

THE STATE OF NEW HAMPSHIRE

CHAIRMAN
Thomas B. Getz

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Clifton C. Below

EXECUTIVE DIRECTOR
AND SECRETARY
Debra A. Howland



PUBLIC UTILITIES COMMISSION

21 S. Fruit St., Suite 10
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July 17, 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: Notice No. 2009-79
Puc 1300, Utility Pole Attachments
Commission Docket No. 08-004
Final Proposal

Dear Mr. Eaton:

On May 1, 2009, the Commission voted pursuant to RSA 541-A to initiate a Readoption with Amendment to Puc 1300, regarding Utility Pole Attachments. A rulemaking notice form required by RSA 541-A:6 was filed with the Office of Legislative Services on May 12, 2009. The notice scheduled the public hearing on the proposed Readoption with Amendment for June 18, 2009.

The hearing was held as scheduled, and comments were received from the parties involved. Those comments were incorporated into the Rules. On July 16, 2009, the Commission held a public hearing, pursuant to RSA 91-A:2, III, and voted to approve that document as the Final Proposal for the Readoption with Amendment of Puc 1300.

The Commission asks that the JLCAR consider this proposal for Approval.

As required by the Rulemaking Manual, you will find enclosed two copies of the following:

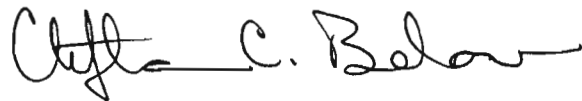
- A completed Appendix II-G, Cover Sheet for Final Proposal;
- A copy of the full text of the statutory rulemaking authority for the rule;

DRM 08-004
Puc 1300, Utility Pole Attachments
Final Proposal

- The established text of the final proposed rule as the “Final Proposal—Fixed Text”;
- The established text of the final proposed rule as the “Final Proposal—Annotated Text”;
- The cross reference table relative to implementation of statutes; and
- Applicable Incorporation by Reference Statements - 3.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Clifton C. Below". The signature is written in a cursive style with a long horizontal line extending from the end.

Clifton C. Below
Commissioner

Enclosures

APPENDIX II-G

COVER SHEET FOR FINAL PROPOSAL

Notice Number 2009-79

Rule Number Puc 1300

1. Agency Name & Address:

NH Public Utilities Commission
21 S. Fruit St Suite 10
Concord NH 03301-2429

2. RSA Authority: RSA 374:34-a, III
 3. Federal Authority: _____
 4. Type of Action:
 Adoption
 Amendment
 Repeal
 Readoption
 Readoption w/amendment

5. Short Title: **UTILITY POLE ATTACHMENTS**

6. Contact person for copies and questions:

 Name: **Lynn Fabrizio, Esq.**
 Address: **NH Public Utilities Commission**
21 South Fruit Street, Suite 10
Concord NH 03301-2429

Title: **Staff Attorney**
 Phone #: **603-271-2431**

7. Yes No Agency requests Committee legal counsel review and delayed Committee review pursuant to RSA 541-A:12, I-a

8. The rulemaking notice appeared in the Rulemaking Register on November 14, 2008

**SEE THE INSTRUCTIONS--PLEASE SUBMIT 2 COPIES OF THIS COVER SHEET
 AND 2 COPIES OF THE FOLLOWING:
 (and numbered correspondingly)**

9. The "Final Proposal-Fixed Text," including the cross-reference table required by RSA 541-A:3-a, II as an appendix.

10. The full text of the RSA passage granting rulemaking authority.

11. Yes N/A Incorporation by Reference Statement(s) because this rule incorporates a document by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.

12. Yes N/A The "Final Proposal-Annotated Text," indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(e).

13. Yes N/A The amended fiscal impact statement because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS) pursuant to RSA 541-A:5, VI.

APPENDIX II-G

COVER SHEET FOR FINAL PROPOSAL

Notice Number 2009-79 Rule Number Puc 1300

<p>1. Agency Name & Address:</p> <p>NH Public Utilities Commission 21 S. Fruit St Suite 10 Concord NH 03301-2429</p>	<p>2. RSA Authority: <u>RSA 374:34-a, III</u></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p><input type="checkbox"/> Adoption</p> <p><input type="checkbox"/> Amendment</p> <p><input type="checkbox"/> Repeal</p> <p><input type="checkbox"/> Readoption</p> <p><input checked="" type="checkbox"/> Readoption w/amendment</p>
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6. Contact person for copies and questions:

Name:	Lynn Fabrizio, Esq.	Title:	Staff Attorney
Address:	NH Public Utilities Commission 21 South Fruit Street, Suite 10 Concord NH 03301-2429	Phone #:	603-271-2431

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TITLE XXXIV
PUBLIC UTILITIES

CHAPTER 374
GENERAL REGULATIONS

Pole Attachments

Section 374:34-a

374:34-a Pole Attachments -

I. In this subdivision, a "'pole'" means 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.

II. Whenever a pole owner is unable to reach agreement with a party seeking pole attachments, the commission shall regulate and enforce rates, charges, terms, and conditions for such pole attachments, with regard to the types of attachments regulated under 47 U.S.C. section 224, to provide that such rates, charges, terms, and conditions are just and reasonable. This authority shall include but not be limited to the state regulatory authority referenced in 47 U.S.C. section 224(c).

III. The commission shall adopt rules under RSA 541-A to carry out the provisions of this section, including appropriate formula or formulae for apportioning costs.

IV. In exercising its authority under this subdivision, the commission shall consider the interests of the subscribers and users of the services offered via such attachments, as well as the interests of the consumers of any pole owner providing such attachments.

V. Nothing in this subdivision shall prevent parties from entering into pole attachment agreements voluntarily, without commission approval.

VI. Any pole owner shall provide nondiscriminatory access to its poles for the types of attachments regulated under this subdivision. A pole owner may deny access to its poles on a nondiscriminatory basis where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

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.

Source. 2007, 340:1, eff. July 16, 2007.

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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.

Source. 2007, 340:1, eff. July 16, 2007.

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, 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.

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 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.

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 when there is insufficient capacity on the pole or for reasons of safety, reliability or generally applicable engineering purposes. Nothing herein shall require the owner or owners of a pole to provide access where such access would violate other applicable laws, rules or regulations.

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, 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 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. 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 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 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 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; 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 Electrical Code as adopted in RSA 155-A:1,IV, and the SR-1421 *Blue Book – Manual of Construction Practices, 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 must be brought into compliance with applicable standards and codes 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.

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.

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 any 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 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 directing the removal of facilities that are attached to a pole without authorization pursuant to this chapter.

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. Where the public interest so requires, the commission may 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;
- (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 1304.07 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, 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.

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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, reasonable and in the public interest. Nothing in this ~~rule~~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~~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 ~~1302~~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 electricity, information, telecommunications, or video programming for the public~~digital information services~~.

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 federal communications by radio, television, wire, satellite and cable commission.

Puc 1302.07 “Make-ready work” means 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.

~~———— 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, 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 when there is insufficient capacity on the pole or for reasons of safety, reliability ~~or~~ generally applicable engineering purposes. Nothing herein shall require the owner or owners of a pole to provide access where such access would violate other applicable laws, rules or regulations.

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 ~~shall~~**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 ~~an attaching entity 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 ~~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 response to an emergency, ~~or to install a customer drop line~~;
- (2) Increasing the ~~load, or weight, on a pole by adding to 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 Electrical Code as adopted ~~in~~by RSA 155-A:1,IV, and the SR-1421 *Blue Book – Manual of Construction Practices, Issue 4*, ~~TelcordiaTelecordia~~ 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 must be brought into compliance with applicable standards and codes 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 the new attaching entity~~ 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 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 Electrical 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 Electrical 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 ~~150~~¹⁸⁰ days after any required pre-payments ~~are rendered for~~ any 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.~~ ~~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 ~~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.~~ ~~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 1304.02 Lack of Agreement.~~ ~~Puc 1304.03 Unauthorized Attachments.~~ ~~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 directing the removal of facilities that are attached to a pole without authorization pursuant to the terms of 47 CFR § 1.1404(d) through (m) in effect on July 16, 2007.~~ ~~this chapter.~~

~~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.~~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 1304.04 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. Where the public interest so requires, the commission may 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;
- (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.

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, reasonable and in the public interest. Nothing in this ~~rule~~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~~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 ~~1302~~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 electricity, information, telecommunications, or video programming for the public~~digital information services~~.

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 federal communications by radio, television, wire, satellite and cable commission.

Puc 1302.07 “Make-ready work” means 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.

~~———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, 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 when there is insufficient capacity on the pole or for reasons of safety, reliability and generally applicable engineering purposes. Nothing herein shall require the owner or owners of a pole to provide access where such access would violate other applicable laws, rules or regulations.

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 ~~shall~~**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 ~~an attaching entity 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 ~~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 response to an emergency, ~~or to install a customer drop line;~~
- (2) Increasing the ~~load, or weight, on a pole by adding to 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 Electrical Code as adopted ~~in~~by RSA 155-A:1,IV, and the SR-1421 *Blue Book – Manual of Construction Practices, Issue 4*, ~~Telcordia~~~~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.

(c) Where a pole or existing attachment must be brought into compliance with applicable standards and codes 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 the new attaching entity~~ will be located above ~~that owner's~~ existing facilities, ~~that owner~~it 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~~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 Electrical 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 Electrical 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 ~~150~~¹⁸⁰ days after any required pre-payments ~~are rendered for~~ any 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. 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 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. 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 1304.02 Lack of Agreement. Puc 1304.03 Unauthorized Attachments. A person requesting a pole attachment and entitled owner may, but is not obligated 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 directing the removal of facilities that are attached to a pole without authorization pursuant to the terms of 47 CFR § 1.1404(d) through (m) in effect on July 16, 2007 this chapter.~~

~~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. 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 1304.04 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. Where the public interest so requires, the commission may 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;
- (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.

Appendix

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

APPENDIX II-H

INCORPORATION BY REFERENCE STATEMENT

****PLEASE LIST THE FOLLOWING:**

1. Name of Agency. **New Hampshire Public Utilities Commission**

2. Person who has reviewed the material to be incorporated into the agency's rules:

Name:	Randy Knepper	Title:	Director, Safety Division
Address:	21 South Fruit Street, Suite 10 Concord, NH 03301	Phone #:	603-271-2431

3. Specific rule number where the material is incorporated: **Puc 1303.07, 1303.10 and 1303.11**

****PLEASE ATTACH THE FOLLOWING**, numbered to correspond to the number on this sheet (a separate sheet is not required for every item):

4. The complete title of the material which is to be incorporated including the date on which the material became effective (or a document identification number) and the title of the entity that created or promulgated the material.

5. How the agency modified the text of the material incorporated, clearly identifying where amendments have been made to the text.

6. How the material incorporated can be obtained by the public (include cost and the address of the out-of-state agency which published the material).

7. Why the agency did not choose to reproduce the incorporated material in full in its rules. The discussion shall include more than the obvious reason that it is less expensive to incorporate by reference.

****PLEASE SIGN THE FOLLOWING:**

I, the adopting authority,* certify that the text of the material which the agency is incorporating by reference in these rules has been reviewed by this agency. To the best of my knowledge and belief, this agency has complied with the requirements of RSA 541-A:12, IV and Section 3.12 of Chapter 4 of the Drafting and Procedure Manual for Administrative Rules. I further certify that the agency has the capability and the intent to enforce the material incorporated into the rules, as identified above.

Date: July 17, 2009

Signature: 

Name: Clifton C. Below

Title: Commissioner

*("Adopting authority" is the official empowered by statute to adopt the rule, or a member of the group of individuals empowered by statute to adopt the rule.)

APPENDIX II-H - INCORPORATION BY REFERENCE STATEMENT
ADDENDUM

PUC 1300, UTILITY POLE ATTACHMENTS
NOTICE NO. 2009-79

Puc 1303.07, 1303.10 and 1303.11

4) The National Electrical Safety Code, 2007 edition, was issued by the Institute of Electrical and Electronic Engineers, Inc. (IEEE), New York, NY in 2007.

5) The PUC did not modify the text of the incorporated material in any way.

6) The National Electrical Safety Code, 2007 edition may be obtained from the Institute of Electrical and Electronic Engineers, Inc. (IEEE), 3 Park Avenue, New York, NY 10016, whose telephone number is 212-419-7900 and internet address is www.ieee.org. The cost of downloading this material as of this date for a non-member of IEEE is \$138.00.

7) The Commission chose not to reproduce the incorporated materials because the document is voluminous and is protected by copyright.

APPENDIX II-H

INCORPORATION BY REFERENCE STATEMENT

****PLEASE LIST THE FOLLOWING:**

1. Name of Agency. **New Hampshire Public Utilities Commission**

2. Person who has reviewed the material to be incorporated into the agency's rules:

Name: **Randy Knepper** Title: **Director, Safety Division**
Address: **21 South Fruit Street, Suite 10** Phone #: **603-271-2431**
Concord, NH 03301

3. Specific rule number where the material is incorporated: **Puc 1303.07, 1303.10 and 1303.11**

****PLEASE ATTACH THE FOLLOWING**, numbered to correspond to the number on this sheet (a separate sheet is not required for every item):

4. The complete title of the material which is to be incorporated including the date on which the material became effective (or a document identification number) and the title of the entity that created or promulgated the material.

5. How the agency modified the text of the material incorporated, clearly identifying where amendments have been made to the text.


6. How the material incorporated can be obtained by the public (include cost and the address of the out-of-state agency which published the material).

7. Why the agency did not choose to reproduce the incorporated material in full in its rules. The discussion shall include more than the obvious reason that it is less expensive to incorporate by reference.

****PLEASE SIGN THE FOLLOWING:**

I, the adopting authority,* certify that the text of the material which the agency is incorporating by reference in these rules has been reviewed by this agency. To the best of my knowledge and belief, this agency has complied with the requirements of RSA 541-A:12, IV and Section 3.12 of Chapter 4 of the Drafting and Procedure Manual for Administrative Rules. I further certify that the agency has the capability and the intent to enforce the material incorporated into the rules, as identified above.

Date: July 17, 2009

Signature: 

Name: Clifton C. Below

Title: Commissioner

*("Adopting authority" is the official empowered by statute to adopt the rule, or a member of the group of individuals empowered by statute to adopt the rule.)

APPENDIX II-H - INCORPORATION BY REFERENCE STATEMENT
ADDENDUM

PUC 1300, UTILITY POLE ATTACHMENTS
NOTICE NO. 2009-79

Puc 1303.07, 1303.10 and 1303.11

4) The National Electrical Safety Code, 2007 edition, was issued by the Institute of Electrical and Electronic Engineers, Inc. (IEEE), New York, NY in 2007.

5) The PUC did not modify the text of the incorporated material in any way.

6) The National Electrical Safety Code, 2007 edition may be obtained from the Institute of Electrical and Electronic Engineers, Inc. (IEEE), 3 Park Avenue, New York, NY 10016, whose telephone number is 212-419-7900 and internet address is www.ieee.org. The cost of downloading this material as of this date for a non-member of IEEE is \$138.00.

7) The Commission chose not to reproduce the incorporated materials because the document is voluminous and is protected by copyright.

APPENDIX II-H

INCORPORATION BY REFERENCE STATEMENT

****PLEASE LIST THE FOLLOWING:**

1. Name of Agency. **New Hampshire Public Utilities Commission**

2. Person who has reviewed the material to be incorporated into the agency's rules:

Name: **Randy Knepper** Title: **Director, Safety Division**
Address: **21 South Fruit Street, Suite 10** Phone #: **603-271-2431**
Concord, NH 03301

3. Specific rule number where the material is incorporated: **Puc 1303.07**

****PLEASE ATTACH THE FOLLOWING**, numbered to correspond to the number on this sheet (a separate sheet is not required for every item):

4. The complete title of the material which is to be incorporated including the date on which the material became effective (or a document identification number) and the title of the entity that created or promulgated the material.

5. How the agency modified the text of the material incorporated, clearly identifying where amendments have been made to the text.

6. How the material incorporated can be obtained by the public (include cost and the address of the out-of-state agency which published the material).

7. Why the agency did not choose to reproduce the incorporated material in full in its rules. The discussion shall include more than the obvious reason that it is less expensive to incorporate by reference.

****PLEASE SIGN THE FOLLOWING:**

I, the adopting authority,* certify that the text of the material which the agency is incorporating by reference in these rules has been reviewed by this agency. To the best of my knowledge and belief, this agency has complied with the requirements of RSA 541-A:12, IV and Section 3.12 of Chapter 4 of the Drafting and Procedure Manual for Administrative Rules. I further certify that the agency has the capability and the intent to enforce the material incorporated into the rules, as identified above.

Date: July 17, 2009

Signature: 

Name: Clifton C. Below

Title: Commissioner

*("Adopting authority" is the official empowered by statute to adopt the rule, or a member of the group of individuals empowered by statute to adopt the rule.)

APPENDIX II-H - INCORPORATION BY REFERENCE STATEMENT
ADDENDUM

PUC 1300, UTILITY POLE ATTACHMENTS
NOTICE NO. 2009-79

Puc 1303.07

4) The National Electrical Code, 2008, is issued by the National Fire Protection Association, Quincy, Massachusetts.

5) The PUC did not modify the text of the incorporated material in any way.

6) The National Electrical Code, 2008, issued by the National Fire Protection Association, may be obtained by the National Fire Protection Association, of 1 Batterymarch Park, Quincy, MA 02269, whose telephone number is 617-770-3000 and whose internet address is www.nfpa.org. The cost for order a hard copy or downloading a PDF version of the National Electric Code, 2008 is \$82.50 for non-members, as of this date.

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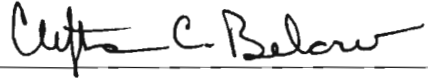
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APPENDIX II-H - INCORPORATION BY REFERENCE STATEMENT
ADDENDUM

PUC 1300, UTILITY POLE ATTACHMENTS
NOTICE NO. 2009-79

Puc 1303.07

4) The SR-1421 *Blue Book - Manual of Construction Practices, Issue 4*, was issued in November 2007 by Telcordia Technologies, Inc. (2007).

5) The PUC did not modify the text of the incorporated material in any way.

6) The SR-1421 *Blue Book - Manual of Construction Practices, Issue 4* may be obtained through Telcordia Technologies, Inc., at 1 Telcordia Drive, Piscataway, NJ 08854-4151, whose telephone number is 1-800-521-2673 and whose internet address is www.telcordia.com.

The document is sold only as an enterprise license for use by an entire company and is quoted at a cost of \$2,570.00.

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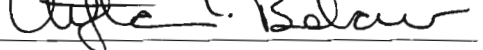
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