

Chapter Puc 1300 Utility Pole Attachments

Readopt Puc 1302.01 through Puc 1302.07, effective 12-1-22 (Document #13498), to read as follows:

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

Puc 1302.02 “Commission” means the New Hampshire public utilities commission.

Puc 1302.03 “Department” means the New Hampshire department of energy.

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 1302.05 “Facility” means the lines, 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 1302.06 “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.

Puc 1302.07 “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.”

Adopt new Puc 1302.08 to read as follows:

Puc 1302.08 “Pole Attachment Rate Formula” is based upon the Federal Communication Commission (FCC)’s Cable Formula, as represented in the equation below, where:

(a) “Maximum Attachment Rate” = “Space Factor” x “Net Cost of Bare Pole” x “Carrying Charge Rate,” where;

(b) “Space Factor” means the Space Occupied by Attachment divided by Total Usable Space;

(c) “Net Cost of Bare Pole” means the Net Pole Investment divided by the Number of Poles;

(d) “Net Pole Investment” means the Gross Pole Investment minus the Accumulated Depreciation minus Deferred income Taxes;

(e) “Carrying Charge Rate” means Administrative plus Maintenance plus Depreciation plus Taxes plus Return.

Readopt and renumber Puc 1302.08 and Puc 1302.09, effective 12-1-22 (Document #13498), as Puc 1302.09 and Puc 1302.10, to read as follows:

Puc 1302.089 “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 1302.0910 “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.

Readopt Puc 1303.01 through Puc 1303.05, effective 12-1-22 (Document #13498), to read as follows:

PART Puc 1303 DISPUTE RESOLUTION

Puc 1303.01 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 1303.02 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. Good faith negotiation shall include adherence to the timelines established through rulemaking by the Department for negotiating and implementing pole attachments, unless each party agrees to following alternate timelines. 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.

Puc 1303.03 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 1303.04 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 1303.05 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.

Readopt with amendment Puc 1303.06, effective 12-1-22 (Document #13498), to read as follows:

Puc 1303.06 Rate Review Standards.

(a) In determining just and reasonable rates for the pole attachments of cable television service providers, wireless service providers, and excepted local exchange carriers that are not incumbent local

exchange carriers to poles owned by electric utilities or incumbent local exchange carriers under this chapter, the commission shall ***apply the Pole Attachment Rate Formula.*** ~~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. §1.1406(d) in effect on October 1, 2022; 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 pole 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.

Readopt Puc 1303.07 and Puc 1303.08, effective 12-1-22 (Document #13498), to read as follows:

Puc 1303.07 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 1303.08 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 1302- Puc 1303	RSA 374:3; RSA 374:34-a