

STATE OF NEW HAMPSHIRE

Inter-Department Communication

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AT (OFFICE): NHPUC

FROM: Kath Mullholand, Director, Regulatory Innovation and Strategy
David K. Wiesner, Staff Attorney

SUBJECT: DRM 17-139, N.H. Code Admin. Rules Puc 1300
Utility Pole Attachment Rules Readoption With Amendments
Filing of Draft Final Proposal for Commission Review

TO: Commissioners
Debra A. Howland, Executive Director

CC: Thomas C. Frantz, Director, Electric Division
Kurt Demmer, Electric Division Analyst

Enclosed with this memorandum is a Draft Final Proposal for further amendments to the Puc 1300 pole attachment rules, which has been prepared by Commission Staff (Staff) in response to comments submitted by interested stakeholders with reference to the Initial Proposal adopted by the Commission on November 9, 2017. Staff recommends that, pursuant to RSA 541-A:11, I(c), the Commission solicit public comment on the Draft Final Proposal before filing a Final Proposal in accordance with RSA 541-A:12.

The following is a summary explanation of the basis for certain of the most significant revisions included in the Draft Final Proposal:

Wireless Service Provider Inclusion

The inclusion of wireless service providers as attaching entities under the Puc 1300 rules has been challenged as beyond the Commission's regulatory authority by the New Hampshire Telephone Association (NHTA), citing RSA 362:6 and Commission precedent. Staff notes that the Commission has authority under RSA 374:34-a to "regulate and enforce rates, charges, terms, and conditions for ... 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." Under federal law, the Federal Communications Commission (FCC) has recognized wireless service providers to be telecommunications carriers entitled to attach to utility poles.¹

¹ See FCC Order 11-50, *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, *Report and Order and Order on Reconsideration*, 26 FCC Rcd 5240 (2011), *aff'd sub nom. American Elec. Power Service Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013).

The primary purpose of the Puc 1300 rules is to implement the Commission's regulatory authority over the owners of poles and the terms, conditions, rates, and charges for attachments to their poles; it is not to regulate cellular mobile radio communication services or the providers of those services. Staff therefore believes that the Commission is well within its regulatory authority to include wireless service providers as attaching entities under the pole attachment rules.

Staff notes as well that CTIA-The Wireless Association (CTIA), a trade association representing the wireless communications industry, filed comments broadly in support of the inclusion of wireless service providers as attaching entities under the Puc 1300 rules.

Applicability of Rules to VoIP and IP-Enabled Service Providers

The New England Cable and Telecommunications Association, Inc. (NECTA) objected to provisions in the Initial Proposal that made the Puc 1300 rules applicable to owners of poles that are providers of "VoIP service" or "IP-enabled service," as such terms are defined in RSA 362:7, I, and included poles owned by such providers within the definition of "pole" contained in Puc 1302.09.

The Draft Final Proposal changes the applicability language in Puc 1301.02(b) to reference "[p]roviders 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)," incorporates a definition of "pole" in Puc 1302.10 that is identical to that contained in RSA 374:34-a, I, and includes a cross-reference to RSA 362:7, I-III in Appendix A. Staff believes these revisions should fully address the objections raised by NECTA that are described above.

Make-Ready Work Timelines

A number of commenters recommended that the Commission adopt shorter timelines for pole owners to ensure completion of make-ready work required for a new attachment. CenturyLink, CTIA, TVC Albany, Inc. d/b/a FirstLight (FirstLight), and the University of New Hampshire (UNH) all advocated that the Commission effectively adopt the FCC's make-ready timeline rules set forth in 47 C.F.R. §1.1420 and §1.1422.

According to CenturyLink, New Hampshire's timeframe of at least 195 days "could allow for undue delays in the provision of service to customers." CenturyLink maintains that the FCC make-ready rules "reflect a balancing of interests," as they provide flexibility for extensions of time, address the unique needs for large orders, and provide certainty and streamlined processes for attaching entities, including the use of utility-approved contractors to perform make-ready work when the utility is unable to complete required work within the applicable timeframe. CenturyLink asserts that, "[f]or multistate attachers and operators of national networks, ... the FCC's rules provide a consistent and familiar set of rules across multiple states." CTIA likewise claims that "[t]he FCC's pole attachment timelines are widely used, reasonable, and have been effective in promoting network deployment." According to CTIA, adoption of the FCC

timelines, “which are shorter and more segmented [than] the Commission’s timelines, will reduce the time to market equation for attachers and, ... reduce the opportunity for disputes and uncertainty.”

Staff believes these arguments are compelling, and therefore the FCC survey and make-ready work timelines and use of contractor rules have been substantially incorporated into the Draft Final Proposal. In particular, the opportunity to use utility-approved contractors to perform make-ready work not timely completed by the pole owner represents an important remedial option for attaching entities that should be included in the rules. The proposed amendments appear in Puc 1303.04 and Puc 1303.12, with clarifying cross-references included in Puc 1303.06.

FCC Formula Rate Review Standards

NHTA objects to the proposed change in Puc 1304.06(a)(5) to reference the FCC’s current rate formulae in 47 C.F.R. §1.1409 rather than the 2007 version of those federal rules referenced in the existing Puc 1300 rules. According to NHTA, that modification would “have the effect of substantially reducing the telecommunications rate formula for pole attachments and bringing that formula closer to the rate formula for cable-television attachments,” which would “reduce pole revenues, with substantial adverse financial impact on pole owners.” NHTA also argues that the fiscal impact statement (FIS) obtained by the Commission from the Legislative Budget Assistant (LBA) failed to properly analyze the effects of that proposed amendment and therefore “understates or ignores” its financial impact on “independently owned businesses,” such as “the NHTA member companies and other utility pole owners in New Hampshire.”

Staff notes that Puc 1304.06(a) does not establish rates for pole attachments, but merely lists a number of factors to be considered by the Commission in determining just and reasonable pole attachment rates, including the FCC rate formulae set forth in 47 C.F.R. §1.1409. Staff agrees with CTIA, moreover, that the FCC rate formulae have been extensively reviewed and have been found to produce rates that are “compensatory and reasonable.” Staff also concurs with the view expressed by FirstLight that “[t]he FCC’s rate methodologies have evolved, and the State of New Hampshire will benefit if the Commission’s rate review standards for pole attachments evolve along with the FCC’s.”

The Draft Final Proposal therefore retains the reference to the 2017 FCC rate formulae, with certain clarifying and technical revisions included in Puc 1304.06(a). And although it is unclear whether the NHTA member companies, several of which are subsidiaries of multistate utility holding companies that are publicly traded corporations, should properly be considered “independently owned businesses,” Staff recommends that the Commission submit a request for an amended FIS with a more specific analysis of the proposed change in the FCC rate formulae rule reference.

Pole Attachment Agreement Transparency

CenturyLink maintains that a new attaching entity should have the ability to review other pole attachment agreements to ensure it is obtaining nondiscriminatory terms and conditions for attachment from the pole owners. CenturyLink proposes that pole owners be required to provide a requesting attacher with copies of pole attachment agreements with other attachers.

Staff believes that greater transparency through availability of pole attachment agreements would serve to ensure nondiscriminatory access to poles on terms and conditions that are just and reasonable. The Draft Final Proposal therefore includes the following addition to Puc 1303.05:

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.

Commission Complaint and Dispute Resolution Procedures

CenturyLink recommends that the Commission adopt expedited dispute resolution procedures, which might include a mix of informal and formal processes, with shortened hearing, oral argument, and briefing timeframes “to ensure decisions are made in a matter of days or weeks instead of months or years.” CenturyLink suggests that the Commission consider an expedited complaint resolution process similar to that recently approved by the Maine Public Utilities Commission.

Staff believes the Commission’s procedural rules, including the Puc 203 rules applicable to adjudicative proceedings, provide sufficient flexibility to resolve pole attachment disputes without undue delay. A party is free to ask for an expedited procedural schedule if circumstances warrant. A complainant may also ask to have a hearings examiner appointed to engage in alternative dispute resolution procedures, such as mediation or non-binding arbitration, subject to Commission review and approval of the results of those procedures. Under RSA 363:17 and Puc 203.14(c), a single Commissioner or qualified Staff member may be appointed as examiner to hear parties, report facts, and make recommendations to the full Commission.

The Draft Final Proposal therefore does not include any proposed amendments to Puc 1304.05 regarding the procedures applicable to disputes involving pole attachments.

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) ~~Owners of poles in whole or in part that are p~~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 additional communications wires, cables, fiber-splice closures, or similar incidental equipment to an attaching entity’s own existing communications wires, cable, or supporting strand already attached to poles.~~

~~Puc 1302.109 “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.”, or is owned in whole or in part by a provider of “VoIP service” or “IP-enabled service,” as such terms are defined in RSA 362:7, I.~~

~~Puc 1302.110 “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 1302.124 “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 sub~~paragraph~~section (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 an agreement for such attachment.

Puc 1303.04 Request for Access and Response Requirements. Requests made under these rules ~~or~~ pursuant to a pole attachment agreement for access to ~~a utility's~~ poles 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 for an application not exceeding 200 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 45 days of receiving a complete request for access. 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~~ may attach facilities to a pole without authorization in writing from the pole owner or owners prior to attaching such facilities, in accordance with Puc 1303.04. 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) Except as otherwise provided in Puc 1303.04 and Puc 1303.12 with respect to access and make-ready work, ~~T~~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, ~~A~~attaching entities shall provide written notice to the owner or owners of a pole not ~~l~~ less than 60 days prior to:

- (1) Modifying an existing attachment other than as part of routine maintenance, ~~o~~ ~~r~~ in response to an emergency, or to install a customer drop line;
- (2) Increasing the load or weight on a pole by installing an overlash or otherwise adding to an existing attachment, other than as part of routine maintenance, ~~o~~ ~~r~~ in response to an emergency, or to install a customer drop line; or

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

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

Puc 1303.07 Installation and Maintenance.

(a) All attachments shall be installed in accordance with the National Electrical Safety Code, 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 64, Telcordia Technologies, Inc. (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 ~~shall~~must be brought into compliance before a new attachment can be added, the cost of bringing that pole or existing attachment into compliance, the cost to remove a duplicate pole that was not removed when a pole was replaced earlier, or the cost to complete other work started before the make-ready work shall not be assessed to or imposed on the entity seeking to add a new attachment.

(d) 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(b).

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 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 or as actually implemented by the company on a regular basis. 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~~may be permitted only with express, written authorization by the pole owner. Pole owners shall grant or deny permission to use boxing, in writing, within 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 owners~~ 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 on a regular basis. Under no circumstances ~~shall~~may extension arms be used to avoid tree trimming requirements. Any use of extension arms shall be consistent with the requirements of applicable codes, including the National Electrical Safety Code. Extension arms ~~shall~~may be permitted only with express, written authorization by the pole owner. Pole owners shall grant or deny permission to use extension arms, in writing, within 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 Timelinesframes. If make ready work involves 300 poles or fewer, the owner or owners of a pole shall ensure that all make ready work is completed within 150 days after any required pre payments are rendered for make ready work estimates provided to the attaching entity by the owner or owners of the pole. If make ready work involves 10 poles or fewer and no pole replacements, all make ready work shall be completed within 45 days after any required pre payments for estimates are rendered. If make ready work involves more than 300 poles, the owner or owners of a pole and the attaching entity shall negotiate a schedule for completion of such make ready work in good faith.~~

(a) If a request for access is 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 a valid 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. 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);

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 make-ready work;

e. 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

f. 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 make-ready work; 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)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 3,000 poles or 5 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 3,000 poles or 5 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 3,000 poles or 5 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 no agreement specifying the rates, terms, and conditions of attachment; and

(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 complete by the date specified in (b)(1)b above, an attaching entity requesting attachment in the communications space may hire a contractor to complete the make-ready work, with written notice of such contractor engagement provided to the pole owner, as of the time specified below:

(1) Immediately, if the pole owner has failed to assert its right to perform remaining 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 perform make-ready work by the date specified in (b)(1)b above and has failed to complete 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 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 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.

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, ~~information service providers that are not incumbent local exchange carriers~~, and excepted local exchange carriers that are not incumbent local exchange carriers to poles owned by electric utilities ~~and~~/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(~~be~~) through (~~gf~~) 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.

APPENDIX A

Rule	Statute
<u>Puc 1301.01</u>	<u>RSA 374:3; RSA 374:34-a</u>
<u>Puc 1301.02(a)</u>	<u>RSA 374:3; RSA 374:34-a</u>
<u>Puc 1301.02(b)</u>	<u>RSA 362:7, I-III; RSA 374:34-a</u>
<u>Puc 1301.02(c)</u>	<u>RSA 374:3; RSA 374:34-a</u>
<u>Puc 1302-13040</u>	RSA 374:3; RSA 374:34-a

APPENDIX B: INCORPORATION BY REFERENCE INFORMATION

Rule	Title (date)	Source
Puc 1303.07(a)	National Electrical Safety Code, 2017 Edition	National Fire Protection Agency 1 Batterymarch Park Quincy, Massachusetts USA 02169-7471 Available for \$210.00 at: http://www.nfpa.org/
Puc 1303.07(a)	SR-1421 “Blue Book – Manual of Construction Procedures, Issue 4,” Telcordia Technologies, Inc., 2017 Edition	Telcordia Ericsson Inc. One Ericsson Drive Piscataway, NJ 08854-4156 USA Available for (Click at bottom of page to request price quote) at: http://telecom-info.telcordia.com/site-cgi/ido/docs.cgi?ID=SEARCH&DOCUMENT=SR-1421&

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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FILING INSTRUCTIONS:

a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:

DEBRA A HOWLAND
EXECUTIVE DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429

b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.

c) Serve a written copy on each person on the service list not able to receive electronic mail.

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