

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

Docket No. DRM 08-004

Utility Pole Attachments
N.H. Code of Administrative Rules Chapter Puc 1300

Request for Advance Public Comment on Subject Matter
of Possible Rulemaking

**COMMENTS OF PUBLIC SERVICE
COMPANY OF NEW HAMPSHIRE**

In response to the New Hampshire Public Utilities Commission (“Commission”) solicitation of public comment on the interim pole attachment rules adopted January 11, 2008, and the promulgation of regular rules concerning pole attachments, Public Service Company of New Hampshire (“PSNH”) submits the following comments:

1. PSNH is the utility owner and operator of approximately 14,287 miles of electric distribution pole plant in the State of New Hampshire. PSNH, in coordination with its principal joint pole owner, Verizon New England, Inc., annually authorizes and administers thousands of attachments to its poles by cable companies, telecommunications companies, and others. With the 2007 enactment of RSA 374:34-a, historic and primary regulation of attachments to PSNH’s poles, ducts, conduits, and right-of-ways is shifting from the Federal Communications Commission (“FCC”) to the Commission.

2. FCC regulation of pole attachments under the Federal Pole Attachment Act (47 U.S.C. § 224) extends to attachments by cable television system operators, and by telecommunications carriers providing telecommunication services. FCC pole attachment regulation does not cover attachments by other entities, such as ILECs, municipalities and private business owners, which are not either a cable operator or a

telecommunications carrier. Likewise, RSA 374:34-a is limited in its regulatory reach. By its express terms, the statute defines and limits the Commission's pole attachment regulatory authority "with regard to the types of attachments regulated under 47 U.S.C. section 224". RSA 374:34-a, II.

3. The recently adopted interim rules do not recognize this clearly expressed statutory limitation upon the Commission's regulatory authority. Interim Puc 1301.02(b) declares the Interim rules applicable to "other persons with facilities attached to such poles, or seeking to attach to such poles", and the Interim rules go on to refer repeatedly to the attachments or attachment requests of such "other persons" or "persons". (See, e.g., Interim Puc 1303.02, 1303.03 and 1304.01). The terms "other persons" or "persons" are not defined, or limited. As presently adopted, the Interim rules would purport to extend the scope of the Commission's regulatory authority to pole attachments of, or requested by, any person, organization or entity, when legally the enabling statute is not so expansive.

4. PSNH proposes certain amendments and additions to the Interim rules which align the rules with the permissible extent of the Commission's pole attachment regulatory authority under RSA 374:34-a. Taken as a whole, these proposed amendments and additions to the Interim rules define the Commission's regulatory authority over pole attachments to be co-extensive with the types of attachments regulated under the Federal Pole Attachment Act, namely, attachments by cable television systems and telecommunications carriers. Attached hereto as APPENDIX I are the adopted Interim rules, with PSNH's proposed changes shown in "blackline" format. Specifically, PSNH proposes amendment of Interim Puc 1301.02(b), and conforming amendments to Interim Puc 1303.01, 1303.02, 1303.03 and 1304.01, to clarify that the rules only apply to attachments of, or attachments requested by, cable

television systems and telecommunications carriers. Specific definitions of the terms “attachment”, “cable television system”, “pole attachment”, “telecommunications carrier” and “telecommunications service”, all consistent with Federal law and regulations, have been added to Interim Puc Part 1303.

5. PSNH proposes an additional amendment to Interim Puc 1304.05, to specify the rate of interest to be applied to payments or refunds of pole attachment rate discrepancies. It will eliminate uncertainty and simplify the application of the rule to specify that the rate shall be the same as the rate paid on utility customer security deposits as of the date of the petition, which is the prime rate as reported in the Wall Street Journal. See, Puc 1202.14 and Puc 1203.03 (1)(3).

6. Apart from the proposed rule changes explained above, PSNH does not believe it would be prudent or useful to recommend additional changes to the Interim rules at this time. The FCC has recently initiated a comprehensive rulemaking proceeding relative to amending its regulations governing pole attachments. (See, “Implementation of Section 224 of the Act: Amendment of the Commission’s Rules and Policies Governing Pole Attachments”, 73 Fed. Reg. 6879 (February 6, 2008)). Among other things, the FCC’s Notice of Proposed Rulemaking seeks comments on changes to the regulations pertaining to the appropriateness of the FCC’s existing pole attachment rate formulas, the attachment rights of ILECs, the adoption of a single pole attachment rate, the treatment of attachments used for broadband internet access, and various terms and conditions of access. While changes to the FCC’s regulations are under consideration by the FCC, it makes sense for the Commission’s interim and regular rules to be largely consistent with the FCC’s present regulations.

7. In accordance with the adopting legislation of 374:34-a, the Commission is constrained, for a period of at least 2 years after the effective date of its passage (i.e.,

July 16, 2007) to adopt rules which are consistent with the FCC's regulations under 47 U.S.C. § 224. In this respect, the Interim rules which have been adopted establish, as do the FCC's present regulations contained in 47 CFR Part 1.1400, a type of "complaint driven" regulatory framework, which relies in the first instance upon the private negotiation of the rates, terms and conditions of access for pole attachments (Interim Puc Part 1303), while affording the parties a jurisdictional forum to resolve any disputes (Interim Puc Part 1304). PSNH therefore recommends that the Commission retain its Interim rules, subject to the revisions proposed by PSNH herein.

Respectfully submitted,

Public Service Company of New
Hampshire
By its Attorneys

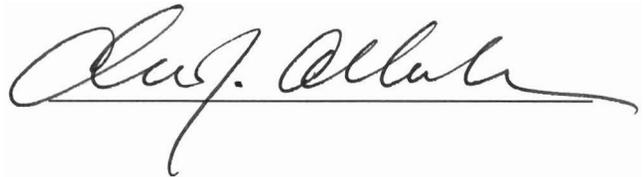
Dated: 3/4/08



Christopher J. Allwarden
Gerald M. Eaton
Legal Department
PSNH Energy Park
780 North Commercial Street
Manchester, NH 03101
603-634-2459

Certificate of Service

The undersigned hereby certifies that on 3/4/08 a copy of the within Comments of Public Service Company of New Hampshire was served by first class mail, postage prepaid, upon all persons on the service list in Docket DRM 08-004.



APPENDIX I

Adopted Interim Rule 1/11/08

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) Any cable television system and any telecommunications carrier or other persons with attachments affixed to such poles, or seeking to affix attachments to such poles.

PART Puc 1302 DEFINITIONS

Puc 1302.01 “Attachment” or “attachments” means any wire, cable, equipment or other apparatus of a cable television system or provider of telecommunications service affixed or proposed to be affixed to a pole.

Puc 1302.02 “Cable television system” means the same as “cable operator”, as defined in 47 U.S.C. § 522(5), namely, “any person or groups of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.” The terms “cable service” and “cable system” used in the foregoing definition shall have the meanings defined in 47 U.S.C. § 522(6) and (7), respectively.

Puc 1302.03~~4~~ “Commission” means the New Hampshire Ppublic Uutilities Ceommission.

Puc 1302.04~~2~~ “FCC” means the Ffederal Ceommunications Ceommission.

Puc 1302.05~~3~~ “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.”

Puc 1302.06 “Pole attachment” or “pole attachments” means the type of attachments regulated under 24 U.S.C. § 224, namely, any attachment by a cable television system or provider of telecommunications service to a pole.

Puc 1302.07 “Telecommunications carrier” means the same as “telecommunications carrier” defined in 47 CFR § 1.1402(h), namely, “any provider of telecommunications services, except that the term does not include aggregators of telecommunications services (as defined in 47 U.S.C. § 226) or incumbent local exchange carriers (as defined in 47 U.S.C. § 251(h)).”

Puc 1302.08 “Telecommunications service” or “telecommunications services” means the same as “telecommunications service” defined in 47 U.S.C. § 153(46), namely, “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.”

PART Puc 1303 ACCESS TO POLES

Puc 1303.01 Access Standard. The owner or owners of a pole shall provide access to such pole to a cable television system or any telecommunications carrier 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 cable television system or telecommunications carrier~~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 cable television system or telecommunications carrier~~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 cable television system or telecommunications carrier ~~person~~ unable to reach agreement with the owner or owners of a pole or poles subject to RSA 374:34 ~~at 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 at the same rate paid on utility customer security deposits, 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.