

Readopt with amendments Puc 1300, effective 12-12-09 (Document #9614), to read as follows:

CHAPTER Puc 1300 UTILITY POLE ATTACHMENTS

Statutory Authority: 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 nondiscriminatory, 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 362:2, 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) Providers of “VoIP service” or “IP-enabled service,” as such terms are defined in RSA 362:7, I, to the extent provided in RSA 362:7, II and III(d) and (e); and

(c) 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, excepted local exchange carriers, wireless service providers, information service providers, 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 “Excepted local exchange carrier” means “excepted local exchange carrier” as defined in RSA 362:7, I (c), namely “(1) An incumbent local exchange carrier providing telephone services to 25,000 or more lines; or (2) An incumbent local exchange carrier providing service to less than 25,000 lines that elects to be excepted, upon the filing with the commission of a written notice advising of said election; or (3) Any provider of telecommunications services that is not an incumbent local exchange carrier.”

Puc 1302.05 “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 1302.06 “Facility” means the lines, cables, wireless antennas, and any 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 1302.07 “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 1302.08 “Make-ready work” means all work, including, but not limited to, rearrangement or transfer of existing facilities, replacement of a pole, complete removal of any pole replaced, or any other changes required to accommodate the attachment of the facilities of the party requesting attachment to the pole.

Puc 1302.09 “Overlash” means the tying or lashing of an attaching entity’s additional fiber optic cables, or similar incidental equipment such as fiber-splice closures, to the attaching entity’s own existing communications wires, cable, or supporting strand already attached to poles.

Puc 1302.10 “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 1302.11 “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 1302.12 “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.

(a) Except as otherwise provided in (b) and (c) below, the owner or owners of a pole shall provide attaching entities access to such pole on terms that are just, reasonable, and nondiscriminatory. Such access shall include wireless facility attachments, including those above the communications space on the pole.

(b) Notwithstanding the obligation set forth in (a) above, the owner or owners of a pole may deny a request for attachment to such pole:

- (1) If there is insufficient capacity on the pole;
- (2) For reasons of safety, reliability, or generally applicable engineering purposes; or
- (3) If the pole owner(s) does not possess the authority to allow the proposed attachment.

(c) The owner or owners of the pole shall not deny a requested attachment under subparagraph (b)(1) or (b)(2) above if other make-ready work or another alternative can be identified that would accommodate the additional 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 and execute an agreement for such attachment. A prospective attaching entity may submit a request for access to a utility's poles pursuant to Puc 1303.04 prior to negotiating and executing a pole attachment agreement with the pole owner or owners.

Puc 1303.04 Request for Access and Response Requirements. Requests for access to a utility's poles, whether made before or after negotiation and execution of a pole attachment agreement, shall be in writing and include information necessary under the pole owner's procedures to schedule a survey of the poles. Absent circumstances beyond the pole owner's control, such as *force majeure*, a survey of poles shall be completed and the results communicated to the applicant seeking to attach within 45 days (or within 60 days, in the case of larger orders as described in Puc 1303.12(d)) of receiving a completed application and survey fee. Pole owners shall grant or deny access in writing within that number of days. The pole 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 represent grounds for denial as specified in Puc 1303.01.

Puc 1303.05 Authorization Required; ~~Posting of Agreements~~. No person shall attach facilities to a pole without a license or similar authorization in writing from the pole owner or owners prior to attaching such facilities. No person shall perform any make ready-work in connection with any request for access to a pole without having executed an agreement for such attachment, in accordance with Puc 1303.03. ~~A pole owner shall post on its public website a copy of each pole attachment agreement executed with an attaching entity, with the name of and other identifying information regarding the attaching entity redacted, on or before the later to occur of 30 days following execution of such agreement or 60 days following the effective date of these rules.~~

Puc 1303.06 Notification.

(a) The owner or owners of a pole shall provide written notice to an attaching entity not less than 60 days 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) Except as otherwise provided in Puc 1303.04 and Puc 1303.12 with respect to access and make-ready work, attaching entities shall provide written notice to the owner or owners of a pole not less than 60 days prior to:

- (1) Modifying an existing attachment other than as part of routine maintenance, 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 (a) as part of routine maintenance, (b) in response to an emergency, (c) to install an overlash, or (d) to install a customer drop line; or

(3) Changing the purpose for which an existing attachment is used.

(c) An existing attaching entity shall provide written notice to the pole owner or owners of its intent to overlash a minimum of 5 days prior to installing an overlash. An existing attaching entity shall provide written notice of an overlash to the pole owner or owners within 10 days after installing the overlash. ~~The owner or owners of the pole shall then have 30 days in which to inspect the overlash and determine compliance.~~

(d) 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, 2017 edition, available as specified in Appendix B, the National Electrical Code as adopted in RSA 155-A:1, IV, and the SR-1421 *Blue Book – Manual of Construction Procedures, Issue 6, Telcordia Technologies, Inc., an Ericsson company (2017)*, available as specified in Appendix B, 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) If a pole or existing attachment is not in compliance with applicable standards and codes and is required to be ~~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 assessed to or imposed on the entity seeking to add a new attachment.

(d) Neither the cost to remove a duplicate pole that was not removed when a pole was replaced earlier, nor the cost to complete other work started before the make-ready work, shall be assessed to or imposed on the entity seeking to add a new attachment.

(e) An overlash shall not be deemed an attachment and an attaching entity shall have the right to install an overlash subject to the notification provisions of Puc 1303.06(c).

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 a wireless facility is to be located above the communications space on a pole. 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 and the new attaching entity shall bear the remaining 40 percent of the cost of relocation, except if and to the extent that Puc 1303.07(c) is applicable.

Puc 1303.10 Boxing of Poles. A pole owner 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 or as actually implemented by the company in the normal course of its business. 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 shall be permitted only with express, written authorization by the pole owner. Pole owners shall grant or deny permission to use boxing, in writing, within the same time period as required for the survey for an attachment or within 30 days of receiving a request not made in connection with an application for attachment. At the request of the attaching entity, 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. A pole owner shall allow limited, reasonable use of extension arms by attaching entities for purposes of clearing obstacles or improving alignment of attachment facilities, consistent with the restrictions it places on its own practice of using extension arms as defined in the company's written methods and procedures or as actually implemented by the company in the normal course of its business. Under no circumstances shall 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 shall 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 the same time period as required for the survey for an attachment or within 30 days of receiving a request not made in connection with an application for attachment. At the request of the attaching entity, 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 Work Timelines.

(a) If a request for access is ~~granted~~not denied, the pole owner shall present to the prospective attaching entity an estimate of charges to perform all necessary make-ready work within 14 days of completing the survey required by Puc 1303.04, or in the case where a prospective attaching entity's contractor has performed a survey, within 14 days of receipt by the pole owner of such survey. Upon presentation of the estimate of charges to perform make-ready work:

(1) A pole owner may withdraw an outstanding estimate beginning 14 days after the estimate is presented; and

(2) An attaching entity may accept an outstanding estimate and make payment any time after receipt of an estimate but before the estimate is withdrawn.

(b) Upon receipt of payment specified in (a)(2) above, a pole owner shall notify immediately and in writing all known entities with existing attachments that may be affected by the make-ready work, as follows:

(1) For attachments in the communications space, the notice shall:

a. Specify where and what make-ready work will be performed;

b. Specify the order in which existing attaching entities must perform their make-ready work;

c. Set a date for completion of make-ready work that is no later than 60 days after notification is sent (or 105 days in the case of larger orders, as described in (d) below), subject to extension by 30 days as specified in d. below;

d. For an application involving more than 100 poles where 30% or more of the affected poles are required to be replaced, the pole owner may extend the completion date by an additional 30 days;

ee. State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready work before the date set for completion;

fd. State that the pole owner may assert its right to 15 additional days to complete any outstanding ~~third party~~ make-ready work, provided that the delay in completion of that make-ready work was caused by the actions or inactions including that of a third party attaching entity who had received timely notice that its make-ready work could be performed;

ge. State that if make-ready work is not completed by the completion date set by the pole owner (or, if the pole owner has asserted its 15-day right of control, 15 days later), the attaching entity requesting access may complete the specified make-ready work; and

hf. State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready work procedure.

(2) For wireless attachments above the communications space, the notice shall:

a. Specify where and what make-ready work will be performed;

b. Set a date for completion of make-ready work that is no later than 90 days after notification is sent (or 135 days in the case of larger orders, as described in (d) below);

c. State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready work before the date set for completion;

d. State that the pole owner may assert its right to 15 additional days to complete any outstanding ~~third party~~ make-ready work, provided that the delay in completion of that make-ready work was caused by the actions or inactions including that of a third party attaching entity who had received timely notice that its make-ready work could be performed; and

e. State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready work procedure.

(c) For attachments in the communications space, a pole owner shall ensure that make-ready work is completed by the date set by the pole owner in (b)(1)~~c~~^b above (or, if the pole owner has asserted its 15-day right of control, 15 days later). For wireless attachments above the communications space, a pole owner shall ensure that make-ready work is completed by the date set by the pole owner in (b)(2)b above (or, if the pole owner has asserted its 15-day right of control, 15 days later).

(d) For the purposes of compliance with the time periods in this section:

(1) A pole owner shall apply the timeline described in Puc 1303.04 and in (a) and (b) above to all requests for pole attachment up to the lesser of 300 poles or 0.5 percent of the pole owner's poles in a state;

(2) A pole owner may add 15 days to the survey period described in Puc 1303.04 to larger orders up to the lesser of ~~32~~,000 poles or ~~54~~ percent of the pole owner's poles in the state;

(3) A pole owner may add 45 days to the make-ready work periods described in (b) above to larger orders up to the lesser of ~~32~~,000 poles or ~~54~~ percent of the pole owner's poles in the state;

(4) A pole owner shall negotiate in good faith the timing of all requests for pole attachments larger than the lesser of 32,000 poles or 54 percent of the pole owner's poles in a state; and

(5) A pole owner may treat multiple requests from a single attaching entity as one request when the requests are filed within 30 days of one another.

(e) A pole owner may deviate from the time limits specified in this section:

(1) Before offering an estimate of charges if the parties have not yet entered into an agreement pursuant to Puc 1303.03 specifying the rates, terms, and conditions of attachment; ~~or~~

(2) During performance of make-ready work for good and sufficient cause that renders it infeasible for the pole owner to complete the make-ready work within the prescribed time frame, provided that:

a. A pole owner that so deviates shall immediately notify, in writing, the attaching entity requesting attachment and other affected entities with existing attachments, stating the reason for and the date and duration of the deviation; and

b. The pole owner shall deviate from the time limits specified in this section for a period no longer than necessary and shall resume make-ready work performance without discrimination when it returns to routine operations.

(f) If a pole owner fails to respond as specified in Puc 1303.04, an attaching entity requesting attachment in the communications space may, as specified in (g) through (i) below, hire a contractor to complete a survey. If make-ready work is not completed by the pole owner or an existing attaching entity by the date specified in (b)(1)~~c~~b above, an attaching entity requesting attachment in the communications space may, as specified in (g) through (i) below, hire a contractor to complete the outstanding make-ready work, with written notice of such contractor engagement provided to the pole owner and each affected attaching entity, as of the time specified below:

(1) Immediately, if the pole owner has failed to assert its right to perform outstanding make-ready work by notifying the attaching entity requesting attachment that the pole owner will do so; or

(2) After 15 days if the pole owner has asserted its right to complete outstanding make-ready work by the date specified in (b)(1)~~b~~b above and has failed to complete all such make-ready work.

(g) A pole owner shall make available and keep up-to-date a list of not less than 3 contractors that such pole owner and any joint pole owner authorizes to perform surveys and make-ready work in the communications space on its poles in cases where the pole owner or an existing attaching entity has failed to meet the deadlines specified in Puc 1303.04 and in (a) through (f) above.

(h) If an attaching entity hires a contractor for purposes specified in (f) above, it shall choose from among the pole owners' list of authorized contractors.

(i) An attaching entity that hires a contractor for purposes specified in (f) above~~survey or make-ready work~~ shall provide a pole owner with a reasonable opportunity for its representative to accompany and consult with the authorized contractor and the attaching entity. For purposes of survey, the electric utility pole owner's representative may make final determinations, on a nondiscriminatory basis, where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

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 C.F.R. §1.1404(d) through (m) in effect on October 1, 2017.

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 pole attachments of cable television service providers, wireless service providers, and excepted local exchange carriers that are not incumbent local exchange carriers to poles owned by electric utilities or incumbent local exchange carriers 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 C.F.R. §1.1409(b) through (g) in effect on October 1, 2017, ~~for pole attachments in the communications space~~; 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 pole 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.