

KEEGAN WERLIN LLP

ATTORNEYS AT LAW

99 HIGH STREET, Suite 2900

BOSTON, MASSACHUSETTS 02110

(617) 951-1400

TELECOPIER:

(617) 951- 1354

June 21, 2022

Daniel C. Goldner, Chairman
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, New Hampshire 03301

Jared S. Chicoine, Commissioner
New Hampshire Department of Energy
21 S. Fruit Street, Suite 10
Concord, New Hampshire 03301

**Re: DRM 22-023: Puc 1300-Utility Pole Attachment Rules
RUL 22-001: En 1300-Utility Pole Attachment Rules
Public Service Company of New Hampshire d/b/a Eversource Energy
Comments in Response to Rulemakings**

Dear Chairman Goldner and Commissioner Chicoine:

Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource” or the “Company”) submits these comments pursuant to the Rulemaking Notice Forms filed by the New Hampshire Public Utilities Commission (the “Commission”) and Department of Energy (“DOE”) instituting rulemakings to revise Puc 1300 and adopt En 1300, respectively. The Commission and DOE held a joint public hearing to receive comments on these rulemakings at the Commission’s offices on June 10, 2022. The Company provided brief comments at the June 10th hearing that are reiterated below. The Company also responds to initial comments provided at the June 10th hearing by New England Cable and Telecommunications Association, Inc. (“NECTA”) and telecommunications provider, Crown Castle Fiber, LLC (“Crown Castle”). As detailed below, the comments provided by NECTA and Crown Castle are not appropriate for consideration as part of these rulemakings because these parties seek to greatly expand the scope of these rulemakings.

A. Eversource Energy Comments Regarding Current Rule Proposal

At the June 10th public hearing, Eversource stated that its concerns with the proposed rules are limited to certain timing constraints that would result in resource acquisition and allocation burdens for the Company, including increased costs. Specifically, the Company suggests that EN 1303.13(d) be revised as follows (new language is underlined):

EN 1303.13(d): The new attaching entity shall be responsible for all surveys required as part of the one-touch make-ready process and shall use a contractor as specified in En 1303.12(i)-(k). The new attaching entity shall permit the pole owner and any existing

attaching entities on the affected poles to be present for any field inspection conducted as part of the new attaching entity's surveys. The new attaching entity shall use commercially reasonable efforts to provide the pole owner and affected existing attaching entities with prior notice of not less than 10 ~~3~~ business days of a field inspection as part of any survey and shall provide the date, time, and location of the surveys and the name of the contractor performing the surveys.

The Company is requesting a notice period of not less than 10 business days for subsection 1303.13(d)¹ because Eversource plans its work two weeks in advance; therefore three (3) business days would not provide a sufficient opportunity to incorporate the survey into its workplans.

Finally, the Company suggests that the header for EN 1303.13 be revised to add the following parenthetical after the title: (Communication Workspace Only). While this addition may appear duplicative, it is important that there is no confusion regarding worker limitations in the electric space. For safety and reliability reasons, the Company seeks to ensure that only Eversource approved personnel are performing work in the electric space. This will also make clear that the survey provisions set forth in Section 1303.13 apply only to surveys conducted in the communications space and not in the electric space. It is imperative that the electric utilities, including Eversource, remain responsible for any surveys performed in the electric space consistent with current practices.

B. Eversource Energy Response to Initial Comments of NECTA and Crown Castle

As noted above, NECTA and Crown Castle each provided comments at the June 10th public hearing. These entities provided comments that would result in substantial changes to the currently proposed rules as noticed by the Commission and DOE. Pursuant to the comments at the June 10th hearing, these entities argue that their proposed revisions and expansion of the proposed rules would more closely align the NH pole attachment rules with attachment rules adopted by the Federal Communications Commission (the "FCC"). Crown Castle and NECTA argue that alignment with FCC rules is appropriate and consistent with rules adopted in other states. These entities also argue that there are efficiencies for their businesses associated with their proposed expansion and revision of the rules.

Overall, the Commission and DOE should reject the proposals by NECTA and Crown Castle in these rulemakings because the proposals far exceed the authorized scope of the proposed rulemakings. As set forth in the notices of rulemaking, these rulemakings were initiated to accomplish the following limited purposes:

Commission Rulemaking Notice Form:

This proposal would readopt with amendment the Puc 1300 rules regarding utility pole attachments, pursuant to RSA 374:34-a, as amended effective July 1, 2021. Proposed amendments include the repeal an existing part of the rules relating to access standards, which the New Hampshire Department of Energy intends to adopt

¹ Please note that after further consideration the Company has revised its timing request set forth the public hearing from at least 7 business days to at least 10 business days for the reasons set forth in these comments.

as part of a new proposed rule set (En 1300) in a rulemaking proceeding that will occur contemporaneously with this proposed action. Proposed amendments also include edits, updates, clarifying changes, and cross references to the New Hampshire Department of Energy's proposed rule set.

DOE Rulemaking Notice Form:

The Department of Energy (Department) intends to adopt new Chapter En 1300 rules regarding utility pole attachments, pursuant to RSA 374:34-a, as amended effective July 1, 2021. The substance of the proposed new rules is the same in most instances as the provisions of Parts Puc 1301, 1302, and 1303 of the existing Chapter Puc 1300 rules of the Public Utilities Commission (PUC), except for the addition of provisions for One-Touch Make-Ready (OTMR) procedures and timelines as required under Senate Bill 88 (2021). Part Puc 1304, which covers dispute resolution and related pole attachment fee rate-setting, will remain with the PUC in an amended version of its Puc 1300 rules. The En 1300 rules, pursuant to the statutory mandate of RSA 374:34-a, provide for the regulation of terms, conditions, rates, and charges for utility pole attachments that are just, reasonable, and in the public interest, by the Department and the PUC rather than by the Federal Communications Commission, under applicable federal law. As noted above, the Department's new rules effectively incorporate "the provisions of [OTMR] as adopted by the Federal Communications Commission in 47 CFR 1.1411(j)," pursuant to RSA 374:34-a, III, as amended by Senate Bill 88, effective on October 9, 2021.

Accordingly, there was no notice that any other provisions of the FCC's attachment rules would be considered for adoption. This is particularly problematic where the comments submitted at the June 10th hearing are not currently available in writing or in a hearing transcript and where the commenters indicated they may expand on their comments in the written version.

Therefore, in the interest of fairness, should the proposals by NECTA or Crown Castle to expand these rulemakings be considered, Eversource respectfully requests an additional opportunity to file reply comments in response to any written comments filed by these entities that sets forth their specific recommendations.

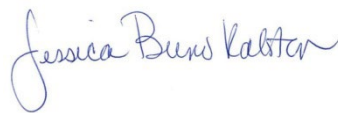
In the interim, the Company notes certain proposals stated by NECTA and Crown Castle at the June 10th hearing are problematic for the following reasons:²

² These comments do not address each point raised in the public comments provided by NECTA and/or Crown Castle at the hearing and Eversource reserves the right to comment further should DOE continue to consider the proposed expansion of rulemaking. This response simply highlights that expanding the rulemakings to address these comments is problematic without additional process.

1. Records Access: In its initial comments, NECTA argues that pole owners should be required to maintain and provide reasonable access to all information necessary for review of pole attachment rates, but provides no specific language for implementation of its proposal. While the Company does not object to the concept of reasonable record keeping requirements, it takes no position on this proposal absent specific language to react to. For the same reason, the Company suggests that additional specificity regarding maintenance and access to records is necessary.
2. Attachment Rates: NECTA recommended adoption of rules that would require all pole attachment rates to be set using the FCC formula. This recommendation ignores the fact that adoption of the FCC formula for pole attachment rates will adversely shift costs to the Company's electric distribution customers (all else being equal). As a result, before pole attachment formulas and/or rates are adjusted, the impacts to electric distribution customers must be considered.
3. Work Performed in the Electric Space: Any revisions to the proposed rules must account for safety and reliability of the electric system by restricting access to the electric space to utility or utility-approved personnel. The Company's core obligations are to ensure a safe and reliable electric grid, and therefore any revisions to the pole attachment rules must not interfere with these obligations or otherwise operate to the detriment of the Company's employees, electric customers and the public.

Please contact me if you have any questions. Thank you for your attention to this filing.

Sincerely,



Jessica Buno Ralston

cc: Service List, Commission Docket DRM 22-023
David K. Wiesner, DOE Legal Director