

Adopted Final Rule [DATE]

Amend Puc 1300 to read as follows:

CHAPTER Puc 1300 UTILITY POLE ATTACHMENTS

Statutory Authority: RSA 374:3; 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~~ rates, charges, terms and conditions for pole attachments that are just, reasonable and in the public interest, whenever a pole owner is unable to reach an agreement with a party seeking 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 with the commission pursuant to RSA 301:57, that own, in whole or in part, any pole used for wire communications or electric distribution.~~

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

Comment [A1]: This language allows ANYONE to attach to utility poles

(a) Pole Attachments as defined in 47 U.S.C. §224.

PART Puc 1302 DEFINITIONS

Puc 1302.01 "Attaching entity" ~~means a natural person or an entity that has attached or seeks 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, competitive local exchange carriers, electric utilities, and governmental entities, as defined 47 C.F.R. 1.1402(m).~~

Puc 1302.02 "Commission" means the New Hampshire public utilities commission.

Puc 1302.03 "FCC" means the federal communications commission.

Puc 1302.04 "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.”

Puc1302.05 “Pole Attachments” means “pole attachments” as defined in 47 U.S.C. §224(a)(4), namely “any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit or right-of-way owner or controlled by a utility.”

Puc 1302.065 “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 1302.076 “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. The owner or owners of a pole shall provide access to such pole for pole attachments, 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 or generally applicable engineering purposes.

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Comment [A2]: Conflicts with trying to limit the number of non-CLECs

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 in good faith with respect to the terms and conditions for an agreement for~~ such attachment.

Puc 1303.04 Request for Access and Response Requirements. ~~Requests An application -for access to a utility’s poles shall be in writing. Absent extraordinary circumstances, a survey for an application not exceeding 200 poles shall be completed and the results If access is not granted withincommunicated within 45 days of receiving the application and survey fee.a request for access, the owner must confirm the denial in writing by the 45th day. 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 relate to the grounds in Puc 1303.01 for such denial.~~

Puc 1303.05 Authorization Required. A person seeking to attach facilities to a pole shall obtain authorization from the pole owner prior to attaching such facilities.

Puc 1303.06 Notification.

(a) A pole owner shall provide a person with facilities attached to a pole no less than 60 days' written notice prior to:

(1) Removing ~~their~~any of the facilities,

~~(2) Terminating any service to the facilities,~~

~~(2)(3)~~ Increasing annual or recurring fees~~any rates~~ applicable to the pole attachment, or

~~(3)(4)~~ Modifying the facilities other than as part of routine maintenance or a response to an emergency.

(b) ~~Attaching entities~~ An attaching entity-person seeking to change the purposes for which existing Pole A-attachments ~~facilities~~ are used shall provide written notice to pole owners 60 days prior to making such changes.

Puc 1303.07 Installation and Maintenance.

(a) ~~All~~ny attachments shall be installed and maintained in accordance with the National Electrical Safety Code, 2007 edition;~~;~~ ~~and~~ the National Electric Code as adopted by RSA 155-A:1,IV; and the SR-1421 Blue Book-Manual of Construction Practices, Issue 4, Telcordia Technologies, Inc. (2007).

(b) Any attachment shall be installed and maintained to prevent interference with service furnished by any other attaching entity.

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 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 the new attaching entity will be above all existing facilities, it shall do so at its own expense. Attachments shall be located in accordance with the standards identified in § 1303.07. Installation of new attachments may require owner(s) and/or existing attachers to move their facilities. In that case, the attaching entity seeking to add a new attachment to the pole shall be required to pay make-ready cost of the~~

owner(s) and existing attachers required to move their facilities to accommodate the new attaching entity. A pole owner with facilities located in the telecommunications space on a pole may retain the placement of its facilities as the lowest on the telecommunications space for the prevention of harm to its facilities and safety of its agents.

Puc 1303.10 Boxing of Poles

~~Pole owners shall permit attaching entities to box poles where boxing may eliminate the need for make-ready work or pole replacement. 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 Electric Safety Code.~~

Puc 1303.11 Use of Extension Arms.

~~Pole owners shall permit limited, reasonable use of extension arms by attaching entities. Such use shall be permitted for purposes of clearing obstacles, improving alignment, or providing space that would not otherwise be available without a replacement pole. Use of extension arms shall be consistent with the requirements of applicable codes.~~

1303.10 Least Cost Alternatives. In completing make-ready work, a Pole owning utility shall pursue reasonable least cost alternatives, including space saving techniques currently relied upon by the utility.

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Puc 1303.1142 Make-Ready Timeframes.

~~Pole owners shall complete make every reasonable effort to complete -make-ready work within 18090 days, except in a circumstance where the make-ready work involves 6 or fewer poles and FairPoint is the only entity required to move, in which case FairPoint will make every reasonable effort to complete make-ready work in 90 days, where the work includes limited or no pole replacements. If pole replacement is required, pole owners shall complete make-ready work within 180 days.~~

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PART Puc 1304 DISPUTE RESOLUTION

Puc 1304.01 Lack of Agreement. An entity seeking a Pole Attachment that is attaching entity unable 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 CFR § 1.1404(d) through (m) in effect on July 16, 2007.

Puc 1304.02 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 1304.03 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 and /or payment for facilities that are attached to a pole without authorization pursuant to this chapter.

Puc 1304.04 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. Where the public interest so requires, the commission may order that rates, charges, terms or conditions for pole attachments be modified.

Puc 1304.05 Rate Review Standards.

(a) In determining just and reasonable rates for the attachments of competitive local exchange carriers and cable television service providers to poles owned by incumbent local exchange carriers under this chapter, the commission shall consider:

- (1) The interests of the subscribers and users of the services offered via such attachments;
- (2) The interests of the consumers of any pole owner providing such attachments; and
- (3) The formulae adopted by the FCC in 47 CFR § 1.1409(c) through (f) in effect on July 16, 2007.

(b) In determining just and reasonable rates for all other attachments under this chapter, the commission shall consider:

- (1) The interests of the subscribers and users of the services offered via such attachments; and
- (2) The interests of the consumers of any pole owner providing such attachments.

(c) For petitions filed on or before July 15, 2009, the Commission shall use the formulae referenced in (a)(3) above to determine just and reasonable rates under this chapter with respect to attachments of competitive local exchange carriers and cable television service providers.

Puc 1304.06 Burden of Proof.

(a) A pole attachment agreement entered into voluntarily under this part shall be presumed to be just, reasonable and nondiscriminatory for purposes of adjudication before the commission. An attaching entity filing a petition under this part shall have the burden of proving that an agreement entered into voluntarily is not just, reasonable and nondiscriminatory.

(b) A signed pole attachment agreement shall be presumed to have been entered into voluntarily. An attaching entity may rebut the presumption of voluntariness by demonstrating that signing the agreement, regardless of its terms, was reasonably necessary to avoid significant delay or business interruption.

(c) When the presumption of voluntariness has been successfully rebutted pursuant to (b) above, the burden of proving that the agreement is just, reasonable and nondiscriminatory shall shift to the pole owner.

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.

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