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December 2, 2009

The Honorable Maurice Pilotte
Vice Chair, Joint Legislative Committee on Administrative Rules
Office of Legislative Services
Administrative Rules
25 Capitol Street, Room 219
Concord, NH 03301-6312

Re:Response to JLCAR's Revised Objection Notice Number 2009-79
Puc 1300, Utility Pole Attachments, Readoption with Amendment
NHPUC Docket No. DRM 08-004

Dear Representative Pilotte:

On November 19, 2009, the Joint Legislative Committee on Administrative Rules (JLCAR or Committee) entered a revised objection to the Public Utilities Commission's (PUC or Commission) preliminary objection response, which was filed on October 16, 2009. Attached please find the Commission's Revised Objection Response for Puc 1300, Utility Pole Attachments, approved at a public meeting by the New Hampshire Public Utilities Commission (Commission) on December 2, 2009. We respond here to issues raised in the revised objection and we believe the amendments resolve the bases for objection.

The proposed rule has been further amended in this filing to reflect changes made in response to JLCAR Staff comments and FairPoint testimony at the November 19, 2009 hearing, as requested in the Committee's letter of November 23, 2009.

Responses to JLCAR Staff Comments:

Puc 1301.01 has been amended to delete the phrase "and in the public interest."

Puc 1303.04 has been amended to limit the term "extraordinary circumstances" by deleting the word extraordinary and modifying the phrase to say: "Absent circumstances beyond the pole owner's control, such as *force majeure*..."

Puc 1304.05 has been amended, as suggested at the JLCAR meeting on November 19, by deleting the sentence referring to the public interest.

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Puc 1300, Utility Pole Attachments

Puc 1304.06 has been amended to specify criteria the commission shall consider when adjudicating pole attachment rates. The intent is to clarify how the commission will implement this provision of the statute.

Responses to FairPoint Testimony:

Puc 1303.04 has been amended to clarify the intent, which is that the pole owner grant or deny access to poles, in writing, within 45 days of receiving a complete request.

Puc 1303.06(b)(1) and (2) have been amended by deleting the word “materially,” clarifying instances when an attaching entity is required to notify the pole owner, with certain exceptions.

Puc 1303.07(a) has been amended to re-insert reference to the text regarding the “SR 1421 *Blue Book Manual of Construction Procedures, Issue 4.*”

Puc 1303.07(c) has been amended to clarify that a new attaching entity shall not be responsible for the cost of bringing existing attachments into compliance with applicable codes, while eliminating the implication that the pole owner would be responsible for such cost.

Puc 1303.10 and 11 have been amended to require attaching entities to obtain express, written permission from a pole owner before using boxing or extension arms. The revision also requires the pole owner to grant or deny a request to use boxing or extension arms within 30 days of receiving a request to use boxing or extension arms in a particular case.

Puc 1303.12 has been amended by re-inserting the language on prepayments.

The Commission did not make further revisions to Puc 1303.09. The Commission believes the proposed rule, which establishes a 60/40 cost sharing, in the event a pole owner elects to move its attachment to maintain the lowest position on the pole, is a balanced result reflecting competing positions advanced in this proceeding. As Attorney Phillips pointed out in his testimony at the November 19 meeting, not all pole owners object to this rule, and in fact the eight incumbent providers he represents, support this provision.

Commission staff reviewed all of the proposed changes addressing the FairPoint testimony with Attorney Davis from FairPoint. Ms. Davis indicated, with these revisions, that FairPoint has no further objections.

Although the Committee did not include in its Revised Objection any of the Local Government Center’s (LGC’s) concerns, the Commission would like to clarify the following points. The two remaining LGC concerns appear to be that the rule somehow exceeds the Commission’s statutory authority and that the PUC rules should require that municipal licenses be obtained by attaching entities prior to making a pole attachment. As explained previously, we fundamentally disagree with LGC regarding the statutory authority. As pointed out in the memo

from Representative Kaen, Chair of the House Science, Technology and Energy Committee, which originally heard and approved the bill creating RSA 374:34-a and mandated this rulemaking, the intent of the legislation was to establish the PUC as the in-state, neutral forum for disputes the parties were not able to resolve, recognizing that many users of poles are not telecommunications entities. Notably, the last sentence in RSA 374:34-a, II provides the Commission broader statutory authority than the authority granted to states under federal statute at 47 U.S.C. section 224(c) (the Telecom Act). A fundamental tenet of statutory construction is that words and sentences in law are presumed to have meaning and purpose. If our authority were to be limited to only the types of attachments and the issues referenced for potential state authority under the federal Telecom Act – as the LGC seems to argue – then there would be no point to including in our state law a sentence that states that the PUC’s “**authority shall include, but not be limited to**, the state regulatory authority referenced in 47 U.S.C. section 224” (emphasis added). Also, as previously noted, the definition of “attaching entity” in our proposed rule is virtually identical to the FCC definition, which includes governmental entities.

The PUC is confident that our statutory authority covers all attachments to poles (and any other plant or facilities) owned by regulated utilities over which we have direct supervisory authority pursuant to RSA 374:34-a and the following specific statutes (emphasis added), among others:

374:3 Extent of Power. – **The public utilities commission shall have the general supervision of all public utilities and the plants owned, operated or controlled by the same** so far as necessary to carry into effect the provisions of this title.

374:1 Service. – Every public utility shall furnish such service and **facilities as shall be reasonably safe and adequate and in all other respects just and reasonable**.

365:8 Rulemaking Authority. – The commission shall adopt rules, pursuant to RSA 541-A, relative to: ...

XII. **Procedures** necessary to provide for the proper administration of and **to further the purposes of this title**.

and

374:34-a Pole Attachments. – ... VII. The commission shall have the authority to hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to pole attachments.

The LGC has argued that we should not be able to resolve complaints or disagreements between municipalities and PUC-regulated utilities with regard to rates, charges, terms, conditions and denial of access relative to pole attachments; although it apparently concedes that we should be able to resolve and enforce issues around safety. This former part of this position is contrary to RSA 374:34-a, VII (cited above) and leaves open the question of who would resolve such disputes. Fundamentally, terms and conditions of attachments may concern safety issues. Furthermore, to the extent that municipalities and utilities want to enter into voluntary agreements about pole attachments, which may or may not be part of licensing agreements, then, pursuant to RSA 374:34-a, V, they may do so without commission approval. The PUC and its proposed rule principally provide a backstop

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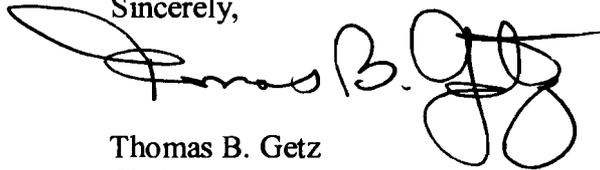
procedure for the hearing and resolution of disputes concerning these issues, subject to appeal to either state or federal court, as may be appropriate.

The Commission has attempted to address LGC's concern regarding municipal licensing requirements in several provisions. Puc 1301.01 explicitly refers to municipal licensing statutes and states that "nothing in this rule shall be construed to supersede, overrule, or replace any other law, rule or regulation, including municipal and state authority over public highways." Puc 1303.01 allows pole owners to deny a request for pole attachment where the pole owner does not possess the authority to allow the attachment. As noted in paragraph (5) on page 8 of our 10/16/09 response to the Committee's Preliminary Objection, if a utility believes it would violate a condition of its municipal license to allow an attachment, such as a requirement that a proposed attaching entity have previously secured its own municipal license, then that provides a basis under the rule for a pole owner to deny permission to attach. We simply do not see where we have the statutory authority to make such municipal licensing a precondition as a direct part of our rules, any more than we could require, as a precondition to attachment, that an attaching entity show that it has paid all taxes, traffic tickets, or other fees that it may owe in other jurisdictions, even though other laws may require them to do so. Puc 1303.08 does require attaching entities to clearly label attachments. This provision will assist municipalities in identifying attaching entities on a pole in both emergency situations and in enforcing municipal laws. Finally, Puc 1304.05 provides for notice to affected municipalities regarding adjudicative proceedings opened pursuant to these rules.

As a courtesy, the Commission sent a draft of the Revised Objection Response amended rule to stakeholders in this rulemaking on December 1, 2009, inviting comments prior to adoption of the amended rule. The Commission took into consideration party comments, further amended the draft, and discussed its amendments at its public meeting on December 2, 2009, where it formally adopted the attached amended Puc 1300 rule as its Revised Objection Response.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas B. Getz", with a large, stylized flourish at the end.

Thomas B. Getz
Chairman

cc: Members of the Joint Legislative Committee on Administrative Rules
Scott Eaton, Staff Director

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 that are just and reasonable. Nothing in this rule shall be construed to supersede, overrule, or replace any other law, rule 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; and

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

PART Puc 1302 DEFINITIONS

Puc 1302.01 “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 1302.02 “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 electricity, information, telecommunications, or video programming for the public or for public safety purposes.

Puc 1302.06 “Federal Communications Commission (FCC)” means the U.S. government agency established by the Communications Act of 1934 and charged with regulating interstate and international communications by radio, television, wire, satellite and cable.

Puc 1302.07 “Make-ready work” means all work, including but not limited to rearrangement 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.

Puc 1302.08 “Pole” means “pole” as defined in RSA 374:34-a, I, 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:

- (a) When there is insufficient capacity on the pole;
- (b) For reasons of safety, reliability or generally applicable engineering purposes;
or
- (c) Where the pole owner(s) does not possess the authority to allow the proposed attachment.

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 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 circumstances beyond the pole owner's control, such as *force majeure*, 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. Pole owners shall grant or deny access in writing within 45 days of receiving a complete request for access. 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. No person may attach facilities to a pole without authorization in writing from the pole owner or owners prior to attaching such facilities, in accordance with Puc 1303.04.

Puc 1303.06 Notification.

(a) A pole owner shall provide an attaching entity 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 in response to an emergency.

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

- (1) Modifying an existing attachment other than as part of routine maintenance or in response to an emergency, or to install a customer drop line;
- (2) Increasing the load or weight on a pole by adding to an existing attachment, other than as part of routine maintenance or in response to an emergency, or to install a customer drop line; or
- (3) Changing the purpose for which an existing attachment is used.

(c) 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 Electrical Code as adopted in RSA 155-A:1, IV, and the SR-1421 *Blue Book – Manual of Construction Procedures, Issue 4, Telcordia 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.

(c) Where a pole or existing attachment is not in compliance with applicable standards and codes and must be brought into compliance before a new attachment can be added, the cost of bringing that pole or existing attachment into compliance shall not be shifted to the entity seeking to add a new attachment.

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 a new attachment will be located above that owner's existing facilities, that owner shall bear 60 percent of the cost of relocation. The new attaching entity shall bear the remaining 40 percent of the cost of relocation, except where Puc 1303.07(c) applies.

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 Electrical Safety Code. Boxing may be permitted only with express, written authorization by the pole owner. Pole owners shall grant or deny permission to use boxing, in writing, within 30 days of receiving a request. An owner's denial of the use of boxing shall be specific, shall include all relevant information supporting its denial, and shall explain how such information supports denial.

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 Electrical

Safety Code. Extension arms may be permitted only with express, written authorization by the pole owner. Pole owners shall grant or deny permission to use extension arms, in writing, within 30 days of receiving a request. An owner's denial of use of extension arms shall be specific, shall include all relevant information supporting its denial, and shall explain how such information supports denial.

Puc 1303.12 Make-Ready Timeframes. Unless otherwise agreed by parties to a pole attachment agreement, pole owners shall complete make-ready work within 150 days after any required pre-payments are rendered for make-ready estimates provided to the attaching entity by the pole owner or owners. Where make-ready work requires 10 poles or less and no pole replacements, the work shall be completed within 45 days after any required pre-payments for estimates are rendered.

PART Puc 1304 DISPUTE RESOLUTION

Puc 1304.01 Voluntary Agreements. A pole attachment agreement submitted to the commission for adjudication shall be deemed a voluntary agreement pursuant to RSA 374:34-a, VII. A party filing a petition under this part shall have the burden of proving that an agreement is not just, reasonable and nondiscriminatory.

Puc 1304.02 Lack of Agreement. A person requesting a pole attachment and entitled to access under these rules and unable, through good faith negotiation, to reach agreement with the owner or owners of a pole or poles subject to this chapter, may petition the commission pursuant to 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 1304.03 Dispute Following Agreement or Order. A party to a pole attachment agreement, 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 1304.04 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 1304.05 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, and shall provide notice to affected municipalities to the extent required by RSA 541-A:39.

Puc 1304.06 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) Relevant federal, state or local laws, rules and decisions;
- (2) The impact on competitive alternatives;
- (3) The potential impact on the pole owner and its customers;
- (4) The potential impact on the deployment of broadband services;
- (5) The formulae adopted by the FCC in 47 CFR § 1.1409(c) through (f) in effect on July 16, 2007; and
- (6) Any other interests of the subscribers and users of the services offered via such attachments or consumers of any pole owner providing such attachments, as may be raised.

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

- (1) Relevant federal, state or local laws, rules and decisions;
- (2) The impact on competitive alternatives;
- (3) The potential impact on the pole owner and its customers;
- (4) The potential impact on the deployment of broadband services; and
- (5) Any other interests of the subscribers and users of the services offered via such attachments or consumers of any pole owner providing such attachments, as may be raised.

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

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 that are just and, reasonable ~~and in the public interest~~. Nothing in this rule shall be construed to supersede, overrule, or replace any other law, rule 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; and

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

PART Puc 1302 DEFINITIONS

Puc 1302.01 “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 1302.02 “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 electricity, information, telecommunications, or video programming for the public or for public safety purposes.

Puc 1302.06 “Federal Communications Commission (FCC)” means the U.S. government agency established by the Communications Act of 1934 and charged with regulating interstate and international communications by radio, television, wire, satellite and cable.

Puc 1302.07 “Make-ready work” means all work, including but not limited to rearrangement 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.

Puc 1302.08 “Pole” means “pole” as defined in RSA 374:34-a, I, 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:

- (a) When there is insufficient capacity on the pole;
- (b) For reasons of safety, reliability or generally applicable engineering purposes;
or
- (c) Where the pole owner(s) does not possess the authority to allow the proposed attachment.

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 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, beyond the pole owner's control, such as *force majeure*, 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. Pole owners shall ~~issue authorization grant or deny~~ grant or deny access in writing within 45 days. ~~If permission for access is not granted within 45 calendar days of receiving a complete request for access, the owner shall 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. No person may attach facilities to a pole without authorization in writing from the pole owner or owners prior to attaching such facilities, in accordance with Puc 1303.04.

Puc 1303.06 Notification.

(a) A pole owner shall provide an attaching entity 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 in response to an emergency.

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

- (1) ~~Materially~~ modifying an existing attachment other than as part of routine maintenance or in response to an emergency, or to install a customer drop line;
- (2) ~~Materially~~ increasing the load, or weight, on a pole by adding to an existing attachment, other than as part of routine maintenance or in response to an emergency, or to install a customer drop line; or
- (3) Changing the purpose for which an existing attachment is used.

(c) 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, ~~and~~ the National Electrical Code as adopted in RSA 155-A:1, IV, and the SR-1421 *Blue Book – Manual of Construction Procedures, Issue 4, Telcordia 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.

(c) Where a pole or existing attachment is not in compliance with applicable standards and codes and must be brought into compliance before a new attachment can be added, the cost of bringing that pole or existing attachment into compliance ~~remediating the pre-existing non-compliance~~ shall not be shifted to the entity seeking to add a new attachment.

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 a new attachment will be located above that owner's existing facilities, that owner shall bear 60 percent of the cost of relocation. The new attaching entity shall bear the remaining 40 percent of the cost of relocation, except where Puc 1303.07(c) applies.

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 Electrical Safety Code. Boxing may be permitted only with express, written authorization by the pole owner. Pole owner's shall grant or deny permission to use boxing, in writing, within 30 days of receiving a request. An owner's denial of the use of boxing shall be specific, shall include all relevant information supporting its denial, and shall explain how such information supports denial.

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 Electrical Safety Code. Extension arms may be permitted only with express, written authorization by the pole owner. Pole owner's shall grant or deny permission to use extension arms, in writing, within 30 days of receiving a request. An owner's denial of use of extension arms shall be specific, shall include all relevant information supporting its denial, and shall explain how such information supports denial.

Puc 1303.12 Make-Ready Timeframes. Unless otherwise agreed by parties to a pole attachment agreement, pole owners shall complete make-ready work within 150 days after any required pre-payments are rendered for make-ready estimates are provided to the attaching entity by the pole owner or owners. Where make-ready work requires 10 poles or less and no pole replacements, the work shall be completed within 45 days after any required pre-payments for estimates are provided rendered.

PART Puc 1304 DISPUTE RESOLUTION

Puc 1304.01 Voluntary Agreements. A pole attachment agreement submitted to the commission for adjudication shall be deemed a voluntary agreement pursuant to RSA 374:34-a, VII. A party filing a petition under this part shall have the burden of proving that an agreement is not just, reasonable and nondiscriminatory.

Puc 1304.02 Lack of Agreement. A person requesting a pole attachment and entitled to access under these rules and unable, through good faith negotiation, to reach agreement with the owner or owners of a pole or poles subject to this chapter, may petition the commission pursuant to 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 1304.03 Dispute Following Agreement or Order. A party to a pole attachment agreement, 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 1304.04 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 1304.05 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, and shall provide notice to affected municipalities to the extent required by RSA 541-A:39. ~~Where the public interest so requires, the commission shall order that rates, charges, terms or conditions for pole attachments be modified.~~

Puc 1304.06 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;~~ Relevant federal, state or local laws, rules and decisions;

~~(2) The interests of the consumers of any pole owner providing such attachments; and~~ The impact on competitive alternatives;

~~(3) The formulae adopted by the FCC in 47 CFR § 1.1409(e) through (f) in effect on July 16, 2007. The potential impact on the pole owner and its customers;~~

~~(4) The potential impact on the deployment of broadband services;~~

~~(5) The formulae adopted by the FCC in 47 CFR § 1.1409(c) through (f) in effect on July 16, 2007; and~~

~~(6) Any other~~ The interests of the subscribers and users of the services offered via such attachments or consumers of any pole owner providing such attachments, as may be raised.;

(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~~ Relevant federal, state or local laws, rules and decisions;

~~(2) The interests of the consumers of any pole owner providing such attachments.~~ The impact on competitive alternatives;

~~(3) The potential impact on the pole owner and its customers;~~

~~(4) The potential impact on the deployment of broadband services; and~~

~~(5) Any other~~ interests of the subscribers and users of the services offered via such attachments or consumers of any pole owner providing such attachments, as may be raised.

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