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STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION
DEPARTMENT OF ENERGY

June 10, 2022 - 1:01 p.m.
21 South Fruit Street
Suite 10
Concord, NH

RE: DRM 22-023 RULEMAKING:
New Hampshire Code of Administrative
Rules Chapter 1300 Utility Pole
Attachments.
RUL 22-001 DEPARTMENT OF ENERGY:
Chapter En 1300 Utility Pole
Attachment Rules.
(Joint Hearing to receive public comment)

PRESENT: Chairman Daniel C. Goldner, Presiding
Commissioner Pradip K. Chattopadhyay
Commissioner Carleton B. Simpson
Commissioner Jared S. Chicoine *(NH DOE)*

Eric Wind, Esq., PUC Legal Advisor

Tracey Russo, Clerk

APPEARANCES: (No appearances taken)

COURT REPORTER: Steven E. Patnaude, LCR No. 52

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P R O C E E D I N G

CHAIRMAN GOLDNER: Okay. Good afternoon. It's 1:00 p.m., 1:01 p.m., on June 10th, 2022. And I'll call the meeting to order.

We're here for a joint hearing with the Department of Energy relating to both Agencies' Chapter 1300 rules. On the Commission end, this hearing occurs in Docket DRM 22-023, which is a rulemaking regarding the readoption, with amendment, of the Puc 1300 rules regarding utility pole attachments. I'm joined by Commissioner Chattopadhyay and Commissioner Simpson.

Commissioner Chicoine, would you introduce the Department's rule set.

CMSR. CHICOINE: I will. Thank you, Chairman Goldner. Oh, sorry. There we go. Thank you, Chairman Goldner. My name is Jared Chicoine. I'm the Commissioner of the Department of Energy. And we are here to receive comments on the DOE's proposed new En 1300 pole attachment rules. Those rules separate certain standard-setting functions related to the utility

1 pole attachments from the dispute resolution and
2 rate-setting functions retained by the PUC
3 following the reorganization that became
4 effective last July.

5 The new rules also incorporate FCC
6 One-Touch Make-Ready procedures and timelines as
7 required under recent state legislation.

8 Thank you.

9 CHAIRMAN GOLDNER: Thank you,
10 Commissioner Chicoine.

11 We're here for a joint public comment
12 hearing on the proposed rule set of rules that
13 both agencies filed with the Joint Legislative
14 Committee on Administrative Rules, consistent
15 with RSA 541-A:11. These notices both appeared
16 in the April 14th, 2022 issue of the New
17 Hampshire Rulemaking Register.

18 Has everyone had an opportunity to sign
19 in on the sign-in sheet?

20 *[No verbal response.]*

21 CHAIRMAN GOLDNER: Guess I'll take that
22 as a "yes".

23 I'll call names in the order where I
24 see indications of a desire to speak. I'll try

1 and call the name of the person who is expected
2 to speak and the person who is expected to speak
3 next, so people can be ready. Given the number
4 of people here today, not a huge number, let's go
5 with a 15-minute time limit, so that we can keep
6 things moving. And we'll go ahead and get
7 started. Looks like everybody's ready.

8 So, we'll begin with Mr. Fossum, and
9 Ms. Ralston is next.

10 MR. FOSSUM: Thank you, Commissioners.
11 I'll trim out most of my comments to get down to
12 15 minutes, hopefully, not too much over.

13 My incredibly hilarious joke aside, we
14 actually, on behalf -- I am here, Matthew Fossum,
15 on behalf of Unitil Energy Systems today. And we
16 do not actually have much of a concern to express
17 relative to the rules.

18 With respect to the Commission's rules,
19 relative to rate-setting and dispute resolution,
20 it's our understanding those rules are
21 essentially unchanged from the current rules, and
22 only need to be readopted so that the
23 reassignment between Agencies is appropriate. In
24 light of that, we have no particular concern with

1 the Public Utility Commission side of the
2 rulemaking.

3 Relative to the Department of Energy
4 side of the rulemaking, Unitil today has a single
5 comment, relative to En -- or, proposed En
6 1303.13, Subsection (d). In that subsection, the
7 final sentence provides that "The new attaching
8 entity is to use commercially reasonable efforts
9 to provide the pole owner and any affected
10 existing attaching entities with prior notice of
11 not less than three business days of a field
12 inspection."

13 In Unitil's estimation, three business
14 days is not sufficient. And we would propose and
15 request that that be extended to no less than
16 "seven business days".

17 And that is the sole comment that I
18 have this afternoon.

19 CHAIRMAN GOLDNER: Thank you. I'm
20 sorry. Thank you, Mr. Fossum.

21 We'll go with Ms. Ralston next,
22 followed by Mr. Emerson.

23 MS. RALSTON: Thank you. Jessica
24 Ralston, from the law firm Keegan Werlin. I'm

1 here today on behalf of Eversource Energy. But
2 we also have very limited comments on the rules.

3 Our first comment was simply to echo
4 what Mr. Fossum just presented with Subsection
5 1303.13(d). We similarly think that the "three
6 business days" is insufficient time, and would
7 request an extension of at least "seven days".

8 Our second comment is with respect to
9 1303.13, Subsection (a). We would just suggest a
10 requirement of notification at least three
11 business days in advance of any surveys. This
12 would allow pole owners and existing attachers an
13 opportunity to be present for a survey, if they
14 desired. And we think that additional timing
15 could be helpful.

16 Thank you for your time. That's our
17 only comments today.

18 CHAIRMAN GOLDNER: Thank you, Ms.
19 Ralston.

20 We'll go with Mr. Emerson, followed by
21 Ms. Geiger.

22 MR. EMERSON: Do you need me to speak
23 in the microphone, if they're not on?

24 CHAIRMAN GOLDNER: Can you hear okay,

1 Steve?

2 (Court reporter indicating the need to
3 use a microphone for the hearing.)

4 MR. EMERSON: I'll come forward.

5 CHAIRMAN GOLDNER: Yes.

6 MR. EMERSON: I have no microphone
7 here.

8 CHAIRMAN GOLDNER: Please. Yes, we're
9 recording, and with the stenographer. Thank you.

10 MR. EMERSON: Thank you. My name is
11 Eli Emerson. I am from the law firm of Primmer,
12 Piper, Eggleston & Cramer. And I m here on
13 behalf of New Hampshire Electric Cooperative.
14 Thank you today for providing us the opportunity
15 to give you comments on this rule.

16 As the Co-op stated in the informal
17 process, it's in the unique position of being
18 both a pole owner and a pole attacher, as it's
19 been implementing a broadband network throughout
20 the State of New Hampshire over the past several
21 years.

22 So, really, just reaffirming those
23 comments, that it's very supportive of this rule,
24 from both a pole-owning perspective and an

1 attaching perspective. It thinks One-Touch
2 Make-Ready is a really important tool to have for
3 those who are trying to implement broadband over,
4 you know, the expedited timeframe that we are
5 expected to over the next several years. Really
6 hope to see that this stay a narrow process,
7 focusing on the One-Touch Make-Ready.

8 Acknowledged in some of the comments
9 during the informal session that there probably
10 are other changes that could be made to the pole
11 attachment rules. But they really, if it's going
12 to be done, should be done in a separate docket,
13 just so this can be expedited as fast as possible
14 to get those rules in place.

15 Fully support the rules, the proposed
16 rule as written, and don't have any suggestion
17 for changes. So, we just really urge the
18 Commission and the Department of Energy to
19 implement this rule as quickly as possible.

20 And thank you for that.

21 CHAIRMAN GOLDNER: Thank you, Mr.
22 Emerson.

23 We'll move on to Ms. Geiger, followed
24 by Mr. Jennings.

1 MS. GEIGER: Yes. Good afternoon. I'm
2 Susan Geiger, with the law firm of Orr & Reno.
3 And I represent the New England Cable &
4 Telecommunications Association, NECTA. NECTA
5 appreciates the opportunity to appear this
6 afternoon to provide these comments.

7 And, as most of you know, NECTA is a
8 nonprofit corporation and regional trade
9 association that represents the interests of most
10 cable television and regional broadband internet
11 providers in New Hampshire, including affiliates
12 of Breezeline, Charter Communications and
13 Comcast, and their competitive local exchange
14 company affiliates.

15 NECTA members attach their facilities
16 to the utility poles to deploy broadband and
17 other advanced communications services. Given
18 this week's announcement that New Hampshire will
19 be receiving \$50 million in federal aid for
20 increasing access to broadband, high-speed,
21 affordable internet service, it is of utmost
22 importance to broadband providers that rules are
23 in place to promote fair and efficient pole
24 attachment processes and just and reasonable pole

1 attachment rates.

2 With respect to the DOE rules, NECTA
3 notes that Senate Bill 88, which was enacted last
4 year, directed DOE to adopt rules implementing
5 the provisions of the One-Touch Make-Ready rules
6 "as adopted by the Federal Communications
7 Commission in 47 CFR 1.144(j)" [1.1411(j)?].
8 Thus, DOE's rulemaking authority is narrowly
9 confined to adopting the FCC's One-Touch
10 Make-Ready rules, which apply to 27 states that
11 have the default to the FCC's pole attachment
12 regulations, and which have been upheld by the
13 Ninth Circuit Court of Appeals. The Ninth
14 Circuit found that the FCC's One-Touch Make-Ready
15 rules are intended to make it faster and less
16 expensive for broadband providers to attach to
17 already-existing utility poles.

18 NECTA commends DOE for drafting an
19 initial rules proposal that closely follows the
20 language of the FCC's One-Touch Make-Ready rules.
21 However, there is one area where DOE deviated
22 slightly from the federal rules. The proposed
23 DOE rules at En 1303.13(c) and 1303.(c)(2) [sic]
24 do not include the definition of "larger orders"

1 that are contained in the FCC's One-Touch
2 Make-Ready rules. Instead, those provisions in
3 the New Hampshire proposed rules reference the
4 definition of "larger orders" that already appear
5 in New Hampshire's rules. And we believe the
6 correct definition of "larger orders" is
7 important, and it sets the threshold for allowing
8 a pole owner to add 15 more days to the time
9 period for reviewing the merits of a complete
10 One-Touch Make-Ready application.

11 So, under the FCC's rules, at 47 CFR
12 1.144(j)(2) [1.1411(j)(2)?], the pole owner must
13 review the merits of a complete application
14 requesting One-Touch Make-Ready and respond to
15 the new attacher, either granting or denying the
16 application, within 15 days of the pole owner's
17 receipt of a complete application, or within 30
18 days in the case of larger orders as described in
19 47 CFR 1.144(g) [1.1411(g)?]. Now, that section,
20 Section (g), describes "larger orders" as "up to
21 the lesser of 3,000 poles or 5 percent of the
22 utility's poles in the state."

23 And, although the New Hampshire
24 proposed One-Touch Make-Ready rules contain the

1 same review and denial standards as the FCC
2 rules, they refer to "larger orders" as described
3 in proposed Rule En 1303.12(e). Now, proposed
4 Rules 1303.12(e)(2) and (3) and (4) refer to
5 "larger orders" as being "up to the lesser of
6 2,000 poles or four percent of the pole owner's
7 poles in the state", and this is the same
8 threshold that currently applies to non-One-Touch
9 Make-Ready and complex make-ready. So, under the
10 proposed rules, the threshold for triggering a
11 15-day delay in reviewing the merits of a
12 complete One-Touch Make-Ready application is
13 lower than under the FCC's rules.

14 NECTA respectfully submits that, in
15 order to be consistent with the FCC's rules,
16 which is required by Senate Bill 88, the
17 definition of "larger orders" contained in the
18 FCC's One-Touch Make-Ready rules is the
19 appropriate definition, and that should be
20 included in the proposed Rules En RSA 1303.13(c)
21 and .13(c)(2).

22 With respect to the PUC's rules, NECTA
23 respectfully submits that, to provide certainty
24 regarding the determination of pole attachment

1 rates, the Commission should adopt the FCC's
2 cable rate formula, and should eliminate the
3 other more subjective criteria that appear in the
4 current and proposed rules.

5 The current and proposed rules contain
6 two sets of standards for pole attachment
7 rulemaking. The first set of standards,
8 appearing in current Rule Puc 1304.06(a) and
9 proposed Rule 1304.06 -- in the proposed rule,
10 having a slightly different number, applies to
11 attachments of cable TV providers, wireless
12 service providers, and ELECs, excepted local
13 exchange carriers that are not ILECs, to poles
14 owned by electric utilities or ILECs. The second
15 set of standards applies to all other pole
16 attachments.

17 Both sets of standards require that the
18 Commission consider several criteria when
19 determining just and reasonable rates. However,
20 the first set of criteria also includes
21 consideration of the formulae adopted by the FCC
22 in 47 CFR Section 1.1409(b) through (g) in effect
23 on October 1st, 2017. It's important to note
24 that the FCC's current pole attachment rate

1 formulae are not found in that cite, they're
2 found at 47 CFR Section 1.1406(d). Therefore,
3 NECTA respectfully submits that reference to the
4 older FCC rules is inappropriate and should be
5 corrected.

6 In addition, for ease of
7 administration, and to ensure that all pole
8 attachers are subject to the same
9 nondiscriminatory, just and reasonable pole
10 attachment rates, NECTA respectfully submits that
11 the Commission should adopt a single rate formula
12 for all pole attachers, and should eliminate the
13 other more subjective criteria listed in the
14 current arranged the proposed rules.

15 NECTA respectfully submits that the
16 FCC's cable rate formula found at 47 CFR Section
17 1.1406(d)(1) should apply to all New Hampshire
18 pole attachments. This is an objective standard
19 that will provide uniformity, certainty, and
20 clarity for the Commission, pole owners, and pole
21 attachers, when determining just and reasonable
22 pole attachment rates. And NECTA would also note
23 that the Maine Public Utilities Commission
24 recently adopted the FCC cable rate formula for

1 calculating a just and reasonable attachment
2 rate.

3 The other area of concern that NECTA
4 would like to raise is the availability of
5 pole-related records to pole attachers. NECTA
6 believes that the pole attachment rules should
7 clearly require that pole owners maintain and
8 make available to pole attachers certain
9 pole-related records upon request. Increased
10 mandatory information sharing from pole owners
11 will greatly decrease the likelihood of disputes
12 over pole attachment rates, and significantly
13 increase the speed of pole attachments, and thus
14 broadband deployment.

15 The rules, therefore, should require
16 that, on request, pole owners must provide access
17 to their outside plant records relevant to poles,
18 historically referred to as "Continuing Property
19 Records", including detailed accounting of the
20 units associated with FERC Account 364, which is
21 used to report pole plant investment.

22 The rules should also require that pole
23 owners track and provide information upon request
24 in the detail necessary to enable pole attachers

1 to compare actual data against the FCC's
2 presumptions used in calculating pole attachment
3 rates, in order to determine whether those
4 presumptions can be rebutted. For example, pole
5 height is a rebuttable presumption, but, because
6 pole owners, not pole attachers, possess pole
7 height records and data, pole attachers need
8 access to that information to rebut the height
9 presumption.

10 The rules should also require that, on
11 request, pole owners must provide their financial
12 records related to poles, so that pole attachers
13 can better understand the data that is used by
14 pole owners to calculate attachment rates. This
15 would include information on the so-called "ARMIS
16 Report", or on an analogous report form
17 applicable to pole-owning telecommunications
18 companies.

19 Thank you very much for the opportunity
20 to provide these comments. NECTA plans on
21 expanding on them in its written submission,
22 which it will file by the deadline that has been
23 set for both sets of rules.

24 Thank you.

1 CHAIRMAN GOLDNER: Thank you, Ms.
2 Geiger.

3 We'll move to Mr. Jennings next,
4 followed by Mr. Kennan.

5 MR. JENNINGS: Thank you. But I have
6 no comments.

7 CHAIRMAN GOLDNER: Okay. Thank you,
8 Mr. Jennings.

9 Mr. Kennan.

10 MR. KENNAN: Hi. Good afternoon. My
11 name is Greg Kennan. I am of-counsel to the law
12 firm Fagelbaum & Heller, LLP, and I am here today
13 representing Crown Castle Fiber, LLC.

14 Let me just introduce Crown Castle to
15 you. Crown Castle is the country's largest
16 independent owner and operator of shared
17 infrastructure. It has some 25 years of
18 experience building and operating network
19 infrastructure. They include some 40,000 towers,
20 115,000 small wireless facilities constructed or
21 under contract, and more than 80,000 route miles
22 of fiber.

23 Crown Castle hopes, respectfully
24 suggests, that its experience can be helpful to

1 the Department and Commission as they address
2 pole attachment issues going forward. And Crown
3 Castle certainly appreciates the opportunity to
4 appear here today and make these comments.

5 Adoption of One-Touch Make-Ready, in
6 accordance with the legislative mandate, is a
7 very good first step. But it should only be a
8 first step. The Department and Commission should
9 do more to encourage and facilitate the
10 deployment of broadband networks that are so
11 essential to the social, economic, medical, and
12 educational wellbeing of the state and its
13 people.

14 More specifically, the Department and
15 Commission should adopt further reforms modeled
16 on the FCC rules or state rules that look like
17 the FCC rules. FCC rules or closely similar
18 state rules are in effect in over 30 states
19 across the country; the 27 Ms. Geiger referred to
20 as directly applicable by the FCC rules, plus
21 another five or so in which states have adopted
22 rules that look very much like the FCC rules.
23 They represent the prevailing -- oh, and those
24 states include neighboring Maine and Vermont.

1 They represent the prevailing view on what pole
2 attachment rules should look like, and were
3 crafted and refined after the input of many
4 stakeholders.

5 Industry participants, who have
6 operations in multiple states, are familiar with
7 such uniformity across jurisdictions promotes
8 efficiency in deployment and operations for both
9 owners and attachers. Predictable, uniform rules
10 and regulations promote capital investment.

11 Among the desired further reforms,
12 beyond the One-Touch Make-Ready, that the
13 Department should consider, respectfully, are
14 impose a timeframe for all make-ready work in the
15 electrical space. Currently, under the rules or
16 the proposed rules, there's only a time limit for
17 wireless attachments above the communications
18 space. That should be made more general, to
19 include all make-ready involving work above the
20 communications space.

21 The Department should tighten the
22 make-ready timeframes in the communications
23 space. Currently, the deadline is 30 days, which
24 may be expanded in the case of larger orders.

1 I'm sorry, it's -- the current rules are 60 days,
2 which may be expanded. The FCC rules, in effect
3 in some thirty plus states, are 30 days, and that
4 will help to speed the deployment of broadband
5 networks.

6 The Department should clarify that not
7 all make-ready work on a pole with wireless
8 facilities attached is deemed "complex". There
9 can be work involving wireless attachments that
10 simply don't affect -- don't fall within the
11 definition of "complex".

12 The self-help remedy should be expanded
13 to include work anywhere on the pole, not just in
14 the communications space. The Department should
15 adopt reforms that facilitate further use of
16 contractors.

17 And I can provide more detail on any of
18 this, but we will certainly give that in written
19 comments. And I can go into it further, if you
20 are interested this afternoon.

21 And, lastly, for the Department, reduce
22 the restrictions on the use of boxing and
23 extension arms, which generally are permitted by
24 the National Electrical Safety Code, but very

1 restrictive under the current Department of
2 Energy rules.

3 For the Commission, respectfully, an
4 expedited dispute resolution process is very
5 important. Right now, the proposed rules
6 reference only the PUC's general Part 203
7 adjudicatory rules, which have an open-ended
8 timeframe. And, without any disrespect to the
9 Commission's decision-making process, these
10 disputes can stop a project dead in its tracks.

11 The FCC has an expedited dispute
12 resolution process that will have a decision made
13 in 60 days. Maine has a very rapid response
14 process, which will render a decision in seven
15 business days. And urge the Commission to look
16 at a more expedited dispute resolution process.

17 And, finally, for the Commission, in
18 its rate-setting function, clarify what part of
19 pole replacement costs should be borne by new
20 attachers. That is a subject that is being
21 looked at at the FCC currently, as well as in
22 Maine. And it is not fair or reasonable to have
23 a new attacher pay the entire cost of replacing a
24 pole, when -- solely because it wants to attach.

1 There's a benefit that is shared among everyone
2 involved, existing attachers, the current owners,
3 as well as the new attachers, and there should be
4 some reasonable apportionment of the cost of
5 replacing the pole, when that has to be done in
6 connection with a new attachment.

7 I'd like to just speak for a moment, if
8 I may, about the issue of controversy. At an
9 earlier stage in these proceedings, when some
10 parties suggested going further than the narrow
11 adoption of the One-Touch Make-Ready rules, there
12 were some counterargument or pushback or
13 suggestion that "the Department should not do
14 that, because it would be controversial." But,
15 respectfully, Commissioners, I think it's only --
16 that's only going to be controversial, if you let
17 it be controversial.

18 Adopting rules modeled on the FCC rules
19 would not be controversial; they would be
20 conventional. They're in place in the majority
21 of states across the country. They're the
22 prevailing view. They're mainstream. And
23 adoption of such rules would not make New
24 Hampshire an outlier. To the contrary, the

1 failure to adopt FCC-like rules would make New
2 Hampshire an outlier, and potentially discourage
3 broadband investment in this state.

4 So, in addition to adopting OTMR, the
5 Department and Commission should join the
6 majority of other states and adopt additional
7 reforms reflecting the FCC pole attachment rules.

8 Thank you.

9 CHAIRMAN GOLDNER: Thank you, Mr.
10 Kennan.

11 That was everyone who had signed up and
12 indicated that they wished to speak. Am I
13 missing anyone?

14 *[No indication given.]*

15 CHAIRMAN GOLDNER: No? Before we
16 adjourn, I'll note that, under the PUC's
17 Rulemaking Notice, we're accepting written
18 comments through June 21st, 2022, and there are
19 instructions on how to submit those in the PUC's
20 Notice.

21 Commissioner Chicoine, is that the same
22 for the Department of Energy?

23 CMSR. CHICOINE: It is. The DOE is
24 also accepting written comments through June

1 21st, preferably by electronic mail, directed to
2 David Wiesner, our Legal Director.

3 We appreciate all of your input today,
4 and look forward to receiving your written
5 comments.

6 MR. KENNAN: May I ask a procedural
7 question on the written comments?

8 Do the Commission and Department want
9 separate sets of comments?

10 I mean, there is some overlap, I think,
11 between the two. Would a unitary set of comments
12 be preferable or separate? Whatever you would
13 prefer?

14 CHAIRMAN GOLDNER: Just a moment.

15 *[Chairman Goldner conferring with*
16 *Atty. Wind.]*

17 CHAIRMAN GOLDNER: Yes. The only thing
18 we'd indicate is that, if you have comments that
19 you'd like to share, to file them in both, make
20 sure you file them in both dockets, because we're
21 addressing them independently.

22 MR. KENNAN: With two captions. Sure.

23 CHAIRMAN GOLDNER: Yes. Thank you.

24 MR. KENNAN: Okay. Thank you.

1 CHAIRMAN GOLDNER: Jared -- or,
2 Commissioner Chicoine, anything to add to that?

3 CMSR. CHICOINE: I think that works for
4 us as well.

5 CHAIRMAN GOLDNER: Okay. Thank you.
6 Anything else?

7 *[No verbal response.]*

8 CHAIRMAN GOLDNER: All right. If
9 there's nothing else, we thank everyone for their
10 comments. And we are adjourned.

11 ***(Whereupon the joint hearing was***
12 ***adjourned at 1:28 p.m.)***

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