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NHPUC 30APR'18PM1:06

April 30, 2018

Scott F. Eaton, Director
Administrative Rules Division
Office of Legislative Services
State House Annex, Room 219
25 Capitol Street
Concord, NH 03301-6312

**Re: Rulemaking Notice No. 2017-163 – Final Proposal Filing
Puc 1300 Utility Pole Attachments Rules
Public Utilities Commission Docket DRM 17-139**

Dear Mr. Eaton:

On November 28, 2017, the Public Utilities Commission filed a rulemaking notice with respect to the readoption with amendments of Puc 1300, its rules regarding utility pole attachments. The rulemaking notice was published in the Rulemaking Register on December 7, 2017.

A public hearing on the Initial Proposal was held on January 24, 2018, pursuant to RSA 541-A:11, and written comments were received through February 2, 2018. A Draft Final Proposal was filed with the Commission, pursuant to RSA 541-A:11, I(c), on March 15, 2018, and written comments on the Draft Final Proposal were received through April 5, 2018. The Commission also held a technical session regarding the new make-ready timelines and procedures contained in the Draft Final Proposal. On April 13, 2018, the Commission voted to establish the Final Proposal for readoption with amendments of Puc 1300. The Commission received Amended Fiscal Impact Statement 17:165 from the Legislative Budget Assistant on April 23, 2018.

The Commission wishes to address certain proposed amendments contained in the Final Proposal that were subject to objection by utility pole owners. First, the Final Proposal includes proposed revisions in Puc 1303.04 and Puc 1303.12 to effectively adopt the Federal Communications Commission's (FCC) make-ready work process and timeline rules as set forth in 47 C.F.R. §1.1420 and §1.1422. Those federal rules provide for a more streamlined, segmented, transparent, and expedited process and timeline for completing the make-ready work necessary to permit new attachments on utility poles. In addition, the opportunity for attaching entities to use utility-approved contractors to perform make-ready work not timely completed by pole owners and existing attachers represents an important remedial option for the attaching entities.

The Commission proposes to adopt the FCC make-ready work process and timelines, taking administrative notice of the extensive record the FCC developed on this topic. The FCC, due to its regulation of cable television and wireless communications, is able to put together a broader picture of deployment issues specific to those industries that the Commission does not have the regulatory authority to address comprehensively. The FCC conducted extensive fact-finding and analysis on appropriate time frames and outcomes that would be inefficient and expensive for the State to duplicate. The proposed new make-ready work process and timeline are applicable in a majority of states, either because they are directly subject to the FCC rules or because they have adopted standards based on or similar to the FCC rules. For example, the Maine Public Utilities Commission recently adopted rules that effectively incorporate the FCC make-ready process and timeline provisions. See 65-407 C.M.R. Ch. 880, §§2.A.1-10 (effective January 24, 2018).

The Commission believes the proposed new make-ready work provisions represent a reasonable and appropriate means of facilitating the continued deployment of broadband technology in the State, through installation of both wired (e.g., fiber optic cable) and wireless (e.g., 5G network) facilities. Even in areas where high-speed broadband internet is already available, further deployment would serve to increase competitive opportunities and customer choice. We note that representatives of all communications industry attaching entities, including cable service providers, wireless service providers, and competitive local exchange carriers, have expressed strong support for adoption of these new provisions. Notwithstanding the dearth of litigated pole attachment complaints during the past several years, information became available during the rulemaking proceeding to suggest that delays in completing necessary make-ready work occur with some frequency. The Commission believes the proactive step of streamlining the make-ready work process and timeline through the proposed rules amendments would address those issues while furthering the important objectives described above.

Second, the Final Proposal, like the Initial Proposal, includes a change in Puc 1304.06(a)(5) to reference the FCC's current rate formulae in 47 C.F.R. §1.1409, rather than the 2007 version of those federal rules referenced in the existing Puc 1300 rules. It should be noted that Puc 1304.06(a) does not establish rates for pole attachments, but rather lists a number of factors to be considered by the Commission in determining just and reasonable pole attachment rates, including the FCC rate formulae set forth in 47 C.F.R. §1.1409. New Hampshire has typically followed the FCC's lead in adopting rate formulae, as the FCC has conducted extensive fact-finding and analysis on costs and charges that would be inefficient and expensive for the State to duplicate. The FCC over time has worked to bring the cable provider rates and telecommunications provider rates into parity, where those rates were authorized by separate legislation and originally developed using different cost elements, resulting in two different rates depending on the services being provided. That disparity resulted in near-constant litigation over rates, which the FCC has sought to avoid by revising the applicable rate formulae.

According to the FCC, its revised rate formulae include a "flexible series of cost allocators [that] should more fully realize the intent of the [FCC] ... to bring parity to pole attachment rates at the cable rate formula level." The FCC further stated that keeping pole attachment rates unified and low will further its "overarching goal to accelerate deployment of broadband by removing barriers to

infrastructure investment and promoting competition.” The Commission shares those goals and believes that the new rate formulae are in the best interests of utility and cable consumers in the State.

As required by the Rulemaking Manual, enclosed please find one copy of each of the following:

- A completed Appendix II-G Cover Sheet for Final Proposal;
- Amended Fiscal Impact Statement 17:165 dated April 23, 2018;
- The established text of the Final Proposed rule as the “Final Proposal-Fixed Text,” including the cross-reference table required by RSA 541-A:3-a, II as Appendix A and the incorporation by reference information table as Appendix B;
- The established text of the Final Proposed rule as the “Final Proposal-Annotated Text;” and
- Completed Appendix II-H Incorporation by Reference Statements.

Thank you in advance for your assistance with this matter.

Sincerely,



Martin P. Honigberg
Chairman

Enclosures
cc: Service List

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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Docket #: 17-139-1 Printed: April 30, 2018

FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:**

DEBRA A HOWLAND
EXECUTIVE DIRECTOR
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21 S. FRUIT ST, SUITE 10
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- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.**
- c) Serve a written copy on each person on the service list not able to receive electronic mail.**

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