

APPENDIX II-C

RULEMAKING NOTICE FORM

NOTE: ADDITIONAL NOTICE
See page one of the instructions regarding additional notice.

Notice Number _____ Rule Number Puc 1300

<p>1. Agency Name & Address:</p> <p>Public Utilities Commission 21 South Fruit Street, Suite 10 Concord, NH 03301</p>	<p>2. RSA Authority: <u>RSA 374:34-a; 374:3</u></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p style="padding-left: 20px;">Adoption _____</p> <p style="padding-left: 20px;">Amendment _____</p> <p style="padding-left: 20px;">Repeal _____</p> <p style="padding-left: 20px;">Readoption _____</p> <p style="padding-left: 20px;">Readoption w/amendment <u>X</u></p>
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5. Short Title: **Puc 1300 – Utility Pole Attachment Rules**

6. (a) Summary of what the rule says and of any proposed amendments:

The Commission intends to readopt with amendments its Puc 1300 rules. The Puc 1300 rules, pursuant to the statutory mandate of RSA 374:34-a, provide for regulation by the State Public Utilities Commission rather than by the Federal Communications Commission of rates, charges, terms, and conditions of utility pole attachments that are just, reasonable, and in the public interest. The proposed amendments contain edits, updates, and clarifying changes, as well as certain definitional and substantive revisions intended to clarify the status and rights of wireless service providers and information service providers. The amendments also address issues regarding make-ready work timelines and obligations that have been identified in the course of the Commission’s administration of the rules during the past several years.

6. (b) Brief description of the groups affected:

The Puc 1300 rules affect public utilities and other entities that own or co-own poles, and entities such as telecommunications providers, cable television providers, electric service providers, wireless service providers, information service providers, and municipalities that have facilities attached to such poles and/or that seek such attachments.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

STATUTORY CROSS-REFERENCE TABLE:

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

APPENDIX II-C (Continued)

RULEMAKING NOTICE FORM - Page 2

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **David K. Wiesner, Esq.**
Address: **Public Utilities Commission**
21 South Fruit Street, Suite 10
Concord, NH 03301

Title: **Staff Attorney**
Phone #: **603-271-6030**
Fax#: **603-271-4033**
E-mail: **David.Wiesner@puc.nh.gov**
TTY/TDD Access: Relay NH 1-800-735-2964
or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **February 2, 2018**

☒ Fax

☒ E-mail

☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **January 24, 2018, at 1:00 p.m.**

Place: **N.H. Public Utilities Commission**
21 South Fruit Street, Suite 10
Concord, NH 03301

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)


FIS # 17:165 , dated Nov. 27, 2017

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposed rules do not mandate or assign any new, expanded, or modified programs or responsibilities to any political subdivision of the State of New Hampshire, and therefore do not violate Part I, Article 28-a of the N.H. Constitution by necessitating additional local expenditures by a political subdivision.

STATE OF NEW HAMPSHIRE
Inter-Department Communication

DATE: November 27, 2017

FROM:  Pamela Ellis
Office of Legislative Budget Assistant
State House, Room 102
Concord, New Hampshire 03301

RE: FIS 17:165

TO: David Wiesner, Esq. (david.wiesner@puc.nh.gov)
Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301

Attached is the fiscal impact statement listed above. It should be reviewed and then submitted to the Division of Administrative Rules, Office of Legislative Services, in accordance with the N.H. Rulemaking Manual dated July 2016.

Attachment

Fiscal Impact Statement for Public Utilities Commission rules governing Utility Pole Attachment Rules. [Puc 1300]

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost when comparing the proposed rules to the existing rules.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

None.

Readopt with amendments Puc 1300, effective 12-12-09 (Document #9614), 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 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.

Puc 1301.02 Applicability.

(a)–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; ~~and~~

(b) Owners of poles in whole or in part that are providers of “VoIP service” or “IP-enabled service.” as such terms are defined in RSA 362:7, I; and

(~~c~~) Attaching entities with facilities attached to such poles, or seeking to attach facilities to such poles.

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, ~~excepted competitive~~ local exchange carriers, wireless service providers, information service providers, electric utilities, and governmental entities.

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

Puc 1302.03 “Commission” means the New Hampshire public utilities commission.

Puc 1302.04 “Excepted local exchange carrier” means “excepted local exchange carrier” as defined in RSA 362:7, I (c), namely “(1) An incumbent local exchange carrier providing telephone services to 25,000 or more lines; or (2) An incumbent local exchange carrier providing service to less than 25,000 lines that elects to be excepted, upon the filing with the commission of a written notice advising of said election; or (3) Any provider of telecommunications services that is not an incumbent local exchange carrier.”

Puc 1302.054 “Extension arm(s)” means a bracket attached to a utility pole to provide support for cables or wires at a distance from the pole.

Puc 1302.06~~5~~ "Facility" means the lines, ~~and cables, wireless antennas, and any~~ 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.

Puc 1302.07~~6~~ "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.

Puc 1302.08~~7~~ "Make-ready work" means all work, including, but not limited to, rearrangement or transfer of existing facilities, replacement of a pole, complete removal of any pole replaced, or any other changes required to accommodate the attachment of the facilities of the party requesting attachment to the pole.

Puc 1302.09~~8~~ "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, or is owned in whole or in part by a provider of "VoIP service" or "IP-enabled service," as such terms are defined in RSA 362:7, I."²

Puc 1302.10~~9~~ "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 1302.11~~0~~ "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.

(a) Except as otherwise provided in (b) and (c) below, the owner or owners of a pole shall provide attaching entities access to such pole on terms that are just, reasonable, and nondiscriminatory. Such access shall include wireless facility attachments, including those above the communications space on the pole.

(b) Notwithstanding the obligation set forth in (a) above, the owner or owners of a pole may deny a request for attachment to such pole:

(1a) If ~~When~~ there is insufficient capacity on the pole;

(2b) For reasons of safety, reliability, or generally applicable engineering purposes; or

(3e) If ~~Where~~ the pole owner(s) does not possess the authority to allow the proposed attachment.

(c) The owner or owners of the pole shall not deny a requested attachment under subsection (b)(1) or (b)(2) above if other make-ready work or another alternative can be identified that would accommodate the additional attachment.

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.

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.

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 ~~represent~~ relate to the grounds for denial as specified in Puc 1303.01 ~~for such denial~~.

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.

Puc 1303.06 Notification.

(a) ~~The owner or owners of a~~ pole owner shall provide written notice to an attaching entity not 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 the owner or owners of 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.

Puc 1303.07 Installation and Maintenance.

(a) All attachments shall be installed in accordance with the National Electrical Safety Code, ~~2017~~2007 edition, available as specified in Appendix B, the National Electrical Code as adopted in RSA 155-A:1, IV, and the SR-1421 *Blue Book – Manual of Construction Procedures, Issue 4, Telcordia Technologies, Inc.* (~~2017~~2007), available as specified in Appendix B, 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) ~~If~~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 ~~assessed~~shifted to or imposed on the entity seeking to add a new attachment.

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 a wireless facility is to be located above the communications space on a pole. 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 and— ~~The~~ new attaching entity shall bear the remaining 40 percent of the cost of relocation, except if and to the extent that ~~where~~ Puc 1303.07(c) is applicable~~applies~~.

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.

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.

Puc 1303.12 Make-Ready Work Timeframes. ~~Unless otherwise agreed by parties to a pole attachment agreement, pole~~If make-ready work involves 300 poles or fewer, the owner or owners of a pole shall ensure that all complete make-ready work is completed within 150 days after any required pre-payments are rendered for make-ready work estimates provided to the attaching entity by the pole owner or owners of the pole. ~~If~~Where make-ready work ~~involves~~requires 10 poles or ~~fewer~~less and no pole replacements, ~~the~~all make-ready work shall be completed within 45 days after any required pre-payments for estimates are rendered. If make-ready work involves more than 300 poles, the owner or owners of a pole and the attaching entity shall negotiate a schedule for completion of such make-ready work in good faith.

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.

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 C.F.R. §-1.1404(d) through (m) in effect on October 1, 2017~~July 16, 2007~~.

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.

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.

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.

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, wireless service providers, information service providers that are not incumbent local exchange carriers, and excepted local exchange carriers that are not incumbent local exchange carriers~~ to poles owned by electric utilities and/or incumbent local exchange carriers ~~or electric utilities~~ 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;
- (5) The formulae adopted by the FCC in 47 C.F.R. §-1.1409(c) through (f) in effect on October 1, 2017~~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.

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.

APPENDIX A

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

APPENDIX B: INCORPORATION BY REFERENCE INFORMATION

Rule	Title (date)	Source
Puc 1303.07(a)	National Electrical Safety Code, 2017 Edition	<p>National Fire Protection Agency 1 Batterymarch Park Quincy, Massachusetts USA 02169-7471</p> <p>Available for \$210.00 at: http://www.nfpa.org/</p>
Puc 1303.07(a)	SR-1421 "Blue Book – Manual of Construction Procedures, Issue 4," Telcordia Technologies, Inc., 2017 Edition	<p>Telcordia Ericsson Inc. One Ericsson Drive Piscataway, NJ 08854-4156 USA</p> <p>Available for (Click at bottom of page to request price quote) at: http://telecom-info.telcordia.com/site-cgi/ido/docs.cgi?ID=SEARCH&DOCUMENT=SR-1421&</p>

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.

Executive.Director@puc.nh.gov	
ak6444@att.com	joseph.fontaine@des.nh.gov
alexander.w.moore@verizon.com	jreyes@brownrudnick.com
amanda.noonan@puc.nh.gov	karen.cramton@puc.nh.gov
awalsh@tillotsoncorp.com	karen.sinville@libertyutilities.com
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david.wiesner@puc.nh.gov	matthew.fossum@eversource.com
dhartford@clf.org	mauraveston@comcast.net
donald.kreis@oca.nh.gov	maureen.karpf@libertyutilities.com
douglas.frazier@eversource.com	mdean@mdeanlaw.net
ehawes@acadiacenter.org	michael.ladam@puc.nh.gov
emerrill@metrocast.com	michael.licata@libertyutilities.com
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heather.tebbetts@libertyutilities.com	pamela.hollick@level3.com
imalmgren@veic.org	pcianelli@necta.info
james.brennan@oca.nh.gov	pmchugh@fairpoint.com

Docket #: 17-139-1 Printed: November 28, 2017

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
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- 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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randy.knepper@puc.nh.gov
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