



June 25, 2009



BY HAND-DELIVERY

Debra A. Howland, Executive Director and Secretary
New Hampshire Public Utilities Commission
21 S. Fruit Street, Suite 10
Concord, NH 03301-2429

RE: Docket No. DRM 08-004 Utility Pole Attachment Rules

Dear Director Howland:

Please accept this letter as the comments of Unitil Energy Systems, Inc. ("UES"), on the proposed Readoption with Amendment of Interim Rule Puc 1300, Utility Pole Attachments, as set forth in New Hampshire Public Utilities Commission ("Commission") Rulemaking Notice Form filed with the Office of Legislative Services on May 12, 2009.

UES' s primary area of concern regarding the proposed rules relates to the broad applicability of the proposed rules. UES agrees with the comments submitted on this point by Public Service Company of New Hampshire and Granite State Electric Company d/b/a National Grid: The scope of the proposal exceeds the statutory authority granted to the Commission pursuant to RSA 374:34-a, which limits the types of attachments to be regulated as those regulated under 47 U.S.C. section 224. As Section 224 defines a "pole attachment" as any attachment by a cable television system or provider of telecommunications service to pole, duct, conduit, or right-of-way owned or controlled by a utility, the Commission's authority to regulate pole attachments is, accordingly, limited to these same attachments.

By incorporating the proposed definition of "Attaching Entity" in Puc 1302.01 with the Applicability section (Puc 1301.02(b)), however, the rules would purport to regulate the pole attachments of any natural person or entity with a statutory or contract right to attach a facility to any type of a pole. UES submits that this would expand the reach of the Commission beyond the authority granted to it in RSA 374:34-a.

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UES recommends, therefore, that the definition of "Attaching Entity" be revised such that the entities covered by the rule are consistent with and limited to those regulated under 47 U.S.C. Section 224: a cable television system or a provider of telecommunications services.

The second area of concern for UES is with respect to the Dispute Resolution section, specifically Puc 1304.02, which appears to limit the pole attachment agreements subject to the Commission's review to those entered into on or after July 17, 2007. UES submits that there is no "vintage" limitation on the attachment agreements which are subject to the Commission's review authority in the enabling legislation. RSA 374:34-a, VII is broad in its scope, providing that:

The commission shall have the authority to hear and resolve complaints concerning the rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to pole attachments.

This section provides the Commission the authority to resolve disputes concerning voluntary agreements without restriction as to the date such agreement was entered into. The proposed limitation of review to only those agreements entered into after July 17, 2007 would also be in conflict with a later provision in the proposed rules, Puc 1304.06(b) which provides that "A pole attachment agreement signed prior to July 17, 2007, shall be presumed to have been entered into voluntarily."

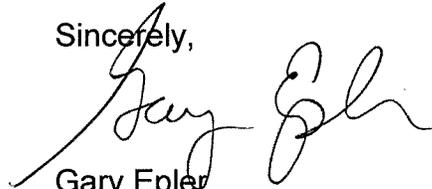
Accordingly, UES recommends that Puc 1304.02 be revised as follows:

Puc 1304.02 Dispute Following Agreement or Order. A party to a voluntary pole attachment agreement, ~~entered into pursuant to this chapter on or after July 17, 2007,~~ 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.

Debra A. Howland, Executive Director
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UES has no further comments on the proposed rules, other than to note its appreciation for the work of the Commission Staff and other interested parties during the course of this docket.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Epler". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Gary Epler
Attorney for Unitil Energy Systems, Inc.

cc: Service List