

Adopt En 1300 to read as follows:

CHAPTER En 1300 UTILITY POLE ATTACHMENTS

PART En 1301 PURPOSE, APPLICABILITY, AND SCOPE

En 1301.01 Purpose. The purpose of En 1300, pursuant to the mandate of RSA 374:34-a, is to ensure that that terms, and conditions for pole attachments are nondiscriminatory, just, and reasonable. Rules regarding the resolution of disputes and the setting of rates for pole attachments under specific circumstances are set forth in chapter Puc 1300 adopted by the public utilities commission.

En 1301.02 Applicability.

(a) En 1300 shall apply to:

(1a) Public utilities within the meaning of RSA 362:2, 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;

(2b) Providers of “VoIP service” or “IP-enabled service,” as such terms are defined in RSA 362:7, I, to the extent provided in RSA 362:7, II and III(d) and (e); and

(3e) Attaching entities with facilities attached to such poles, or seeking to attach facilities to such poles.

~~(b)En 1301.03—Scope~~. 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.

PART En 1302 DEFINITIONS

En 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.

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

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

En 1302.04 “Communications space” means the lower usable space on a pole, which typically is reserved for low-voltage communications equipment.

En 1302.05 “Complex make-ready” means transfers and work within the communications space that would be reasonably likely to cause a service outage(s) or facility damage, including work such as splicing of any communications attachment or relocation of existing wireless attachments. Any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers, are considered complex.

En 1302.06 “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.”

En 1302.07 “Extension arm(s)” means a bracket attached to a pole to provide support for cables or wires at a distance from the pole.

En 1302.08 “Facility” means the lines, cables, wireless antennas, and any accompanying appurtenances attached to a pole for the transmission of electricity, information, telecommunications, or video programming for the public or for public safety purposes.

En 1302.09 “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.

En 1302.10 “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.

En 1302.11 “New attaching entity” means an attaching entity requesting to attach new or upgraded facilities to a pole owned or controlled by a utility.

En 1302.12 “Overlash” means the tying or lashing of an attaching entity’s additional fiber optic cables, or similar incidental equipment such as fiber-splice closures, to the attaching entity’s own existing communications wires, cable, or supporting strand already attached to poles.

En 1302.13 “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.”

En 1302.14 “Simple make-ready” means make-ready work where existing attachments in the communications space of a pole could be transferred without any reasonable expectation of a service outage or facility damage, and which does not require splicing of any existing communications attachment or relocation of any existing wireless attachment.

En 1302.15 “Usable space” means the space on a pole above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment, and which includes space occupied by the pole owner or owners, and, with respect to any conduit, the term means capacity within a conduit system which is available, or which could, with reasonable effort and expense, be made available, for the purpose of installing wires, cable and associated equipment for telecommunications or cable services, and which includes capacity occupied by the pole owner or owners.

En 1302.16 “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 En 1303 ACCESS TO POLES

En 1303.01 Access Standard.

Note to the JLCAR and Agency. If the Committee should approve the rules with a citation to the relevant statute, that will not represent an implied legislative authorization of the rule's substantive or procedural lawfulness. *See* RSA 541-A: 13.

(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.

Unclear/Legis. Intent. It is unclear how the agency determines that the owner's terms are “just and reasonable and nondiscriminatory”. While RSA 541-A:7 says that the rules should be clear to the persons regulated by the rule, pursuant to RSA 541-A:1, XV rules must implement, interpret, or make specific a statute and that may mean defining terms if they are not defined in the statute. In this case, RSA 374:34-a uses these terms but does not define them. There's no broad criteria in this proposal describing what these terms mean, and not having any criteria in the rule any criteria can lead to arbitrary decision making. OLS staff comments to PUC proposal (NN 2022-14) also noted this issue and the PUC rather than define the terms opted to cite to the statute since the terms were being used in an adjudicative process and would be determined by a hearings examiner. DOE has indicated that it may request to remove this language and cite to RSA 374:34-a.

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

- (1) If there is insufficient capacity on the pole;
- (2) For reasons of safety, reliability, or generally applicable engineering purposes; or
- (3) If 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 is identified that would accommodate the additional attachment.

En 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.

En 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 and execute an agreement for such attachment. A prospective attaching entity may submit a request for access to a utility's poles pursuant to En 1303.04 prior to negotiating and executing a pole attachment agreement with the pole owner or owners.

En 1303.04 Request for Access and Response Requirements.

(a) Requests for access to a utility's poles, whether made before or after negotiation and execution of a pole attachment agreement, shall be in writing and include information necessary under the pole owner's procedures to schedule a survey of the poles.

(b) Absent circumstances beyond the pole owner's control, such as *force majeure*, a survey of poles shall be completed and the results communicated to the applicant seeking to attach within 45 days, or within 60 days, in the case of larger orders as described in En 1303.12(e), of receiving a completed application and survey fee.

(c) Pole owners shall grant or deny access in writing within the number of days allowed for completion of the survey, as specified in (b) above. The pole 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 grounds for denial as specified in En 1303.01.

En 1303.05 Authorization Required. No person shall attach facilities to a pole without a license or similar authorization in writing from the pole owner or owners prior to attaching such facilities. No person shall perform any make ready-work in connection with any request for access to a pole without having executed an agreement for such attachment, in accordance with En 1303.03.

En 1303.06 Notification.

(a) The owner or owners of a pole shall provide written notice to an attaching entity not less than 60 days 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) Except as otherwise provided in En 1303.04 and En 1303.12 with respect to access and make-ready work, attaching entities shall provide written notice to the owner or owners of a pole not less than 60 days prior to:

(1) Modifying an existing attachment other than as part of routine maintenance, 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:

- a. As part of routine maintenance;
- b. In response to an emergency;
- c. To install an overlash; or
- d. To install a customer drop line; or

(3) Changing the purpose for which an existing attachment is used.

(c) An existing attaching entity shall provide written notice to the pole owner or owners of its intent to overlash a minimum of 5 days prior to installing an overlash. An existing attaching entity shall provide written notice of an overlash to the pole owner or owners within 10 days after installing the overlash.

(d) Separate and additional attachments shall be subject to pole attachment application and licensing processes.

En 1303.07 Installation and Maintenance.

(a) All attachments shall be installed in accordance with the National Electrical Safety Code, 2017 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 6, Telcordia Technologies, Inc., an Ericsson company (2017)*, available as specified in Appendix B, and in accordance with such other applicable standards and requirements specified in the pole attachment agreement.

(b) The attaching entity shall install and maintain its attachments so as to prevent interference with service furnished by the pole owner or owners and any other attaching entity.

(c) If a pole or existing attachment is not in compliance with applicable standards and codes and is required to 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 to or imposed on the entity seeking to add a new attachment.

(d) Neither the cost to remove a duplicate pole that was not removed when a pole was replaced earlier, nor the cost to complete other work started before the make-ready work, shall be assessed to or imposed on the entity seeking to add a new attachment.

(e) An overlash shall not be deemed an attachment and an attaching entity shall have the right to install an overlash subject to the notification provisions of En 1303.06(c).

En 1303.08 Labeling of Attachments. The attaching entity shall clearly label its attachments with the attaching entity's identification.

En 1303.09 Location of Attachments.

(a) No attaching entity shall be denied attachment solely because a wireless facility is to be located above the communications space on a pole.

(b) No attaching entity shall be denied attachment solely because the only space available for attachment on a pole is below the lowest attached facility.

(c) 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 shall 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 En 1303.07(c) is applicable.

En 1303.10 Boxing of Poles.

(a) A pole owner 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 or as actually implemented by the company in the normal course of its business. 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, available as specified in Appendix B.

(b) Boxing shall be permitted only with express, written authorization by the pole owner. Pole owners shall grant or deny permission to use boxing, in writing, within the time period specified in En 1303.04(b), or within 30 days of receiving a request not made in connection with an application for attachment.

(c) At the request of the attaching entity, 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.

En 1303.11 Use of Extension Arms.

(a) A pole owner shall allow limited, reasonable use of extension arms by attaching entities for purposes of clearing obstacles or improving alignment of attachment facilities, consistent with the restrictions it places on its own practice of using extension arms as defined in the company's written methods and procedures or as actually implemented by the company in the normal course of its business.

(b) Under no circumstances shall 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, available as specified in Appendix B.

(c) Extension arms shall 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 the time period specified in En 1303.04(b), or within 30 days of receiving a request not made in connection with an application for attachment.

(d) At the request of the attaching entity, 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.

En 1303.12 Make-Ready Work Timelines.

(a) If a request for access is granted, the pole owner shall present to the prospective attaching entity an estimate of charges to perform all necessary make-ready work within 14 days of completing the survey required by En 1303.04, or in the case where a prospective attaching entity's contractor has performed a survey, within 14 days of receipt by the pole owner of such survey.

(b) Upon presentation of the estimate of charges to perform make-ready work:

- (1) A pole owner shall not withdraw an outstanding estimate until 14 days after the estimate is presented; and
- (2) An attaching entity may accept an outstanding estimate and make payment any time after receipt of an estimate but before the estimate has been withdrawn.

(c) Upon receipt of payment specified in (b)(2) above, a pole owner shall notify immediately and in writing all known entities with existing attachments that might be affected by the make-ready work, as follows:

(1) For attachments in the communications space, the notice shall:

- a. Specify where and what make-ready work shall be performed;
- b. Specify the order in which existing attaching entities shall perform their make-ready work;
- c. Set a date for completion of make-ready work that is no later than 60 days after notification is sent, or 105 days in the case of larger orders, as described in En 1303.12(e) below, subject to extension by 30 days as specified in d. below;
- d. For an application involving more than 100 poles where 30% or more of the affected poles are required to be replaced, the pole owner may extend the completion date by an additional 30 days;
- e. State that any entity with an existing attachment shall only modify the attachment consistent with the specified make-ready work before the date set for completion;
- f. State that the pole owner may assert its right to 15 additional days to complete any outstanding make-ready work, provided that the delay in completion of that make-ready work was caused by the actions or inactions of a third party attaching entity who had received timely notice that its make-ready work could be performed;
- g. State that if make-ready work is not completed by the completion date set by the pole owner, or if the pole owner has asserted its 15-day right of control, 15 days later, the attaching entity requesting access may complete the specified make-ready work; and
- h. State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready work procedure; and

(2) For wireless attachments above the communications space, the notice shall:

- a. Specify where and what make-ready work shall be performed;
- b. Set a date for completion of make-ready work that is no later than 90 days after notification is sent, or 135 days in the case of larger orders, as described in En 1303.12(e) below;
- c. State that any entity with an existing attachment shall only modify the attachment consistent with the specified make-ready work before the date set for completion;
- d. State that the pole owner may assert its right to 15 additional days to complete any outstanding make-ready work, provided that the delay in completion of that make-ready

work was caused by the actions or inactions of a third party attaching entity who had received timely notice that its make-ready work could be performed; and

e. State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready work procedure.

(d) For attachments in the communications space, a pole owner shall ensure that make-ready work shall be completed by the date set by the pole owner in (c)(1)c above, or if the pole owner has asserted its 15-day right of control, 15 days later. For wireless attachments above the communications space, a pole owner shall ensure that make-ready work is completed by the date set by the pole owner in (c)(2)b above, or if the pole owner has asserted its 15-day right of control, 15 days later.

(e) For the purposes of compliance with the time periods in this section:

(1) A pole owner shall apply the timeline described in En 1303.04 and in (a) through (c) above to all requests for pole attachment up to the lesser of 300 poles or 0.5 percent of the pole owner's poles in a state;

(2) A pole owner may add 15 days to the survey period described in En 1303.04 to larger orders up to the lesser of 2,000 poles or 4 percent of the pole owner's poles in the state;

(3) A pole owner may add 45 days to the make-ready work periods described in (c) above to larger orders up to the lesser of 2,000 poles or 4 percent of the pole owner's poles in the state;

(4) A pole owner shall negotiate in good faith the timing of all requests for pole attachments larger than the lesser of 2,000 poles or 4 percent of the pole owner's poles in a state; and

(5) A pole owner may treat multiple requests from a single attaching entity as one request when the requests are filed within 30 days of one another.

A pole owner shall only deviate from the time limits specified in this section:

(1) Before offering an estimate of charges if the parties have not yet entered into an agreement pursuant to En 1303.03 specifying the rates, terms, and conditions of attachment; or

(2) During performance of make-ready work for good and sufficient cause that renders it infeasible for the pole owner to complete the make-ready work within the prescribed time frame, provided that:

a. A pole owner that so deviates shall immediately notify, in writing, the attaching entity requesting attachment and other affected entities with existing attachments, stating the reason for and the date and duration of the deviation; and

b. The pole owner shall deviate from the time limits specified in this section for a period no longer than necessary and shall resume make-ready work performance without discrimination when it returns to routine operations.

(g) If a pole owner fails to respond as specified in En 1303.04, an attaching entity requesting attachment in the communications space may, as specified in (i) through (l) below, hire a contractor to complete a survey.

(h) If make-ready work is not completed by the pole owner or an existing attaching entity by the date specified in (c)(1)c above, an attaching entity requesting attachment in the communications space may, as specified in (i) through (l) below, hire a contractor to complete the outstanding make-ready work, and written

Unclear. Please refer to the comments on the bottom of page 2 as they are also applicable here. It is unclear what "good and sufficient cause" and how it will be determined. It could be that it is something that "renders it infeasible for the pole owner to complete the make-ready work within the prescribed time frame..." or maybe it is another standard. The agency indicated that the One Touch Make Ready requirements are established by the FCC and that those are found in the next section, En 1303.13. It could be that this section also implements some the requirements in 47 CFR 1.1411(j). If so, then at a minimum the federal regulation should be cited.

Unclear. Please refer to the comments on the bottom of page 2 as they are also applicable here. Administrative rules must implement, interpret, and make specific a statute. The statute does not define these terms. Accordingly, the agency needs to define what these terms mean either in the context or in the definitions section. If they are determined by FCC regulations, then a citation to that regulation would help.

notice of such contractor engagement shall be provided to the pole owner and each affected attaching entity, as of the time specified below:

- (1) Immediately, if the pole owner has failed to assert its right to perform outstanding make-ready work by notifying the attaching entity requesting attachment that the pole owner shall do so; or
 - (2) After 15 days if the pole owner has asserted its right to complete outstanding make-ready work by the date specified in (c)(1)c above and has failed to complete all such make-ready work.
- (i) A pole owner shall make available, and keep up-to-date, a list of not less than 3 contractors that such pole owner, and any joint pole owner, authorizes to perform surveys and make-ready work in the communications space on its poles in cases where the pole owner or an existing attaching entity has failed to meet the deadlines specified in En 1303.04 and in (a) through (h) above or pursuant to En 1303.13.
- (j) If an attaching entity hires a contractor for purposes specified in (g) or (h) above or pursuant to En 1303.13, it shall choose from among the pole owners' list of authorized contractors.
- (k) An attaching entity that hires a contractor for purposes specified in (g) or (h) above or pursuant to En 1303.13 shall provide a pole owner with a reasonable opportunity for its representative to accompany and consult with the authorized contractor and the attaching entity.

(l) For purposes of survey, the electric utility pole owner's representative shall make final determinations, on a nondiscriminatory basis, where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

Note to the JLCAR and Agency. If the Committee should approve the rules with ambiguous terms, that will not represent an implied legislative authorization of the rule's substantive or procedural lawfulness. See RSA 541-A: 13. This applies here and on page 9.

En 1303.13 One-Touch Make-Ready Option.

- (a) For attachments involving simple make-ready, new attaching entities may use the process described in this section in lieu of the attachment process described in En 1303.12(c)-(f).
- (b) A new attaching entity electing the one-touch make-ready work process shall elect the one-touch make-ready work process in writing in its attachment application and shall identify the simple make-ready that it shall perform.
- (c) The new attaching entity shall ensure that its contractor determines whether the make-ready work requested in an attachment application is simple make-ready.
- (d) The pole owner shall review the new attaching entity's attachment application for completeness before reviewing the application on its merits.
- (e) An attachment application shall be considered complete if it provides the pole owner with the information necessary under its procedures, as specified in a master service agreement or in publicly-released requirements at the time of submission of the application, to make an informed decision on the application.

(f) With respect to any such application:

- (1) A pole owner shall have 10 business days after receipt of a new attaching entity's attachment application in which to determine whether the application is complete and notify the attaching entity of that decision;

Unclear/Legis. Intent/Note to the JLCAR. The agency's cover letter indicates that this section is meant to implement the requirements of 47 CFR 1.1411(j) and in conversation with the agency, the agency thinks that SB 88, 2021 created a carve out from the requirements of RSA 541-A. That bill amended RSA 374:34-a to state that the department shall "adopt rules under RSA 541-A implementing the provisions of One Touch Make Ready (OTMR) as adopted by the Federal Communications Commission in 47 CFR 1.1411(j)." While this language clearly directs the agency to adopt the FCC's rules as the FCC has adopted them, it also directs the agency to do so via RSA 541-A, and it does not explicitly state that the drafting requirements of RSA 541-A do not apply; therefore, this is not an exemption from those requirements. The agency states that it is unable to comply both with the FCC and RSA 541-A. If the legislative intent was to create an exemption then legislation needs to be proposed this session to clearly exempt this set of rules from the requirements of RSA 541-A. Such an exemption should go into RSA 541-A:21. Regardless, the agency could in this proposal incorporate 47 CFR 1.1411(j) by reference and we have commented that the appendix needs to be updated to include the federal regulations.

(2) If the pole owner does not respond within 10 business days after receipt of an application submitted under (1) above, or if the pole owner rejects the application as incomplete but fails to specify any reasons in the application, then the application shall be deemed complete;

(3) If the pole owner timely notifies the new attaching entity that its attachment application is not complete, then the pole owner shall specify all reasons for finding it incomplete;

(4) The new attaching entity may resubmit an application to the pole owner, which resubmitted application need only address the pole owner's specified reasons for finding the application incomplete and such resubmitted application shall be deemed complete within 5 business days after its resubmission, unless the pole owner specifies to the new attaching entity which reasons were not addressed and how the resubmitted application did not sufficiently address those reasons; and

(5) The applicant may follow the resubmission procedure described in (4) above as many times as it chooses, provided that, in each case, it makes a bona fide attempt to correct the reasons identified by the pole owner, and in each case the deadline set forth in (4) shall apply to the pole owner's review.

(gf) The pole owner shall review on the merits a complete application requesting one-touch make-ready and respond to the new attaching entity either granting or denying the application within 15 days of the pole owner's receipt of a complete application, or within 30 days in the case of larger orders as described in (4) below.

(h) With respect to any such complete application:

(1) If the pole owner denies the application on its merits, then its decision shall be specific, shall include all relevant evidence and information supporting its decision, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards;

(2) Within the 15-day application review period, or within 30 days in the case of larger orders as described in (4) below, a pole owner may object to the designation by the new attaching entity's contractor that certain make-ready work is simple make-ready, and in such a case, the make-ready work shall be deemed to be complex make-ready;

(3) The pole owner's objection shall be final and determinative, provided that the objection shall be specific and in writing, includes all relevant evidence and information supporting the decision, is made in good faith, and explains how such evidence and information relate to a determination that the make-ready work is not simple make-ready; and

(4) For purposes of this subsection (hf), "larger orders" shall mean those orders up to the lesser of 3,000 poles or 5 percent of the pole owner's poles in the state.

(ig) The new attaching entity shall be responsible for all surveys required as part of the one-touch make-ready process and shall use a contractor as specified in En 1303.12(i)-(k).

(jh) The new attaching entity shall permit the pole owner and any existing attaching entities on the affected poles to be present for any field inspection conducted as part of the new attaching entity's surveys.

(k) The new attaching entity shall use commercially reasonable efforts to provide the pole owner and affected existing attaching entities with prior notice of not less than 3 business days of a field inspection as part of any survey and shall provide the date, time, and location of the surveys and the name of the contractor performing the surveys.

(l) If the new attaching entity's attachment application is approved and if it has provided 15 days prior written notice of the make-ready work to the affected pole owner and existing attaching entities, the new attaching entity shall proceed with make-ready work using a contractor in the manner as specified in En 1303.12(i)-(k).

(m) With respect to any such make-ready work:

(1) The prior written notice shall include the date and time of the make-ready work, a description of the work involved, the name of the contractor being used by the new attaching entity, and shall provide the affected pole owner and existing attaching entities a reasonable opportunity to be present for any make-ready work;

Unclear/Legis. Intent/Need for legislation. Please see the comment on the bottom of page 8. The agency states that this section implements the FCC's rules and that it cannot remove this language and be in compliance with federal law. It also states that it cannot define what reasonably. Legislation may be needed to exempt this set of rules if the legislative intent was that the agency was to adopt the FCC rules without change. The term "reasonably" should either be defined or be removed as there can be differences of interpretation as to what this term means. Please also refer to previous comments regarding RSA 541-A: 13.

(2) The new attaching entity shall notify an affected pole owner or existing attaching entity immediately if make-ready work damages the equipment of the pole owner or existing attaching entity or causes an outage that is reasonably likely to interrupt the service of the pole owner or existing attaching entity, upon receipt of which notice the affected pole owner or existing attaching entity may either:

- a. Complete any necessary remedial work and bill the new attaching entity for the reasonable costs related to fixing the damage; or
- b. Require the new attaching entity to fix the damage at its expense immediately following notice from the affected pole owner or existing attaching entity; and

(3) In performing make-ready work, if the new attaching entity or the pole owner determines that make-ready work classified as simple is complex, then that specific make-ready work shall be halted and the determining party shall provide immediate notice to the other party of its determination and the affected poles, in which case the affected make-ready work shall then be governed by En 1303.12(a) through (f) and the pole owner shall provide the notice required by En 1303.12(c) as soon as reasonably practicable.

(n) A new attaching entity shall notify the affected pole owner and existing attaching entities within 15 days after completion of make-ready work on a particular pole, which notice shall provide the affected pole owner and existing attaching entities at least 90 days from receipt in which to inspect the make-ready work.

(o) The affected pole owner and existing attaching entities shall have 14 days after completion of their inspection to notify the new attaching entity of any damage or code violations caused by make-ready work conducted by the new attaching entity on their equipment.

(p) If the affected pole owner or an existing attaching entity notifies the new attaching entity of any such damage or code violations, then the pole owner or existing attaching entity shall provide detailed and specific documentation describing the damage or code violations.

(q) With respect to any such damage or code violations, the affected pole owner or existing attaching entity may either:

- (1) Complete any necessary remedial work and bill the new attaching entity for the reasonable costs related to fixing the damage or code violations; or
- (2) Require the new attaching entity to fix the damage or code violations at its expense within 14 days following notice from the affected pole owner or existing attaching entity.

Note to the JLCAR on the need for legislation. This proposal implements SB 88, 2021 which made changes impacting broadband to included the requirement that rules be adopted to implement One Touch Make Ready. (Please refer to previous comments regarding the need for legislation to exempt this program from the requirements of RSA 541-A if the legislative intent was that the agency was to adopt the FCC's rules without complying with the requirements of RSA 541-A.

Also, there is need to clarify the rulemaking authority and jurisdictional divide of the PUC and the Dept. of Energy. The Budget bill, HB 2, (2021, 91), established the Dept. of Energy and transferred the PUC's functions, powers, and duties to the Dept. of Energy. Specifically RSA 12-P:11 states that "all of the functions, powers, duties, records, personnel and property" of the PUC is replaced with the authority of the department of energy as of July 1, 2021. (See the attachments for copies of SB 88 and HB 2.) RSA363:1 states that the PUC is an independent agency administratively attached to the Dept. of Energy pursuant to RSA 21-G:10, and that the chair of the PUC has the powers set forth in RSA 21-G:9.

However, RSA 21-G:9, II(b) authorizes a commissioner of an agency organized under RSA 21-G to adopt rules of the agency; therefore, the PUC's chair is still a rulemaker and pursuant to RSA 541-A:1, II rulemaking authority is no longer held by a quorum of the PUC but by its chair. Clearly the PUC still has rulemaking authority but OLS staff is unable to tell where the rulemaking authority of the new Commissioner of the Dept. of Energy begins and which PUC rulemaking authority is retained by the Chair of the PUC. RSA 374:34-a and RSA 363:1 may need to be amended to clearly specify rulemaking authority pursuant to RSA 541-A. The Dept. of Energy in its cover letter to the conditional approval states that it has express rulemaking authority under RSA 374:34-a and that the PUC retains broad authority under RSA 365:8, I to adopt rules relative to procedures necessary to implement the title. The Dept. interprets to mean that the statute only authorizes the PUC to regulate and enforce rates, charges, terms and conditions of pole attachments and to hear and resolve complaints. The agency states that while there maybe need to clarify the division of authority it feels that there is sufficient statutory framework to support it moving forward with this proposal. Regardless there is need to clarify the jurisdictional divide and rulemaking authority. Should the Committee approve the rules with the outstanding ambiguities that will not represent an implied legislative authorization of the rule's substantive or procedural lawfulness. See RSA 541-A: 13.

Unclear/Edit. Appendix A should also include the federal statute or regulation that the rule implements. Also every section should be listed and there are missing sections.

APPENDIX A

Rule	Statute
En 1300	RSA 374:3; RSA 374:34-a
En 1301.01	RSA 374:3; RSA 374:34-a
En 1301.02(a)	RSA 374:3; RSA 374:34-a
En 1301.02(b)	RSA 362:7, I-III; RSA 374:34-a
En 1301.02(c)	RSA 374:3; RSA 374:34-a
En 1301.03	RSA 374:3; RSA 374:34-a
En 1302	RSA 374:3; RSA 374:34-a
En 1303	RSA 374:3; RSA 374:34-a

APPENDIX B: INCORPORATION BY REFERENCE INFORMATION

Rule	Title (date)	Source
En 1303.07(a)	National Electrical Safety Code, 2017 Edition	<p>IEEE Standards Association 501 Hoes Lane, 3rd Floor Piscataway, NJ 08855</p> <p>Available for \$210.00 (printed) or \$190.00 (PDF) at: IEEE SA - Standards Store IEEE C2-2017 (techstreet.com)</p>
En 1303.07(a)	SR-1421 “Blue Book – Manual of Construction Procedures, Issue 6,” Telcordia Technologies, Inc., an Ericsson company, 2017 Edition	<p>Telcordia Technologies Ericsson Inc. 1 Centennial Ave. Piscataway, NJ 08854</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>