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June 21, 2022

David K. Wiesner, Esq.
Legal Director
New Hampshire Department of Energy
21 S. Fruit Street, Ste. 10
Concord, NH 03301

Daniel Goldner, Chairman
Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301

Re: DOE Docket No. RUL 22-001
PUC Docket No. DRM 22-023

Dear Mr. Wiesner and Chairman Goldner,

On April 6, 2022, the New Hampshire Department of Energy (“NH DOE”) issued, among other things, a rulemaking notice form and the initial proposed revised Rule 1300. Consistent with Senate Bill 88, the proposed rule is intended to implement the Federal Communications Commission’s (“FCC”) rule on One Touch Make-Ready (“OTMR”). On April 13, 2022, the New Hampshire Public Utilities Commission (“NH PUC”) also issued a rulemaking notice form and a proposed revised rule that addressed the NH PUC portions of Rule 1300. The NH DOE and the NH PUC conducted a joint public comment session on June 10, 2022, and requested that interested parties file written comments by June 21, 2022. This letter contains the comments of the New Hampshire Electric Cooperative, Inc. (“NHEC”). NHEC participated in the June 10th public comment session and provided a summary of these comments.

NHEC is a rural electric cooperative that is generally not subject to regulation by the NH PUC. RSA 362:2, II. It is, however, subject to Puc 1300, which governs attachments to utility poles. RSA 374:34-a, I. Consequently, NHEC has a unique perspective in this formal rulemaking process. Although it is a pole-owning utility that must work with entities that want to attach facilities to its poles, NHEC is also in the midst of a broadband services design and buildout. Because of this broadband services initiative, NHEC has been and will continue to be an “attaching entity” under Puc 1300. Therefore, NHEC has a strong desire to ensure the pole attachment rule provides for safe and reliable operation of the poles for all entities utilizing those poles, but it also wants there to be a timely and cost-efficient process for attaching facilities to the poles. For this reason, NHEC supports the NH DOE’s proposed rule that adopts OTMR in a

manner that assures safety and reliability and avoids placing an unreasonable burden on the pole owner.

The enabling legislation that directed NH DOE to begin this rulemaking process is very narrow; meaning that the NH DOE “shall adopt rules under RSA 541-A implementing the provisions of the One Touch Make Ready (OTMR) as adopted by the Federal Communications Commission in 47 CFR 1.1411(j).” SB 88, Part II. NHEC strongly urges the NH DOE to follow the direction of the Legislature. The proposed rule simply incorporates the FCC’s OTMR provisions into Puc 1300 without affecting other sections of the rule. By keeping the scope of this rulemaking narrow, it avoids the potential for disagreement among the parties on subjects that are not relevant to the Legislature’s explicit direction. As the implementation of broadband deployment accelerates in response to federal funding, it is important that there be an approved process for quickly and safely performing make-ready work for both the attaching entities *and* the pole-owning utilities. OTMR is a process that assures an attaching entity can install its facilities in a timely fashion and avoids overwhelming the pole-owning utility with attachment-related requests. It is critical that the NH DOE completes this rulemaking process as quickly and as reasonably as possible.

Several of the parties that attended the public comment session on June 10th suggested that the NH DOE and NH PUC depart from the Legislature’s explicit and narrow mandate to revise Rule 1300 to incorporate OTMR. NHEC strongly urges the NH DOE and NH PUC to reject these suggestions in the context of this particular rulemaking process. These proposals were not adequately vetted or discussed during the informal rulemaking process that occurred in late 2021. Moreover, the proposals are not universally supported by the parties participating in this rulemaking, which can only work to slow down the adoption of OTMR. In particular, NHEC strongly opposes two suggestions proposed by Crown Castle. The first proposal was to reduce restrictions on the use of boxing. Boxing of poles does not provide for adequate climbing space, as required by the National Electrical Safety Code. It would result in unsafe working conditions for NHEC crews, so the NH DOE should not consider revisions to Section 1303.10 without significantly more input on the safety of such a change.

In the portion of the rule overseen by the NH PUC (Rule 1304 *et seq.*), Crown Castle suggested changing the cost allocation for replacing poles, resulting in existing attachers and pole owners becoming responsible for some of the associated costs. NHEC believes the cost causer should continue to be responsible for these costs. Trying to determine the remaining useful life of the pole, existing asset values, or shared costs for new plant would be an overly complicated process with too many possible scenarios. Given the amount of pole attachment applications a pole owner could experience in the coming years, the NH PUC should aim to simplify make-ready. This proposal would overly complicate the process and significantly add to the workload and timeframe to perform make-ready work and add significant delays in processing applications, especially for larger jobs.

In contrast, every party that spoke at the public comment session spoke in favor of adopting the OTMR provisions as proposed by the NH DOE. Therefore, NH DOE and NH PUC should not

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expand this rulemaking process to include provisions outside of OTMR. To the degree that either agency believes further updates are needed for Rule 1300, they should initiate another rulemaking process after this current process is completed. In this matter, they should adopt the proposed rule as submitted on April 6, 2022.

Thank you for your consideration of these comments.

Regards,



Elijah D. Emerson