

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

CHAPTER Puc 1300 UTILITY POLE ATTACHMENTS

Statutory Authority: RSA 374:34-a

REVISION NOTE:

Document #13498, effective 12-1-22, readopted with amendments Chapter Puc 1300 titled “Utility Pole Attachments.”

Pursuant to 2021, 91:187, effective 7-1-21, the Department of Energy was established by the adoption of RSA 12-P. Pursuant to RSA 12-P:11, “All of the functions, powers, duties, records, personnel, and property of the public utilities commission incorporated in the statutes establishing the department of energy and which replace the authority of the commission with the authority of the department of energy, are hereby transferred, as of July 1, 2021, to the department of energy.”

Pursuant to RSA 12-P:14, “Existing rules, orders, and approvals of the public utilities commission which are associated with any functions, powers, and duties, transferred to the department of energy pursuant to RSA 12-P:11 or any other statutory provision, shall continue in effect and be enforced by the commissioner of the department of energy until they expire or are repealed or amended in accordance with applicable law.”

The amendments in Document #13498 were made pursuant to RSA 374:34-a on pole attachments, as amended by 2021, 91:271, effective 7-1-21, to the extent of the provisions which are under the authority of the Public Utilities Commission. The amendments in Document #13498 included, but were not limited to, the deletion of Puc 1302.02 defining “boxing”; the adoption of Puc 1302.03 defining “Department” as the Department of Energy; the deletion of Puc 1302.05 defining “extension arm(s)”; the deletion of Puc 1302.08 defining “make-ready work”; the deletion of Puc 1302.09 defining “overlash”; the renumbering of other rules within Part Puc 1302 titled “Definitions”; the deletion of Part Puc 1303 titled “Access to Poles”; and the amendment and renumbering of Part Puc 1304 titled “Dispute Resolution” as Part Puc 1303. The source notes of the rules indicate the former rule numbers where applicable.

Document #13498 replaced all prior filings affecting the former Chapter Puc 1300. The prior filings affecting the deleted rules in the former Chapter Puc 1300 included the following documents:

- #9703, INTERIM, effective 1-17-08 (rules Puc 1302.02 and Puc 1303.01-Puc 1303.04)
- #9614, effective 12-12-09 (all deleted rules)
- #12574, effective 9-1-18 (all deleted rules)

The Department of Energy adopted Chapter En 1300 titled “Utility Pole Attachments” in Document #13497, effective 12-1-22, which included Part En 1303 titled “Access to Poles” based on the former Part Puc 1303.

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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. Rules regarding the process and timelines for pole attachment applications and agreements and related surveys, inspections, and make-ready work are set forth in chapter En 1300 adopted by the department of energy.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09; ss by #12574, eff 9-1-18; ss by #13498, eff 12-1-22 (See Revision Note at chapter heading for Puc 1300)

Puc 1301.02 Applicability. Puc 1300 shall apply to:

(a) Public utilities within the meaning of RSA 362:2, including rural electric cooperatives for which a certificate of deregulation is on file pursuant to RSA 301:57, that own, in whole or in part, any pole used for wire communications or electric distribution;

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

(c) Attaching entities with facilities attached to such poles, or seeking to attach facilities to such poles.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09; ss by #12574, eff 9-1-18; ss by #13498, eff 12-1-22 (See Revision Note at chapter heading for Puc 1300)

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.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09; ss by #12574, eff 9-1-18; ss by #13498, eff 12-1-22 (See Revision Note at chapter heading for Puc 1300)

Puc 1302.02 “Commission” means the New Hampshire public utilities commission.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09; ss by #12574, eff 9-1-18; ss by #13498, eff 12-1-22 (formerly Puc 1302.03) (see Revision Note at chapter heading for Puc 1300)

Puc 1302.03 “Department” means the New Hampshire department of energy.

Source. #13498, eff 12-1-22 (see Revision Note at chapter heading for Puc 1300)

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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.”

Source. #9614, eff 12-12-09; ss by #12574, eff 9-1-18; ss by #13498, eff 12-1-22 (See Revision Note at chapter heading for Puc 1300)

Puc 1302.05 “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.

Source. #9614, eff 12-12-09; ss by #12574, eff 9-1-18 ; ss by #13498, eff 12-1-22 (formerly Puc 1302.06)(See Revision Note at chapter heading for Puc 1300)

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.

Source. #9614, eff 12-12-09; ss by #12574, eff 9-1-18; ss by #13498, eff 12-1-22 (formerly Puc 1302.07)(See Revision Note at chapter heading for Puc 1300)

Puc 1302.07 “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.”

Source. #9614, eff 12-12-09; ss by #12574, eff 9-1-18 ; ss by #13498, eff 12-1-22 (formerly Puc 1302.10)(See Revision Note at chapter heading for Puc 1300)

Puc 1302.08 “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.

Source. #9614, eff 12-12-09; ss by #12574, eff 9-1-18; ss by #13498, eff 12-2-22 (formerly Puc 1302.11) (see Revision Note at chapter heading for Puc 1300)

Puc 1302.09 “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.

Source. #9614, eff 12-12-09; ss by #12574, eff 9-1-18; ss by #13498, eff 12-1-22 (formerly Puc 1302.12)(See Revision Note at chapter heading for Puc 1300)

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PART Puc 1303 DISPUTE RESOLUTION

Puc 1303.01 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.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09; ss by #12574, eff 9-1-18; ss by #13498, eff 12-1-22 (formerly Puc 1304.01)(See Revision Note at chapter heading for Puc 1300)

Puc 1303.02 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. Good faith negotiation shall include adherence to the timelines established through rulemaking by the Department for negotiating and implementing pole attachments, unless each party agrees to following alternate timelines. 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.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09; ss by #12574, eff 9-1-18; ss by #12574, eff 9-1-18; ss by #13498, eff 12-1-22 (formerly Puc 1304.02)(See Revision Note at chapter heading for Puc 1300)

Puc 1303.03 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.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09; ss by #12574, eff 9-1-18; ss by #13498, eff 12-1-22 (formerly Puc 1304.03)(See Revision Note at chapter heading for Puc 1300)

Puc 1303.04 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.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09; ss by #12574, eff 9-1-18; ss by #13498, eff 12-1-22 (formerly Puc 1304.04)(See Revision Note at chapter heading for Puc 1300)

Puc 1303.05 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.

Source. #9614, eff 12-12-09; ss by #9614, eff 12-12-09; ss by #9614, eff 12-12-09; ss by #12574, eff 9-1-18; ss by #13498, eff 12-1-22 (formerly Puc 1304.05)(See Revision Note at chapter heading for Puc 1300)

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Puc 1303.06 Rate Review Standards.

(a) In determining just and reasonable rates for the pole attachments of cable television service providers, wireless service providers, and excepted local exchange carriers that are not incumbent local exchange carriers to poles owned by electric utilities or incumbent local exchange carriers under this chapter, the commission shall consider:

- (1) Relevant federal, state, or local laws, rules, and decisions;
- (2) The impact on competitive alternatives;
- (3) The potential impact on the pole owner and its customers;
- (4) The potential impact on the deployment of broadband services;
- (5) The formulae adopted by the FCC in 47 C.F.R. §1.1406(d) in effect on October 1, 2022; 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.

Source. #9614, eff 12-12-09; ss by #9614, eff 12-12-09; ss by #9614, eff 12-12-09; ss by #12574, eff 9-1-18; ss by #13498, eff 12-1-22 (formerly Puc 1304.06)(See Revision Note at chapter heading for Puc 1300)

Puc 1303.07 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.

Source. #9614, eff 12-12-09; ss by #12574, eff 9-1-18; ss by #13498, eff 12-1-22 (formerly Puc 1304.07)(See Revision Note at chapter heading for Puc 1300)

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Puc 1303.08 Interest. Refunds or payments ordered under Puc 1304.07 shall accrue simple annual interest at a rate equal to the prime rate.

Source. #9614, eff 12-12-09; ss by #12574, eff 9-1-1; ss by #13498, eff 12-1-22 (formerly Puc 1304.08)(See Revision Note at chapter heading for Puc 1300)

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APPENDIX A

Rule	Statute
Puc 1300	RSA 374:3; RSA 374:34-a
Puc 1301.01	RSA 374:3; RSA 374:34-a
Puc 1301.02(a)	RSA 374:3; RSA 374:34-a
Puc 1301.02(b)	RSA 362:7, I-III; RSA 374:34-a
Puc 1301.02(c)	RSA 374:3; RSA 374:34-a
Puc 1302-1303	RSA 374:3; RSA 374:34-a