

**THE STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DT 08-146**

**segTEL, Inc.**

**Request for Arbitration Regarding Failure to Provide Access to  
Utility Poles by Public Service Company of New Hampshire**

**SETTLEMENT AGREEMENT**

NOW COME segTEL, Inc. ("segTEL") and Public Service Company of New Hampshire ("PSNH"), parties in the above-referenced docket, by their undersigned attorneys, and hereby agree to stipulate to the following terms and conditions:

WHEREAS, segTEL and PSNH are parties to Docket No. DT 08-146 (hereinafter referred to as the "docket") now pending at the Public Utilities Commission;

WHEREAS, segTEL is a duly authorized Competitive Local Exchange Carrier ("CLEC") in the State of New Hampshire, and, as such is a public utility;

WHEREAS, PSNH is an incumbent electric utility in the State of New Hampshire, and the sole or joint owner of each of the utility poles in New London and Sunapee, New Hampshire, that are the subject of this docket;

WHEREAS, segTEL and PSNH are parties to a Pole Attachment Agreement dated April 6, 2004;

WHEREAS, pursuant to the said Pole Attachment Agreement, segTEL has requested and continues to request, and PSNH has granted and continues to grant, segTEL attachment licenses for poles in numerous locations throughout New Hampshire;

WHEREAS, pursuant to the said Pole Attachment Agreement, segTEL has sought access to 101 electric poles in New London and Sunapee, owned by PSNH, for the attachment of fiber

optic cables for segTEL's telecommunication use;

WHEREAS, segTEL remitted advance payment for field survey work on those poles with its applications to PSNH, and PSNH deposited segTEL's payments;

WHEREAS, the poles in question are located on private property pursuant to easement rights obtained by PSNH or its predecessors;

WHEREAS, the deeds conveying said easements to PSNH fall into two categories: those from the first half of the twentieth century (the "earlier deeds") and those from the second half (the "later deeds");

WHEREAS, the parties recognize that the earlier deeds and later deeds contain distinguishable conveyance language, and that the two categories of deeds may be analyzed by reference to representative language contained in each category;

WHEREAS, PSNH believes that it did not have authority to grant segTEL's attachment request pursuant to the language of all of the easement deeds;

WHEREAS, on November 14, 2008, segTEL filed with the Commission a Request for Arbitration Regarding Failure to Provide Access to Utility Poles by PSNH, initiating this docket;

WHEREAS, the Commission has found that the earlier deeds conveying easements to PSNH do not grant PSNH sufficient authority to grant segTEL a license to attach fiber optic lines to those poles governed by the earlier deeds;

WHEREAS, because the Commission has granted segTEL a rehearing on the question as to whether the conveyance language contained in the later deeds grant PSNH sufficient authority to grant segTEL a license to attach fiber optic lines to those poles governed by the later deeds, that issue remains unresolved;

WHEREAS, Carolyn Cole is the general counsel for segTEL and a duly authorized representative of segTEL;

WHEREAS, Christopher J. Allwarden is Senior Counsel, NUSCO Legal and a duly authorized representative of PSNH; and

WHEREAS, segTEL and PSNH have mutually determined it is not in their interests to litigate this matter further and have now agreed to settle the above-referenced docket upon the terms and conditions set forth herein;

NOW THEREFORE, it is agreed by and between the parties to this settlement agreement as follows:

- **Settlement.** The parties hereby agree to fully and finally settle the above-referenced docket upon the terms and conditions set forth below.
- **Withdrawal of pole attachment application.** Upon Commission approval of this Settlement Agreement, segTEL hereby agrees to withdraw its application for access to attach its fiber optic cables to the 101 poles owned by PSNH in New London and Sunapee, New Hampshire at issue in this docket;
- **Payment.** Upon Commission approval of this Settlement Agreement, PSNH will refund and repay to segTEL the amounts segTEL remitted as advance payment for field survey work with its applications to PSNH;
- **Understanding.** Both parties agree that there is no dispositive ruling on the substantive issue raised in the later deeds and that this issue therefore can be considered as not having been decided. Both parties agree that a final determination of the substantive issue raised would require introduction of additional evidence and

testimony as well as further legal briefing. Both parties agree that there is no need for further or conclusive determination on the substantive issue concerning the conveyance language contained in the later deeds at this time.

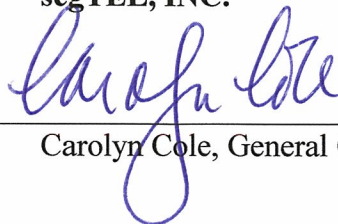
- **Controversy Mooted:** Upon Commission approval of this Settlement Agreement, the parties agree that the Arbitration Request and controversy at issue is mooted.
- **Complete Agreement.** The parties hereunder further agree that this Settlement Agreement represents the entire agreement between them in this matter. This Settlement Agreement represents the give and take of negotiation between the parties and is for the purposes of settling this docket only. As such, this Settlement Agreement may not be used for any other purpose by any party. The parties hereunder further agree that no part of this Settlement Agreement shall be used to abridge the rights of either party with respect to any proceeding other than the instant docket.
- **Approval By Commission.** This Settlement Agreement shall be submitted for and is contingent upon approval by the Commission, with prior notice to be given to all other parties in this docket. If the Commission shall determine that any part of this Settlement Agreement may not be approved, either party hereunder reserves the right to withdraw the entire agreement and move forward with the rehearing granted segTEL by the Commission.

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement on this

7<sup>th</sup> day of July 2010.

**segTEL, INC.**

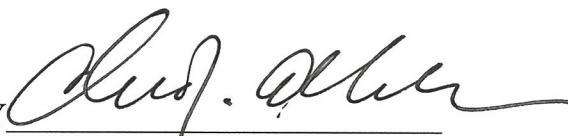
BY



Carolyn Cole, General Counsel

**PUBLIC SERVICE COMPANY OF  
NEW HAMPSHIRE**

BY



Christopher J. Allwarden, Senior Counsel,  
NUSCO Legal