

APPENDIX II-F

OFFICE OF LEGISLATIVE BUDGET ASSISTANT
REQUEST FOR AMENDED FISCAL IMPACT STATEMENT

FIS Number 17:165

Rule Number Puc 1300

1. Agency Name & Address:

**Public Utilities Commission
21 S. Fruit Street, Ste. 10
Concord, NH 03301**

2. Date First Notice Published in

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3. Short Title: **Puc 1300 Utility Pole Attachments Rules**

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Please submit this form only after your public comment period has concluded and only if, as a result of the public hearing and comment process, a change has been made to the proposed rule which affects the original fiscal impact statement. Please include a copy of the final, annotated proposed rule to the Office of Legislative Budget Assistant. Allow 5 working days from day of receipt for the amended fiscal impact statement to be returned. For additional information, see Section 2.11 of Chapter 3 in the Drafting and Procedure Manual for Administrative Rules.

As a result of notice and hearing, the following changes (described below or in an attachment) have been made to this proposed rule which affect the original fiscal impact statement, and the agency hereby requests an amended fiscal impact statement:

FCC Rate Formulae Reference Update. The Final Proposal includes a proposed change in Puc 1304.06(a)(5) to reference the FCC's current rate formulae set forth in 47 C.F.R. §1.1409, rather than the 2007 version of those federal rules referenced in the existing Puc 1300 rules. It should be noted that Puc 1304.06(a) does not establish rates for pole attachments, but rather lists a number of factors to be considered by the Commission in determining just and reasonable pole attachment rates, including the FCC rate formulae set forth in 47 C.F.R. §1.1409. New Hampshire has typically followed the FCC's lead in adopting rate formulae, as the FCC has conducted extensive fact-finding and analysis on costs and charges that would be inefficient and expensive for the State to duplicate.

Assuming for the purposes of this request that utility pole owners and attaching entities in New Hampshire may properly be considered "independently owned businesses," the Commission requests an amended fiscal impact statement with a more specific analysis of the proposed change in the FCC rate formulae rule reference. In connection with that analysis, the following is a summary description of the primary differences between the 2007 and 2017 FCC rate formulae:

Under federal law, cable provider rates and telecommunications provider rates were authorized by separate legislation and developed using different cost elements, resulting in two different rates, depending on the services being provided. Over time, in an effort to reduce the near-constant litigation over rates, the FCC worked to bring the cable rate and the telecom rate into parity.

The current rules reference the pole attachment rates as they were codified in 2007. The FCC has acted to adjust the telecom rate formula twice since then. In 2011, the telecom formula was revised to lower the cost allocation of unusable space to 66% in urban areas and 44% in non-urban areas. However, the revised rules succeeded in leveling rates only when the number of attaching entities on utility poles matched the FCC's presumptions that there would be 5 attaching entities in urban areas and 3 in rural areas. Subsequently, the FCC reclassified broadband Internet access as a telecommunications service, potentially converting virtually all cable television attachments to telecommunications attachments subject to higher attachment rates.

In order to avoid an unintended windfall to pole owners, the FCC amended the telecom pole attachment rate formula by eliminating the distinction between urban and non-urban service areas and instead established new cost allocators based on the actual number of attaching entities on a pole.

The new formulae allow pole owners to charge telecommunications service providers the higher of the rates yielded under two alternative formulas. The first of these formulas – which allows the recovery of costs for maintenance and administrative carrying charges but excludes capital costs – remains unchanged. The second formula, however, has been changed and now reads as follows:

Rate = Space Factor × Cost

Where Cost:

- in Service Areas where the number of Attaching Entities is 5 = 0.66 x (Net Cost of a Bare Pole x Carrying Charge Rate)
- in Service Areas where the number of Attaching Entities is 4 = 0.56 x (Net Cost of a Bare Pole x Carrying Charge Rate)
- in Service Areas where the number of Attaching Entities is 3 = 0.44 x (Net Cost of a Bare Pole x Carrying Charge Rate)
- in Service Areas where the number of Attaching Entities is 2 = 0.31 x (Net Cost of a Bare Pole x Carrying Charge Rate)
- in Service Areas where the number of Attaching Entities is not a whole number = N x (Net Cost of a Bare Pole x Carrying Charge Rate), where N is interpolated from the cost allocator associated with the nearest whole numbers above and below the number of Attaching Entities.

$$\text{Where SpaceFactor} = \left[\frac{\left(\frac{\text{Space Occupied}}{\text{Pole Height}} \right) + \left(\frac{2}{3} \times \frac{\text{UnusableSpace}}{\text{No. of Attaching Entities}} \right)}{\text{Pole Height}} \right]$$

According to the FCC, this new “flexible series of cost allocators should more fully realize the intent of the [FCC] ... to bring parity to pole attachment rates at the cable rate formula level.” The FCC further stated that keeping pole attachment rates unified and low will further its “overarching goal to accelerate deployment of broadband by removing barriers to infrastructure investment and promoting competition.” The Commission shares those goals and believes that the new rate formulae are in the best interests of utility and cable consumers in the state.

If the new FCC rate formulae were applied as a factor in a given instance, it is difficult to estimate the potential financial impacts on pole owners or attaching entities, as well as the ultimate effects on their respective customers in the State. The Commission therefore believes that the fiscal impact of the proposed change may be significant but is indeterminate.

Make-Ready Work Process and Timeline Revisions. The Final Proposal for the Public Utilities Commission’s Puc 1300 rules for utility pole attachments includes proposed changes in Puc 1303.04 and Puc 1303.12 to effectively adopt the Federal Communications Commission’s (FCC) make-ready work process and timeline rules as set forth in 47 C.F.R. §1.1420 and §1.1422. Those federal rules provide for a more streamlined, segmented, transparent, and expedited process and timeline for completing the make-ready work necessary to permit new attachments on utility poles. In addition, the opportunity for attaching entities to use utility-approved contractors to perform make-ready work not timely completed by pole owner and existing attachers represents an important remedial option for the attaching entities. The Commission expects that any incremental costs reasonably incurred by pole owners to comply with the proposed new make-ready work process and timeline rules will be passed on to the attaching entities requiring performance of the make-ready work.

Assuming for the purposes of this request that utility pole owners and attaching entities in New Hampshire may properly be considered “independently owned businesses,” the Commission requests an amended fiscal impact statement with a specific analysis of the proposed changes in the make-ready work process and timeline. It is difficult to estimate the potential financial impacts of those proposed rules amendments on pole owners or attaching entities, as well as the ultimate effects on their respective customers in the State. The Commission therefore believes that the fiscal impact of the proposed changes may be significant but is indeterminate.

David K. Wiesner

Name

David K. Wiesner, Staff Attorney

Title

April 16, 2018

Date