

STATE OF NEW HAMPSHIRE
Before the
PUBLIC UTILITIES COMMISSION & DEPARTMENT OF ENERGY
Pole Attachment Rule Making
June 21, 2022
Comments of Until Energy Systems Inc. d/b/a Unutil

As described in related rulemaking notices of the New Hampshire Department of Energy (“DOE”) and the New Hampshire Public Utilities Commission (“Commission”), the DOE and Commission are undertaking aligned rulemaking actions relating to the regulation of pole attachments in New Hampshire. The Commission’s rulemaking is part of its Docket No. DRM 22-023, while the DOE does not have a separate docket for the rules. These aligned proceedings are intended to shift much of the Commission’s existing rules in Chapter Puc 1300 to the DOE which will adopt them as its new Chapter En 1300. More particularly, the Commission will retain the provisions of its existing rules relating to pole attachment rate setting and dispute resolution, and the DOE will assume responsibility for other pole attachment rules pertaining to issues of pole access. In addition, the DOE is adopting new provisions to implement one-touch make-ready (“OTMR”) consistent with the requirement of the Legislature in Senate Bill 88 (“SB88”), which was passed into law in 2021 and required that the State adopt OTMR rules that align with those already implemented by the Federal Communications Commission (“FCC”).

Consistent with the notices, the DOE and Commission held a joint public hearing on the proposed rules on June 10, 2022 and are accepting written comments until June 21, 2022. Enclosed are the written comments of Unutil Energy Systems, Inc. d/b/a Unutil (“Unutil” or the “Company”) pertaining to both sets of proposed rules. These comments are filed in the Commission’s Docket No. DRM 22-023, and are provided to the DOE’s representative consistent with the DOE’s notice of this rulemaking.

Initially, and consistent with its comments during the June 10, 2022 public hearing, in that the Commission is merely readopting and renumbering its rules pertaining to rate setting and dispute resolution without material substantive amendments, Unutil has no comments on the Commission’s proposed rules.

With respect to the proposed rules of the DOE, Unutil notes a single issue. In proposed En 1303.13(d) of the DOE’s Initial Proposal, it presently provides, in relevant part, “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.” In Unutil’s assessment, 3 business days is an insufficient time to assure that the pole owner will be able to review the proposed survey information. Unutil proposes that this rule be amended to provide for not less than 7 business

days' notice to the pole owner and affected existing attachers. This extension of time will provide an appropriate level of notice to the pole owner without materially affecting the time line for the deployment of new attachments.

While Unitil does not believe that substantial other changes to the Initial Proposals of the DOE and Commission are necessary or advisable, Unitil offers the below additional comments to respond to issues raised by other parties during the June 10, 2022 session. In general, Unitil opposes many of the other suggested changes as unnecessary, inadvisable, or inconsistent with New Hampshire law.

With respect to the rules proposed by the DOE, the New England Cable and Telecommunications Association ("NECTA") acknowledged that the DOE's rulemaking was intended primarily to realign the existing rules as between the DOE and Commission and that the only matter of substance was the narrow issue of implementing OTMR consistent with SB88. Recognizing this status, NECTA's only substantive recommendation was that the DOE align its definition of the term "larger order" with the definition already adopted by the FCC. Unitil notes that either definition does not make a material difference for Unitil. Accordingly, Unitil takes no position on NECTA's proposal.

Regarding the rules proposed by the Commission, NECTA argued that the Commission should modify its rate formula to adopt a single rate formula, and that the Commission should require pole owners to undertake expanded record keeping pertaining to their pole plant and make those records available upon request to current or prospective attachers. Regarding the rate formula, Unitil takes no position on the Commission adopting a single rate formula applicable to all attachments in New Hampshire. So far as Unitil is aware, presently the only difference in the formulae used by the Commission are that one requires the Commission to consider certain FCC regulations regarding the allocation of unused space on the pole, and one does not. In both instances, however, the rules provide only a set of considerations for the Commission to review in determining just and reasonable pole attachment rates, and do not dictate a particular calculation. Unitil takes no position on the Commission aligning the considerations it reviews in determining pole attachment rates.

With respect to the additional record keeping proposed by NECTA, Unitil opposes that request. Unitil already keeps significant and adequate records of its pole plant in New Hampshire and objects to a requirement that it be required to expand its record keeping activities solely for the benefit of attachers. To the extent NECTA or its members have concerns about the records or information of a particular pole owner, such concerns appear best addressed to that pole owner rather than being used to create expanded responsibilities for all pole owners. Furthermore, as NECTA and the Commission are well aware, certain pole owners are seeking, or may seek, to sell their pole assets. Pole assets are accounted for and recorded in different ways by different pole owners and, in Unitil's view, an acquiring pole owner should not be held responsible for enhanced record keeping to address the assets of a divesting pole owner. Accordingly, Unitil would oppose any proposed additional record keeping requirements.

Also at the June 10, 2022 public hearing Crown Castle Fiber, LLC (“CCF”) offered comments proposing numerous changes to both the DOE’s and the Commission’s proposed rules. In general, CCF contended that the DOE and Commission should essentially align all of their rules with the rules adopted by the FCC on the basis that the FCC’s rules are the prevailing rules elsewhere in the country. Regarding this general contention, Unitil notes that neither rulemaking notice includes any indication that either agency intended to adopt or implement any of the FCC’s rules other than to comply with the specific requirements of SB88 as it relates to OTMR. Further to this point, New Hampshire has long implemented its own scheme for the regulation of pole attachments and has specifically rejected implementation of the FCC’s rules. To the extent the State has determined to adopt the FCC’s requirements, it has done so in a specific and direct way, such as was done with SB88. For CCF to contend that the DOE and Commission should simply adopt and implement the FCC’s requirements because CCF would prefer that New Hampshire align with other states rejects New Hampshire’s history and current law and ignores the scope of the rulemaking being undertaken. Neither the DOE nor the Commission should accept the contention that New Hampshire should broadly implement the FCC’s pole attachment rules.

Beyond the general arguments, CCF also requested, without providing any details or analysis, that the DOE implement numerous other changes including:

- Imposing timelines on electric companies for all make-ready work in the electric space;
- Tightening the make-ready timelines for work the communications space;
- Expanding the self-help provisions to apply to work anywhere on the pole, including the electric space;
- Furthering the use of contractors; and
- Reducing the restrictions on the use of boxing or extension arms.

Unitil opposes each of these proposals. In the first instance, there has been no substantive discussion about these proposed changes to determine the potential operational and safety impacts, or to assess the costs. Without such discussion and analysis, there is no basis for the DOE to adopt or implement these proposed adjustments – the DOE simply has no information that could lead it to conclude that the proposed practices are safe, reasonable, or necessary. Further, Unitil strongly opposes any rule or proposed rule that would allow or require entities that Unitil does not employ to do any work in the electric space on the pole. Unitil’s electric facilities should not be compromised by opening work in the electric space to other contractors retained to assure efficient deployment of communications facilities.

Unitil appreciates the opportunity to provide these comments and is prepared to provide additional information or respond to any questions pertaining to the adoption of these rules by the DOE and the Commission.