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January 15, 2010

Office of Legislative Services
Division of Administrative Rules
25 Capitol Street
State House Annex, Room 219
Concord, N.H. 03301-6312

Re: Doc. # 9614
Puc 1300, Utility Pole Attachments

Dear Ms. Holahan:

Pursuant to RSA 541-A:15, I-a, I hereby certify that the enclosed rules are the same in substance as the rules originally filed with the Office of Legislative Services, Division of Administrative Rules.

I further certify that the enclosed rules, as edited for format by the Division of Administrative Rules, is the official version of these rules which this agency is required to publish in an 8 ½ X 11 inch loose-leaf format as part of the New Hampshire Code of Administrative Rules, under Chapter 5 of the New Hampshire Drafting and Procedure Manual for Administrative Rules and RSA 541-A:15, I.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas B. Getz", with a stylized flourish at the end.

Thomas B. Getz
Chairman

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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.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09

Puc 1301.02 Applicability.

(a) Puc 1300 shall apply to: 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) Attaching entities with facilities attached to such poles, or seeking to attach facilities to such poles.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09

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, competitive local exchange carriers, electric utilities, and governmental entities.

Source. #9073, INTERIM, eff 1-17-08; ss by #9615, eff 12-12-09

Puc 1302.02 "Boxing" means the placement of lines or cables on both the road side and the field side of a pole.

Source. #9073, INTERIM, eff 1-17-08; ss by #9615, eff 12-12-09

Puc 1302.03 "Commission" means the New Hampshire public utilities commission.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09 (from Puc 1302.01)

Puc 1302.04 "Extension arm(s)" means a bracket attached to a utility pole to provide support for cables or wires at a distance from the pole.

Source. #9614, eff 12-12-09

Puc 1302.05 "Facility" means the lines and cables and 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.

Source. #9614, eff 12-12-09

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Puc 1302.06 "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.

Source. #9614, eff 12-12-09 (from Puc 1302.02)

Puc 1302.07 "Make-ready work" means all work, including but not limited to, rearrangement or transfer of existing facilities, replacement of a pole, or any other changes required to accommodate the attachment of the facilities of the party requesting attachment to the pole.

Source. #9614, eff 12-12-09

Puc 1302.08 "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."

Source. #9614, eff 12-12-09 (from Puc 1302.03)

Puc 1302.09 "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.

Source. #9614, eff 12-12-09

Puc 1302.10 "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.

Source. #9614, eff 12-12-09

PART Puc 1303 ACCESS TO POLES

Puc 1303.01 Access Standard. The owner or owners of a pole shall provide attaching entities access to such pole 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:

- (a) When there is insufficient capacity on the pole;
- (b) For reasons of safety, reliability or generally applicable engineering purposes; or
- (c) Where the pole owner(s) does not possess the authority to allow the proposed attachment.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09

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.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09

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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.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09

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 relate to the grounds in Puc 1303.01 for such denial.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09

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.

Source. #9614, eff 12-12-09

Puc 1303.06 Notification.

- (a) A pole owner shall provide an attaching entity no 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 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.

Source. #9614, eff 12-12-09

Puc 1303.07 Installation and Maintenance.

- (a) All attachments shall be installed in accordance with the National Electrical Safety Code, 2007 edition, the National Electrical Code as adopted in RSA 155-A:1, IV, and the SR-1421 *Blue Book – Manual*

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of Construction Procedures, Issue 4, Telcordia Technologies, Inc. (2007), 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) 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 shifted to the entity seeking to add a new attachment.

Source. #9614, eff 12-12-09

Puc 1303.08 Labeling of Attachments. Attaching entities shall clearly label their attachments with owner identification.

Source. #9614, eff 12-12-09

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 a new attachment will be located above that owner's existing facilities, that owner shall bear 60 percent of the cost of relocation. The new attaching entity shall bear the remaining 40 percent of the cost of relocation, except where Puc 1303.07(c) applies.

Source. #9614, eff 12-12-09

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.

Source. #9614, eff 12-12-09

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.

Source. #9614, eff 12-12-09

Puc 1303.12 Make-Ready Timeframes. Unless otherwise agreed by parties to a pole attachment agreement, pole owners shall complete make-ready work within 150 days after any required pre-payments are

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rendered for make-ready estimates provided to the attaching entity by the pole owner or owners. Where make-ready work requires 10 poles or less and no pole replacements, the work shall be completed within 45 days after any required pre-payments for estimates are rendered.

Source. #9614, eff 12-12-09

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.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09 (from Puc 1303.04)

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 CFR § 1.1404(d) through (m) in effect on July 16, 2007.

Source. #9073, INTERIM, eff 1-17-08, ss by #9614, eff 12-12-09 (from Puc 1304.01)

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.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09 (from Puc 1304.02)

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.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09

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.

Source. #9073, INTERIM, eff 1-17-08; ss by #9614, eff 12-12-09 (from Puc 1304.03)

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 to poles owned by incumbent local exchange carriers or electric utilities under this chapter, the commission shall consider:

- (1) Relevant federal, state or local laws, rules and decisions;

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- (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 CFR § 1.1409(c) through (f) in effect on 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.

Source. #9614, eff 12-12-09

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.

Source. #9614, eff 12-12-09 (from Puc 1304.05)

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.

Source. #9614, eff 12-12-09

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APPENDIX

Rule	Statute
Puc 1300	RSA 374:3; RSA 374:34-a

APPENDIX

Rule	Statute
Puc 2601.01	RSA 125-O:8, II; RSA 125-O:23
Puc 2601.02	RSA 125-O:8, II; RSA 125-O:23, II
Puc 2602.01	RSA 125-O:8, II; RSA 125-O:23; RSA 125-O:21, II
Puc 2602.02	RSA 125-O:8, II; RSA 125-O:23; RSA 155-D:2, II
Puc 2602.03	RSA 125-O:8, II; RSA 125-O:23
Puc 2602.04	RSA 125-O:8, II; RSA 125-O:23
Puc 2602.05	RSA 125-O:8, II; RSA 125-O:23
Puc 2602.06	RSA 125-O:8, II; RSA 125-O:23; RSA 125-O:2, IV
Puc 2602.07	RSA 125-O:8, II; RSA 125-O:23
Puc 2602.08	RSA 125-O:8, II; RSA 125-O:23
Puc 2602.09	RSA 125-O:8, II; RSA 125-O:23
Puc 2602.10	RSA 125-O:8, II; RSA 125-O:23
Puc 2602.11	RSA 125-O:8, II; RSA 125-O:23
Puc 2602.12	RSA 125-O:8, II; RSA 125-O:23
Puc 2602.13	RSA 125-O:8, II; RSA 125-O:23
Puc 2602.14	RSA 125-O:8, II; RSA 125-O:23
Puc 2602.15	RSA 125-O:8, II; RSA 125-O:23; RSA 125-O:20, XII
Puc 2602.16	RSA 125-O:8, II; RSA 125-O:23
Puc 2602.17	RSA 125-O:8, II; RSA 125-O:23
Puc 2603.01	RSA 125-O:8, II; RSA 125-O:23; RSA 125-O:23, III
Puc 2604.01	RSA 125-O:8, II; RSA 125-O:23
Puc 2604.02	RSA 125-O:8, II; RSA 125-O:23
Puc 2604.03	RSA 125-O:8, II; RSA 125-O:23; RSA 125-O:23, VII
Puc 2605.01	RSA 125-O:8, II; RSA 125-O:23; RSA 125-O:23, IV
Puc 2605.02	RSA 125-O:8, II; RSA 125-O:23, V
Puc 2605.03	RSA 125-O:8, II; RSA 125-O:23; IV