

Amend Puc 1300 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 rates, charges, terms and conditions for pole attachments that are just, reasonable and in the public interest.

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 with the commission pursuant to RSA 301:57, that own, in whole or in part, any pole used for wire communications or electric distribution.

(b) Other persons 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 that has attached or seeks 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 “Commission” means the New Hampshire public utilities commission.

Puc 1302.03 “FCC” means the federal communications commission.

Puc 1302.04 “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 1302.05 “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 1302.06 “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 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 or 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 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 pole attachment shall contact the owner or owners of the pole and make a reasonable effort to negotiate an agreement for such attachment.

Puc 1303.04 Request for Access and Response Requirements. Requests for access to a utility’s poles shall be in writing. If access is not granted within 45 days of receiving a 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 the facilities,
- (2) Terminating any service to the facilities,
- (3) Increasing any rates applicable to the pole attachment, or

(4) Modifying the facilities other than as part of routine maintenance or a response to an emergency.

(b) Attaching entities seeking to change the purposes for which existing attachment facilities are used shall provide written notice to pole owners 60 days prior to making such changes.

Puc 1303.07 Installation and Maintenance.

(a) Any attachment shall be installed in accordance with the National Electrical Safety Code, 2007 edition, and the National Electric Code as adopted by RSA 155-A:1, IV.

(b) Any attachment shall be installed and maintained to prevent interference with service furnished by 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 shall permit attaching entities to box poles where boxing may eliminate the need for make-ready work or pole replacement. 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 permit limited, reasonable use of extension arms by attaching entities. Such use shall be permitted for purposes of clearing obstacles, improving alignment, or providing space that would not otherwise be available without a replacement pole. Use of extension arms shall be consistent with the requirements of applicable codes.

Puc 1303.12 Make-Ready Timeframes.

Pole owners shall complete make-ready work within 90 days where the work includes limited or no pole replacements. If pole replacement is required, pole owners shall complete make-ready work within 180 days.

PART Puc 1304 DISPUTE RESOLUTION

Puc 1304.01 Lack of Agreement. An attaching entity unable 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 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 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 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 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.

(c) For petitions filed on or before July 15, 2009, the Commission shall use the formulae referenced in (a)(3) above to determine just and reasonable rates under this chapter with respect to attachments of competitive local exchange carriers and cable television service providers.

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 signed pole attachment agreement 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 or business interruption.

(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.