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September 28, 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: En 1300 – Utility Pole Attachment Rules
Department of Energy Final Proposal
Rulemaking Notice No. 2022-53**

Dear Mr. Morrell:

On April 6, 2022, the Department of Energy filed a rulemaking notice with respect to the adoption of En 1300 rules regarding utility pole attachments. The rulemaking notice was published in the Rulemaking Register on April 14, 2022. A public hearing on the Initial Proposal was held on June 10, 2022, pursuant to RSA 541-A:11, and written comments were received through June 21, 2022. Comments were also received from counsel for the Office of Legislative Services Administrative Rules Division (OLS). On September 28, 2022, the Commissioner of the Department established the Final Proposal for adoption of En 1300.

The Final Proposal incorporates certain revisions suggested by interested stakeholders as well as most of the comments received from OLS. Please note that certain comments provided by OLS were not incorporated into the Final Proposal 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 which attaching entities are telecommunications carriers that conduct business in a number of different states and jurisdictions.

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 rules, and we would strongly prefer to preserve both the language and format of the FCC

FP 2022-53
En 1300
Final Proposal

rules 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.

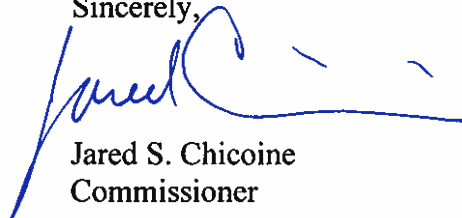
Finally, with respect to OLS's "Note to the JLCAR on potential need for legislation," we believe that the division of responsibility between the Department and the Public Utilities Commission (PUC) that would be effected by adoption of the En 1300 rules and concurrent amendment of the Puc 1300 rules 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.

As required by the Rulemaking Manual, enclosed please find one copy of each of the following:

- A completed Appendix II-G Cover Sheet for Final Proposal;
- The established text of the Final Proposed rule as the "Final Proposal-Fixed Text," including the cross-reference table required by RSA 541-A:3-a, II as Appendix A and the incorporation by reference information table as Appendix B;
- The established text of the Final Proposed rule as the "Final Proposal-Annotated Text;" and
- Completed Appendix II-H Incorporation by Reference Statements.

Thank you in advance for your assistance with this matter.

Sincerely,



Jared S. Chicoine
Commissioner

Enclosures