

COMMISSIONER
Jared S. Chicoine

FAX No. 271-1526

DEPUTY COMMISSIONER
Christopher J. Ellms, Jr.TDD Access: Relay NH
1-800-735-2964Website:
www.energy.nh.govDEPARTMENT OF ENERGY
21 S. Fruit St., Suite 10
Concord, N.H. 03301-2429

October 17, 2022

Michael Morrell, Acting Director
Administrative Rules Division
Office of Legislative Services
State House Annex, Room 219
25 Capitol Street
Concord, NH 03301-6312

**Re: Rulemaking Notice No. 2022-53
En 1300 – Utility Pole Attachment Rules
Department of Energy Conditional Approval Request**

Dear Mr. Morrell:

Please find enclosed a Conditional Approval Request for the Department of Energy's En 1300 Utility Pole Attachment Rules. The Final Proposal for adoption of those rules is on the agenda for consideration by the Joint Legislative Committee on Administrative Rules at its meeting scheduled for October 20, 2022. To the extent that this filing may be considered untimely, the Department hereby requests that a waiver be granted under RSA 541-A:13, II(b), because we only received the final comments of counsel for the Office of Legislative Services Administrative Rules Division (OLS) on Thursday, October 13th.

The Conditional Approval Request addresses a number of editorial comments received from your office. Please note, however, that certain comments received from OLS counsel are not incorporated into the Conditional Approval Request because the Final Proposal language is based on specific language in RSA 374:34-a and/or in relevant regulations promulgated by the Federal Communications Commission (FCC), such as references to just, reasonable, and nondiscriminatory terms for pole attachments. Such specific language appears in the existing version of the Puc 1300 Utility Pole Attachment Rules and is familiar to and well understood by the regulated community, consisting of public utility pole owners and attaching entities. The majority of the attaching entities are telecommunications carriers that conduct business in a number of different states and jurisdictions, many of which are subject to the FCC regulations or state rules or procedures that are based on those FCC regulations.

This is particularly the case with respect to the new "one-touch make-ready" provisions of En 1303.13, which are included pursuant to the specific statutory direction in RSA 374:34-a, III for the Department to adopt rules "implementing the provisions of One Touch Make Ready (OTMR) as adopted by the [FCC] in 47 CFR 1.1411(j)." *See* 2021 N.H. Laws Chapter 198 (Senate Bill 88). Consistent with that legislative mandate, we have proposed rules that are as close as possible to the language and format contained in the cited FCC regulations, and we

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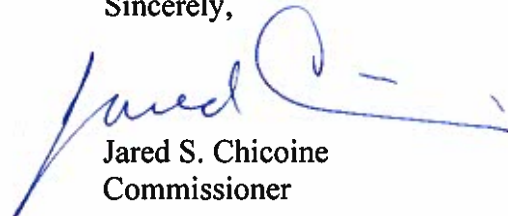
would strongly prefer to preserve both the language and format of the FCC regulations in En 1303.13, even where they may be different from what the Rulemaking Manual would otherwise prescribe. Again, we believe that the regulated community is familiar with and understands those specific rules provisions, which are in effect in many other states and jurisdictions in the region and across the country.

Finally, with respect to OLS's "Note to the JLCAR on potential need for legislation," we believe that the division of responsibility between the Department and the Public Utilities Commission (PUC) that would be effected by adoption of the En 1300 rules and concurrent amendment of the Puc 1300 rules would result in an appropriate regulatory framework that is consistent with the legislature's intent. While the Department has express rulemaking authority under RSA 374:34-a, the PUC retains broad authority under RSA 365:8, I (1) to adopt rules relative to "procedures necessary to provide for the proper administration of and to further the purposes of this title." The reference to "this title" should be understood to include the provisions of RSA 374:34-a that authorize the PUC to regulate and enforce rates, charges, terms, and conditions for pole attachments (paragraph II) and to "hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to pole attachments" (paragraph VII). That is the basis for the PUC's retention of current Part Puc 1304, which covers dispute resolution and related pole attachment fee rate-setting, through an amended version of its Puc 1300 rules, while the Department's rules address other aspects of the utility pole attachment process. Although future legislation might serve to further clarify the respective roles of the two regulatory agencies, we believe the existing statutory framework is sufficient to support approval of the proposed En 1300 rules.

We respectfully ask that the requested waiver be granted, if necessary, and that the Committee conditionally approve the Final Proposal with the revisions specified in the Conditional Approval Request.

Please let me know if you have any questions regarding this matter.

Sincerely,



Jared S. Chicoine
Commissioner

Enclosure