nh.gov**
TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **June 25, 2009**

☒ Fax

☒ E-mail –

☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **June 18, 2009 at 9:00 AM**
Place: **Public Utilities Commission**
21 South Fruit Street, Suite 10
Concord, NH 03301

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # **09:074** dated **May 8, 2009**

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution: **The proposed rules do not modify an existing program or responsibility in any way that violates Part I, Article 28-a.**

LBAO
FIS 09:074
05/08/09

Fiscal Impact Statement for Public Utilities Commission rules governing Utility Pole Attachments.
[Puc 1300]

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost when comparing the proposed rules to the existing rules.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

There are no costs or benefits attributable to the proposed rules

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

None.

Readopt with Amendment Chapter Puc 1300, effective 1-17-08 (Document # 9073) to read as follows:

CHAPTER Puc 1300 UTILITY POLE ATTACHMENTS

Statutory Authority: RSA 374:3; RSA 374:34-a

PART Puc 1301 PURPOSE AND APPLICABILITY

Puc 1301.01 Purpose. The purpose of Puc 1300, pursuant to the mandate of RSA 374:34-a, is to ~~provide for the resolution of disputes involving the~~ ensure rates, charges, terms and conditions for pole attachments: are just, reasonable and in the public interest. Nothing in this Rule shall be construed to supersede, overrule, or replace any other law or regulation, including municipal and state authority over public highways pursuant to RSA 231:159 et seq.

Puc 1301.02 Applicability. Puc 1300 shall apply to

(a) Public utilities within the meaning of RSA 362, including rural electric cooperatives for which a certificate of deregulation is on file pursuant to RSA 301:57, that own, in whole or in part, any pole used for wire communications or electric distribution.

(b) ~~Other persons~~ Attaching entities with facilities attached to such poles, or seeking to attach facilities to such poles.

PART Puc 1302 DEFINITIONS

Puc 1301.01 “Attaching entity” means a natural person or an entity with a statutory or contract right to attach a facility of any type to a pole, including but not limited to telecommunications providers, cable television service providers, incumbent local exchange carriers, competitive local exchange carriers, electric utilities, and governmental entities.

Puc 1301.02 “Boxing” means the placement of lines or cables on both the road side and the field side of a pole.

Puc 1302.04~~3~~ “Commission” means the New Hampshire public utilities commission.

Puc 1302.04 “Extension arm(s)” means a bracket attached to a utility pole to provide support for cables or wires at a distance from the pole.

Puc 1302.05 “Facility” means the lines and cables and accompanying appurtenances attached to a utility pole for the transmission of electric, telecommunications, or digital information services.

Puc 1302.02~~6~~ “FCC” means the federal communications commission.

Puc 1302.07 “Make-ready work” means the movement of cables and other facilities or the replacement of an existing pole with a taller pole to allow for additional attachments.

Puc 1302.03~~8~~ “Pole” means “pole” as defined in RSA 374:34-a, namely “any pole, duct, conduit or right-of-way that is used for wire communications or electricity distribution and is owned in whole or in part by a public utility, including a rural electric cooperative for which a certificate of deregulation is on file with the commission pursuant to RSA 301:57.”

Puc 1302.09 “Prime rate” means the rate reported in the *Wall Street Journal* on the first business day of the month preceding the beginning of each calendar quarter, or the average of the rates so reported on that day.

Puc 1302.10 “Utility” means a public utility as defined in RSA 362:2, including a rural electric cooperative for which a certificate of deregulation is on file with the commission pursuant to RSA 301:57.

PART Puc 1303 ACCESS TO POLES

Puc 1303.01 Access Standard. The owner or owners of a pole shall provide attaching entities access to such pole on terms that are just, reasonable and nondiscriminatory. Notwithstanding this obligation, the owner or owners of a pole may deny a request for attachment to such pole when there is insufficient capacity on the pole or for reasons of safety, reliability and generally applicable engineering purposes.

Puc 1303.02 Owner Obligation to Negotiate. The owner or owners of a pole shall, upon the request of a person ~~seeking a~~ entitled to access under these rules seeking a pole attachment, negotiate in good faith with respect to the terms and conditions for such attachment.

Puc 1303.03 Requestor Obligation to Negotiate. A person ~~seeking a~~ entitled to access under these rules seeking a pole attachment shall contact the owner or owners of the pole and make a reasonable effort to negotiate in good faith an agreement for such attachment.

~~Puc 1303.04 Voluntary Agreements. Any pole attachment agreement entered into voluntarily under this part shall be presumed to be just, reasonable and nondiscriminatory. The commission shall not alter the terms of any such agreement.~~

Puc 1303.04 Request for Access and Response Requirements. Requests made under these rules and pursuant to a pole attachment agreement for access to a utility’s poles shall be in writing. Absent extraordinary circumstances, a survey for an application

not exceeding 200 poles shall be completed and the results communicated to the applicant seeking to attach within 45 days of receiving a completed application and survey fee. If permission for access is not granted within 45 calendar days of receiving a complete request for access, the owner must confirm the denial in writing by the 45th day. The owner's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to the grounds in Puc 1303.01 for such denial.

Puc 1303.05 Authorization Required. A person seeking to attach facilities to a pole shall obtain authorization from the pole owner or owners prior to attaching such facilities.

Puc 1303.06 Notification.

(a) A pole owner shall provide a person with facilities attached to a pole no less than 60 days' written notice prior to:

- (1) Removing any of that person's facilities,
- (2) Increasing any annual or recurring fees or rates applicable to the pole attachment, or
- (3) Modifying the facilities other than as part of routine maintenance or response to an emergency.

(b) Attaching entities shall provide written notice to pole owner or owners no less than 60 days prior to:

- (1) Modifying an existing attachment other than as part of routine maintenance or response to an emergency;
- (2) Increasing the pole loading of an existing attachment; or
- (3) Changing the purpose for which an existing attachment is used.

Separate and additional attachments are subject to pole attachment application and licensing processes.

Puc 1303.07 Installation and Maintenance.

(a) All attachments shall be installed in accordance with the National Electrical Safety Code, 2007 edition, the National Electric Code as adopted by RSA 155-A:1,IV, and the SR-1421 *Blue Book – Manual of Construction Practices, Issue 4*, Telecordia Technologies, Inc. (2007), and in accordance with such other applicable standards and requirements specified in the pole attachment agreement.

(b) Any attachment shall be installed and maintained to prevent interference with service furnished by the utility pole owner or owners and any other attaching entity.

Puc 1303.08 Labeling of Attachments.

Attaching entities shall clearly label their attachments with owner identification.

Puc 1303.09 Location of Attachments

No attaching entity shall be denied attachment solely because the only space available for attachment on a pole is below the lowest attached facility. If the owner of the lowest facility chooses to relocate its existing facilities to a lower allowable point of attachment so that the new attaching entity will be above all existing facilities, it shall do so at its own expense.

Puc 1303.10 Boxing of Poles

Pole owners may restrict the practice of boxing poles consistent with the restrictions it places on its own practice of boxing poles as defined in the company's written methods and procedures. Such boxing shall be safely accessible by bucket trucks, ladders or emergency equipment and otherwise consistent with the requirements of applicable codes, including the National Electric Safety Code.

Puc 1303.11 Use of Extension Arms.

Pole owners shall allow limited, reasonable use of extension arms by attaching entities for purposes of clearing obstacles or improving alignment of attachment facilities. Under no circumstances may extension arms be used to avoid tree trimming requirements. Any use of extension arms shall be consistent with the requirements of applicable codes, including the National Electric Safety Code.

Puc 1303.12 Make-Ready Timeframes.

Unless otherwise agreed by parties to a pole attachment agreement, pole owners shall complete make-ready work within 180 days after any required pre-payments of any make-ready estimates provided to the attaching entity by the pole owner or owners. Unless otherwise agreed by the parties to a pole attachment agreement, make-ready work shall be deemed to include all work, including but not limited to rearrangement and/or transfer of existing facilities, replacement of a pole or any other changes required to accommodate the attachment of the facilities of the party requesting attachment to the pole.

PART Puc 1304 DISPUTE RESOLUTION

Puc 1304.01 Lack of Agreement. A person ~~unable-requesting a pole attachment and entitled to access under these rules and unable, under demonstrable exhaustion of reasonable good faith negotiation efforts,~~ to reach agreement with the owner or owners of a pole or poles subject to this chapter, may petition the commission pursuant to Part Puc 203 for an order establishing the rates, charges, terms and conditions for the pole attachment or attachments. Such a petition shall include the information required for complaints to the FCC made pursuant to the terms of 47 CFR § 1.1404(d) through (m) in effect on July 16, 2007.

Puc 1304.02 Dispute Following Agreement or Order. A party to a ~~voluntary~~ pole attachment agreement entered into ~~pursuant to this chapter on or after July 17, 2007,~~ or a party subject to an order of the commission establishing rates, charges, terms or conditions for pole attachments, may petition the commission pursuant to Puc 203 for resolution of a dispute arising under such agreement or order.

~~Puc 1304.03 Procedure. Upon receipt of a petition pursuant to this part, the commission shall conduct adjudicative proceedings pursuant to Puc 203 for the purpose of considering and ruling on the petition. The commission shall issue its order resolving the complaint within 180 days of the receipt of a complete petition under this part.~~

~~Puc 1304.04 FCC Standard Applicable. In determining just and reasonable rates under this chapter, the commission shall apply the standards and formulae adopted by the FCC in 47 CFR § 1.1409(e) through (f) in effect on July 16, 2007.~~

~~Puc 1304.05 Remedies. When the commission determines just and reasonable rates under this Part that differ from the rates paid by the petitioner, the commission shall order a payment or refund, as appropriate. Such refund or payment shall be the difference between the amount actually paid and the amount that would have been paid under the rates established by the commission, plus interest, as of the date of the petition.~~

~~Puc 1304.03 Unauthorized Attachments. A pole owner may, but is not obligated to petition the commission pursuant to Puc 203 for an order directing the removal of facilities that are attached to a pole without authorization pursuant to this chapter.~~

~~Puc 1304.04 Procedure. Upon receipt of a petition pursuant to this part, the commission shall conduct an adjudicative proceeding pursuant to Puc 203 to consider and rule on the petition. Where the public interest so requires, the commission may order that rates, charges, terms or conditions for pole attachments be modified.~~

Puc 1304.05 Rate Review Standards.

(a) In determining just and reasonable rates for the attachments of competitive local exchange carriers and cable television service providers to poles owned by incumbent local exchange carriers or electric utilities under this chapter, the commission shall consider:

(1) The interests of the subscribers and users of the services offered via such attachments;

(2) The interests of the consumers of any pole owner providing such attachments; and

(3) The formulae adopted by the FCC in 47 CFR § 1.1409(c) through (f) in effect on July 16, 2007.

(b) In determining just and reasonable rates for all other attachments under this chapter, the commission shall consider:

(1) The interests of the subscribers and users of the services offered via such attachments; and

(2) The interests of the consumers of any pole owner providing such attachments.

Puc 1304.06 Burden of Proof.

(a) A pole attachment agreement entered into voluntarily under this part shall be presumed to be just, reasonable and nondiscriminatory for purposes of adjudication before the commission. An attaching entity filing a petition under this part shall have the burden of proving that an agreement entered into voluntarily is not just, reasonable and nondiscriminatory.

(b) A pole attachment agreement signed prior to July 17, 2007, shall be presumed to have been entered into voluntarily. An attaching entity may rebut the presumption of voluntariness by demonstrating that signing the agreement, regardless of its terms, was reasonably necessary to avoid significant delay in deployment of facilities.

(c) When the presumption of voluntariness has been successfully rebutted pursuant to (b) above, the burden of proving that the agreement is just, reasonable and nondiscriminatory shall shift to the pole owner.

Puc 1304.07 Remedies. When the commission determines just and reasonable rates under this part that differ from the rates paid by the petitioner, the commission shall order a payment or refund, as appropriate. Such refund or payment shall be the difference between the amount actually paid and the amount that would have been paid under the rates established by the commission, plus interest, as of the date of the petition.

Puc 1304.08 Interest. Refunds or payments ordered under Puc 1304.07 shall accrue simple annual interest at a rate equal to the prime rate.

~~PART Puc 1305 CERTIFICATION TO FCC~~

~~Puc 1305.01 Certification. Within 10 days of the effective date of these rules, the commission shall certify to the FCC that the commission regulates the rates, terms and conditions for pole attachments in a manner sufficient to supersede FCC jurisdiction pursuant to 47 U.S.C. § 224 in effect on July 17, 2007 or any successor federal statute.~~

Appendix

Rule	Applicable Statute
Puc 1300	RSA 374:3; RSA 374:34-a

Readopt with Amendment Chapter Puc 1300, effective 1-17-08 (Document # 9073) to read as follows:

CHAPTER Puc 1300 UTILITY POLE ATTACHMENTS

Statutory Authority: RSA 374:3; RSA 374:34-a

PART Puc 1301 PURPOSE AND APPLICABILITY

Puc 1301.01 Purpose. The purpose of Puc 1300, pursuant to the mandate of RSA 374:34-a, is to ensure rates, charges, terms and conditions for pole attachments are just, reasonable and in the public interest. Nothing in this Rule shall be construed to supersede, overrule, or replace any other law or regulation, including municipal and state authority over public highways pursuant to RSA 231:159 et seq.

Puc 1301.02 Applicability. Puc 1300 shall apply to

(a) Public utilities within the meaning of RSA 362, including rural electric cooperatives for which a certificate of deregulation is on file pursuant to RSA 301:57, that own, in whole or in part, any pole used for wire communications or electric distribution.

(b) Attaching entities with facilities attached to such poles, or seeking to attach facilities to such poles.

PART Puc 1302 DEFINITIONS

Puc 1301.01 “Attaching entity” means a natural person or an entity with a statutory or contract right to attach a facility of any type to a pole, including but not limited to telecommunications providers, cable television service providers, incumbent local exchange carriers, competitive local exchange carriers, electric utilities, and governmental entities.

Puc 1301.02 “Boxing” means the placement of lines or cables on both the road side and the field side of a pole.

Puc 1302.03 “Commission” means the New Hampshire public utilities commission.

Puc 1302.04 “Extension arm(s)” means a bracket attached to a utility pole to provide support for cables or wires at a distance from the pole.

Puc 1302.05 “Facility” means the lines and cables and accompanying appurtenances attached to a utility pole for the transmission of electric, telecommunications, or digital information services.

Puc 1302.06 “FCC” means the federal communications commission.

Puc 1302.07 “Make-ready work” means the movement of cables and other facilities or the replacement of an existing pole with a taller pole to allow for additional attachments.

Puc 1302.08 “Pole” means “pole” as defined in RSA 374:34-a, namely “any pole, duct, conduit or right-of-way that is used for wire communications or electricity distribution and is owned in whole or in part by a public utility, including a rural electric cooperative for which a certificate of deregulation is on file with the commission pursuant to RSA 301:57.”

Puc 1302.09 “Prime rate” means the rate reported in the *Wall Street Journal* on the first business day of the month preceding the beginning of each calendar quarter, or the average of the rates so reported on that day.

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PART Puc 1303 ACCESS TO POLES

Puc 1303.01 Access Standard. The owner or owners of a pole shall provide attaching entities access to such pole on terms that are just, reasonable and nondiscriminatory. Notwithstanding this obligation, the owner or owners of a pole may deny a request for attachment to such pole when there is insufficient capacity on the pole or for reasons of safety, reliability and generally applicable engineering purposes.

Puc 1303.02 Owner Obligation to Negotiate. The owner or owners of a pole shall, upon the request of a person entitled to access under these rules seeking a pole attachment, negotiate in good faith with respect to the terms and conditions for such attachment.

Puc 1303.03 Requestor Obligation to Negotiate. A person entitled to access under these rules seeking a pole attachment shall contact the owner or owners of the pole and make a reasonable effort to negotiate in good faith an agreement for such attachment.

Puc 1303.04 Request for Access and Response Requirements. Requests made under these rules and pursuant to a pole attachment agreement for access to a utility’s poles shall be in writing. Absent extraordinary circumstances, a survey for an application not exceeding 200 poles shall be completed and the results communicated to the applicant seeking to attach within 45 days of receiving a completed application and survey fee. If permission for access is not granted within 45 calendar days of receiving a complete request for access, the owner must confirm the denial in writing by the 45th day. The owner’s denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to the grounds in Puc 1303.01 for such denial.

Puc 1303.05 Authorization Required. A person seeking to attach facilities to a pole shall obtain authorization from the pole owner or owners prior to attaching such facilities.

Puc 1303.06 Notification.

(a) A pole owner shall provide a person with facilities attached to a pole no less than 60 days' written notice prior to:

- (1) Removing any of that person's facilities,
- (2) Increasing any annual or recurring fees or rates applicable to the pole attachment, or
- (3) Modifying the facilities other than as part of routine maintenance or response to an emergency.

(b) Attaching entities shall provide written notice to pole owner or owners no less than 60 days prior to:

- (1) Modifying an existing attachment other than as part of routine maintenance or response to an emergency;
- (2) Increasing the pole loading of an existing attachment; or
- (3) Changing the purpose for which an existing attachment is used.

Separate and additional attachments are subject to pole attachment application and licensing processes.

Puc 1303.07 Installation and Maintenance.

(a) All attachments shall be installed in accordance with the National Electrical Safety Code, 2007 edition, the National Electric Code as adopted by RSA 155-A:1,IV, and the SR-1421 *Blue Book – Manual of Construction Practices, Issue 4*, Telecordia Technologies, Inc. (2007), and in accordance with such other applicable standards and requirements specified in the pole attachment agreement.

(b) Any attachment shall be installed and maintained to prevent interference with service furnished by the utility pole owner or owners and any other attaching entity.

Puc 1303.08 Labeling of Attachments.

Attaching entities shall clearly label their attachments with owner identification.

Puc 1303.09 Location of Attachments

No attaching entity shall be denied attachment solely because the only space available for attachment on a pole is below the lowest attached facility. If the owner of the lowest facility chooses to relocate its existing facilities to a lower allowable point of attachment so that the new attaching entity will be above all existing facilities, it shall do so at its own expense.

Puc 1303.10 Boxing of Poles

Pole owners may restrict the practice of boxing poles consistent with the restrictions it places on its own practice of boxing poles as defined in the company's written methods and procedures. Such boxing shall be safely accessible by bucket trucks, ladders or emergency equipment and otherwise consistent with the requirements of applicable codes, including the National Electric Safety Code.

Puc 1303.11 Use of Extension Arms.

Pole owners shall allow limited, reasonable use of extension arms by attaching entities for purposes of clearing obstacles or improving alignment of attachment facilities. Under no circumstances may extension arms be used to avoid tree trimming requirements. Any use of extension arms shall be consistent with the requirements of applicable codes, including the National Electric Safety Code.

Puc 1303.12 Make-Ready Timeframes.

Unless otherwise agreed by parties to a pole attachment agreement, pole owners shall complete make-ready work within 180 days after any required pre-payments of any make-ready estimates provided to the attaching entity by the pole owner or owners. Unless otherwise agreed by the parties to a pole attachment agreement, make-ready work shall be deemed to include all work, including but not limited to rearrangement and/or transfer of existing facilities, replacement of a pole or any other changes required to accommodate the attachment of the facilities of the party requesting attachment to the pole.

PART Puc 1304 DISPUTE RESOLUTION

Puc 1304.01 Lack of Agreement. A person requesting a pole attachment and entitled to access under these rules and unable, under demonstrable exhaustion of reasonable good faith negotiation efforts, to reach agreement with the owner or owners of a pole or poles subject to this chapter, may petition the commission pursuant to Part Puc 203 for an order establishing the rates, charges, terms and conditions for the pole attachment or attachments. Such a petition shall include the information required for complaints to the FCC made pursuant to the terms of 47 CFR § 1.1404(d) through (m) in effect on July 16, 2007.

Puc 1304.02 Dispute Following Agreement or Order. A party to a pole attachment agreement entered into on or after July 17, 2007, or a party subject to an order of the commission establishing rates, charges, terms or conditions for pole attachments, may petition the commission pursuant to Puc 203 for resolution of a dispute arising under such agreement or order.

Puc 1304.03 Unauthorized Attachments. A pole owner may, but is not obligated to petition the commission pursuant to Puc 203 for an order directing the removal of facilities that are attached to a pole without authorization pursuant to this chapter.

Puc 1304.04 Procedure. Upon receipt of a petition pursuant to this part, the commission shall conduct an adjudicative proceeding pursuant to Puc 203 to consider and rule on the petition. Where the public interest so requires, the commission may order that rates, charges, terms or conditions for pole attachments be modified.

Puc 1304.05 Rate Review Standards.

(a) In determining just and reasonable rates for the attachments of competitive local exchange carriers and cable television service providers to poles owned by incumbent local exchange carriers or electric utilities under this chapter, the commission shall consider:

- (1) The interests of the subscribers and users of the services offered via such attachments;
- (2) The interests of the consumers of any pole owner providing such attachments; and
- (3) The formulae adopted by the FCC in 47 CFR § 1.1409(c) through (f) in effect on July 16, 2007.

(b) In determining just and reasonable rates for all other attachments under this chapter, the commission shall consider:

- (1) The interests of the subscribers and users of the services offered via such attachments; and
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Puc 1304.06 Burden of Proof.

(a) A pole attachment agreement entered into voluntarily under this part shall be presumed to be just, reasonable and nondiscriminatory for purposes of adjudication before the commission. An attaching entity filing a petition under this part shall have the

burden of proving that an agreement entered into voluntarily is not just, reasonable and nondiscriminatory.

(b) A pole attachment agreement signed prior to July 17, 2007, shall be presumed to have been entered into voluntarily. An attaching entity may rebut the presumption of voluntariness by demonstrating that signing the agreement, regardless of its terms, was reasonably necessary to avoid significant delay in deployment of facilities.

(c) When the presumption of voluntariness has been successfully rebutted pursuant to (b) above, the burden of proving that the agreement is just, reasonable and nondiscriminatory shall shift to the pole owner.

Puc 1304.07 Remedies. When the commission determines just and reasonable rates under this part that differ from the rates paid by the petitioner, the commission shall order a payment or refund, as appropriate. Such refund or payment shall be the difference between the amount actually paid and the amount that would have been paid under the rates established by the commission, plus interest, as of the date of the petition.

Puc 1304.08 Interest. Refunds or payments ordered under Puc 1304.07 shall accrue simple annual interest at a rate equal to the prime rate.

Appendix

Rule	Applicable Statute
Puc 1300	RSA 374:3; RSA 374:34-a