

APPENDIX II-B

**OFFICE OF LEGISLATIVE BUDGET ASSISTANT
REQUEST FOR FISCAL IMPACT STATEMENT (FIS)**

FIS Number _____

Rule Number Puc 1300

1. Agency Name & Address: Public Utilities Commission 21 South Fruit Street, Suite 10 Concord, NH 03301	2. RSA Authority:	<u>RSA 374:34-a; 374:3</u>
	3. Federal Authority:	_____
	4. Type of Action:	
	Adoption	_____
	Amendment	_____
	Repeal	_____
	Readoption	_____
	Readoption w/amendment	<u>X</u>
	Interim rule	_____
	5. Have the rules expired?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
	Date Expired:	_____

6. Short Title: Puc 1300 – Utility Pole Attachment Rules

7. Contact Person:

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Remember:

- (a) A copy of the proposed rule or an annotated copy of the amended rule must accompany this form. The annotated copy shall use [brackets] to indicate deleted material, and underlining for added material, or any other annotation style allowed in Section 5.4 in Chapter 4 of the Drafting and Procedure Manual for Administrative Rules.
- (b) Please provide the methodology and any calculations used in determining the fiscal impact. Where appropriate or necessary, please attach a worksheet detailing the methodology and associated calculations.
- (c) This form may be replicated to expedite preparation.
- (d) Please allow 10 working days from day of receipt for the Office of Legislative Budget Assistant to complete the fiscal impact statement. Additional information about this form is in Section 2.3 in Chapter 3 of the Drafting and Procedure Manual for Administrative Rules.

REQUEST FOR FISCAL IMPACT STATEMENT (FIS) – Page 2

- (e) Please provide the following information and attach additional sheets if necessary:

NOTE: Pursuant to RSA 541-A:5, IV the fiscal impact of the proposed rule which was previously effective but has expired, or of a proposed rule which adopts a current agency policy, procedure or practice as a rule for the first time, shall not be assessed as an existing rule but as a proposed rule which is not yet effective.

- (1) Summarize the intended action and the proposed rule. The intended action is defined by RSA 541-A:5, VII as the proposed adoption, amendment, readoption, readoption with amendment, or repeal of a rule pursuant to RSA 541-A.

The Commission intends to readopt with amendments its Puc 1300 rules. The Puc 1300 rules, pursuant to the statutory mandate of RSA 374:34-a, provide for the regulation of rates, charges, terms, and conditions of utility pole attachments that are just, reasonable, and in the public interest, by the State Public Utilities Commission rather than by the Federal Communications Commission. The proposed amendments contain edits, updates, and clarifying changes, as well as certain definitional and substantive revisions intended to clarify the status and rights of wireless service providers and information service providers. The proposed amendments also address issues regarding make-ready work timelines and obligations that have been identified in the course of the Commission's administration of the rules during the past several years.

- (2) Is the cost associated with this intended action mandated by the rule or by state statute? If the cost is mandated by statute, then the rule itself may not have a cost or benefit associated with it. Please state either the statute or chapter law that is instigating this rule.

Any costs associated with these rules are mandated by the statute, RSA 374:34-a; the rules administer the statute and do not add any other costs.

- (3) Compare the cost of the proposed rule with the cost of the existing rule, if there is an existing rule. Please provide the methodology and any calculations used in making your determination. If there is no cost, please explain why.

There are no incremental or net costs to the state as a result of the proposed rules or the existing rules.

- (4) To the extent the proposed rule had expired, please indicate the cost of the expired rule as you do for a new rule, and if applicable, the difference in cost of any proposed change from the expired rule. Please provide the methodology and any calculations used in making your determination. If there is no cost, please explain why.

The existing Puc 1300 rules have not expired.

- (5) Describe the costs and benefits to the state general fund which would result from this intended action.

There are no costs or benefits to the state general fund as a result of these rules.

REQUEST FOR FISCAL IMPACT STATEMENT (FIS) – Page 3

- (6) Explain and cite the federal mandate for the intended action, if there is such a mandate. How would the mandate affect state funds?

There is no federal mandate unless a state chooses to assume regulation of utility pole attachments. 47 U.S.C. §224(c) gives states the option of regulating pole attachments, requiring the Federal Communications Commission to hear pole attachment disputes involving states that have *not* adopted enabling legislation and rules. Under 47 U.S.C. §224(c)(3)(A), a State shall not be considered to regulate rates, terms, and conditions for pole attachments unless the State has issued and made effective rules and regulations implementing the State's regulatory authority over pole attachments. New Hampshire assumed such regulation pursuant to the interim rules adopted in January 2007 and the existing Puc 1300 rules which became effective in December 2009.

- (7) Describe the cost and benefits to any state special fund which would result.

There are no costs or benefits to any state special fund as a result of these rules.

- (8) Describe the costs and benefits to the political subdivisions of the state.

It may be to the advantage of political subdivisions seeking pole attachments to be able to bring any disputes to the Commission in Concord, as opposed to the more distant and less locally responsive federal authorities in Washington, DC.

- (9) Describe the costs and benefits to the citizens of the state.

It may be to the advantage of entities seeking pole attachments, and public utilities and other pole owners providing such attachments, to be able to bring any disputes to the Commission in Concord, as opposed to the more distant and less locally responsive federal authorities in Washington, D.C.

- (10) Describe the costs and benefits to any independently owned business, including a description of the specific reporting and recordkeeping requirements upon those employing fewer than 10 employees.

The Puc 1300 rules do not impose any costs that are particular to independently owned businesses or businesses employing fewer than 10 employees, other than normal administrative costs. Such businesses may benefit, however, from having a nearby and locally responsive forum for hearing disputes over 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 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.

(a) 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; ~~and~~

(b) Owners of poles in whole or in part that are providers of "VoIP service" or "IP-enabled service," as such terms are defined in RSA 362:7, I; 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~~ competitive 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 1302.054 "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 1302.065 "Facility" means the lines, ~~and 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 1302.076 "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 1302.087 "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 1302.098 "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 1302.109 "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 1302.110 "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 their obligation set forth in (a) above, the owner or owners of a pole may deny a request for attachment to such pole:

(1a) If~~When~~ there is insufficient capacity on the pole;

(2b) For reasons of safety, reliability, or generally applicable engineering purposes; or

(3e) If~~Where~~ 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 subsection (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 and pursuant to a pole attachment agreement for access to a utility's poles shall be in writing. Absent circumstances beyond the pole owner's control, such as *force majeure*, a survey for an application not exceeding 200 poles shall be completed and the results communicated to the applicant seeking to attach within 45 days of receiving a completed application and survey fee. Pole owners shall grant or deny access in writing within 45 days of receiving a complete request for access. The 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 ~~relate to the grounds for denial as specified in Puc 1303.01 for such denial.~~

Puc 1303.05 Authorization Required. No person 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.

Puc 1303.06 Notification.

(a) ~~The owner or owners of a pole owner~~ shall provide written notice to an attaching entity not less than 60 days' ~~written notice~~ 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) Attaching entities shall provide written notice to the owner or owners of a pole ~~owner or owners~~ no less than 60 days prior to:

- (1) Modifying an existing attachment other than as part of routine maintenance or in response to an emergency, or to install a customer drop line;
- (2) Increasing the load or weight on a pole by adding to an existing attachment, other than as part of routine maintenance or 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~~2007~~ 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 4, Telcordia Technologies, Inc.* (2017~~2007~~), 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~~Where a pole or existing attachment is not in compliance with applicable standards and codes and must be brought into compliance before a new attachment can be added, the cost of bringing that pole or existing attachment into compliance shall not be ~~assessed~~~~shifted to~~ or imposed on the entity seeking to add a new attachment.

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 thatwhere Puc 1303.07(c) is applicable~~applies~~.

Puc 1303.10 Boxing of Poles. 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. 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 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 30 days of receiving a request. 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. Pole owners shall allow limited, reasonable use of extension arms by attaching entities for purposes of clearing obstacles or improving alignment of attachment facilities. Under no circumstances 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 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 30 days of receiving a request. 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 Timeframes. ~~Unless otherwise agreed by parties to a pole attachment agreement, pole~~If make-ready work involves 300 poles or fewer, the owner or owners of a pole shall ensure that all complete 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 pole owner or owners of the pole. IfWhere make-ready work ~~involves~~requires 10 poles or ~~fewer~~less and no pole replacements, ~~the~~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.

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~~July 16, 2007~~.

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 attachments of ~~competitive local exchange carriers and 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 or ~~electric utilities~~ 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(c) through (f) in effect on October 1, 2017~~July 16, 2007~~; 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 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
Puc 1300	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	<p>National Fire Protection Agency 1 Batterymarch Park Quincy, Massachusetts USA 02169-7471</p> <p>Available for \$210.00 at: http://www.nfpa.org/</p>
Puc 1303.07(a)	SR-1421 "Blue Book – Manual of Construction Procedures, Issue 4," Telcordia Technologies, Inc., 2017 Edition	<p>Telcordia Ericsson Inc. One Ericsson Drive Piscataway, NJ 08854-4156 USA</p> <p>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&</p>