

THE STATE OF NEW HAMPSHIRE

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January 18, 2008

Re: Docket No. DRM 07-119 (interim rules)
Docket No. DRM 08-004 (regular rules)
N.H. Code of Administrative Rules Chapter Puc 1300
Utility Pole Attachments

To Interested Persons:

Please be advised that, following approval by the Joint Legislative Committee on Administrative Rules (JLCAR), the Commission on January 11, 2008 adopted the attached interim rules governing utility pole attachments. The Legislature directed the Commission to promulgate these rules in 2007 N.H. Laws 340:1, codified as RSA 374:34-a. A copy of the interim rules is attached.

The interim rules will become effective on the day after their filing with the Office of Legislative Services, Division of Administrative Rules. As required by 47 U.S.C. § 224(c) and Puc 1305.01, our agency will promptly notify the Federal Communications Commission that the New Hampshire PUC has assumed jurisdiction over these matters.

The Commission will next move toward promulgation of regular (as distinct from interim) rules concerning pole attachments. To that end, please be advised that pursuant to RSA 541-A:11, VIII the Commission has opened Docket No. DRM 08-004 and is seeking public comment on the pole attachment rules prior to adopting an initial proposal for regular rules. The deadline for submitting such comments is March 5, 2008. Notice of this comment opportunity is being published in the New Hampshire Rulemaking Register.

To assist interested persons in preparing their comments, the Staff of the Commission will conduct an informal technical session on February 27, 2008 at 10:00 a.m. At the technical session, there will be an opportunity for general discussion of how the interim rules should be revised for promulgation as regular rules, particularly in light of the testimony presented to the JLCAR.

Persons with questions about the foregoing should contact the Commission's general counsel, Donald Kreis, at 271.6006 or donald.kreis@puc.nh.gov.

Sincerely,

A handwritten signature in dark ink, appearing to read "Debra A. Howland".

Debra A. Howland
Executive Director and Secretary

Encl.

APPENDIX II-A

REQUEST FOR ADVANCE PUBLIC COMMENT ON SUBJECT
MATTER OF POSSIBLE RULEMAKING

	Rule Number	<u>Puc 1300</u> (If applicable)
1. Agency Name & Address: New Hampshire Public Utilities Commission 21 South Fruit Street, Suite 10 Concord, New Hampshire 03301	2. RSA Authority: 3. Federal Authority: 4. Type of Action: Adoption Amendment Repeal Readoption Readoption w/amendment	<u>RSA 374:34-a</u> <u>47 U.S.C. § 224(c)</u> <u>X</u>
5. Short Title: Utility Pole Attachments		

IN ACCORDANCE WITH RSA 541-A:11, VIII THIS AGENCY IS SOLICITING PUBLIC COMMENT ON A SUBJECT MATTER OF POSSIBLE RULEMAKING UNDER ACTIVE CONSIDERATION PRIOR TO FORMALLY PROPOSING RULES IN THE RULEMAKING PROCESS. WHERE, WHEN, AND HOW PERSONS MAY PROVIDE COMMENT ARE INDICATED BELOW.

6. (a) Summary of the subject matter, or summary of the rule if drafted, and the effect on those regulated:

Section 224 of the federal Telecommunications Act, 47 U.S.C. § 224, authorizes states to assume jurisdiction over disputes between the owners of utility poles and persons attaching or seeking to attach facilities to those poles. The Legislature authorized the New Hampshire Public Utilities Commission (PUC) to assume such jurisdiction, thereby regulating and enforcing the rates, charges, terms and conditions for such attachments, in 2007 N.H. Laws Ch. 340, codified as RSA 374:34-a. Interim rules, Chapter Puc 1300, recently went into effect and, thus, disputes over utility pole attachments in New Hampshire are now properly brought before the PUC as opposed to the Federal Communications Commission. The PUC is now beginning the process of drafting regular rules.

6. (b) Brief description of the groups affected:

Public utilities that own or co-own utility poles; persons with facilities attached to such poles; and persons seeking such attachments.

APPENDIX II-A (Continued)

**REQUEST FOR ADVANCE PUBLIC COMMENT ON SUBJECT
MATTER OF POSSIBLE RULEMAKING - Page 2**

7. Contact person for copies, questions, and receipt of comment including requests to accommodate persons with disabilities:

Name:	Donald M. Kreis	Title:	General Counsel
Address:	NH Public Utilities Commission	Phone #:	603.271.2431
	21 South Fruit Street, Suite 10	Fax#:	603.271.3878
	Concord, New Hampshire 03301	E-mail:	rules@puc.nh.gov

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of comment in writing or, if practicable for the agency, in the electronic format specified: **March 5, 2008**

☒ Fax

☒ E-mail

☐ Other format (specify):

9. Public hearing scheduled for: **None scheduled. However, Commission Staff will conduct a technical session to meet with interested persons about the Puc 1300 rules on February 27, 2008 at 10:00 a.m.**

Date and Time: **February 27, 2008; 10:00 a.m.**

Place: **21 South Fruit Street, Suite 10; Concord, New Hampshire 03301**

Adopt Puc 1300 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 provide for the resolution of disputes involving the rates, charges, terms and conditions for pole attachments.

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.

(b) Other persons with facilities attached to such poles, or seeking to attach facilities to such poles.

PART Puc 1302 DEFINITIONS

Puc 1302.01 “Commission” means the New Hampshire public utilities commission.

Puc 1302.02 “FCC” means the federal communications commission.

Puc 1302.03 “Pole” means “pole” as defined in RSA 374:34-a, 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.”

PART Puc 1303 ACCESS TO POLES

Puc 1303.01 Access Standard. The owner or owners of a pole shall provide 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.

Puc 1303.02 Owner Obligation to Negotiate. The owner or owners of a pole shall, upon the request of a person 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 seeking a pole attachment shall contact the owner or owners of the pole and make a reasonable effort to negotiate an agreement for such attachment.

Puc 1303.04 Voluntary Agreements. Any pole attachment agreement entered into voluntarily under this part shall be presumed to be just, reasonable and nondiscriminatory. The commission shall not alter the terms of any such agreement.

PART Puc 1304 DISPUTE RESOLUTION

Puc 1304.01 Lack of Agreement. A person unable 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 voluntary pole attachment agreement entered into pursuant to this chapter, 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 1304.03 Procedure. Upon receipt of a petition pursuant to this part, the commission shall conduct adjudicative proceedings pursuant to Puc 203 for the purpose of considering and ruling on the petition. The commission shall issue its order resolving the complaint within 180 days of the receipt of a complete petition under this part.

Puc 1304.04 FCC Standard Applicable. In determining just and reasonable rates under this chapter, the commission shall apply the standards and formulae adopted by the FCC in 47 CFR § 1.1409(c) through (f) in effect on July 16, 2007.

Puc 1304.05 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.

PART Puc 1305 CERTIFICATION TO FCC

Puc 1305.01 Certification. Within 10 days of the effective date of these rules, the commission shall certify to the FCC that the commission regulates the rates, terms and

conditions for pole attachments in a manner sufficient to supersede FCC jurisdiction pursuant to 47 U.S.C. § 224 in effect on July 17, 2007 or any successor federal statute.

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Docket #: 07-119 Printed: January 29, 2008

FILING INSTRUCTIONS: PURSUANT TO N.H. ADMIN RULE PUC 203.02(a),

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PURSUANT TO N.H. ADMIN RULE 203.09 (d), FILE DISCOVERY

DIRECTLY WITH THE FOLLOWING STAFF

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