

1 STATE OF NEW HAMPSHIRE
2 PUBLIC UTILITIES COMMISSION
3

4 February 3, 2009 - 10:04 a.m.
5 Concord, New Hampshire
6

7 RE: DT 08-146
8 SEGTEL, INC.:
9 Request for arbitration regarding failure
10 to provide access to utility pole by
11 Public Service of New Hampshire.
(Prehearing conference)

12 PRESENT: Edward N. Damon, Esq.
13 (Presiding as Hearings Examiner)

14 Diane Bateman, Clerk

15 APPEARANCES: Reptg. SegTEL, Inc.:
16 Jeremy Katz, appearing pro se
Kath Mullholand

17 Reptg. Public Service Co. of New Hampshire:
18 Christopher J. Allwarden, Esq.

19 Reptg. Unitil:
20 Scott Wade

21 Reptg. PUC Staff:
F. Anne Ross, Esq.
22 Robert Hunt, Esq.

23 Court Reporter: Steven E. Patnaude, LCR No. 52
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STATEMENTS OF PRELIMINARY POSITION BY:

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Mr. Katz

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Mr. Wade

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Mr. Allwarden

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Ms. Ross

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QUESTIONS BY MR. DAMON

22, 24, 25

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RESPONSES TO QUESTIONS BY:

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Mr. Katz

22, 24, 25

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Mr. Allwarden

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Ms. Ross

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1 P R O C E E D I N G S

2 MR. DAMON: Good morning, everyone. My
3 name is Edward Damon. I am the Director of the Legal
4 Division at the Commission. And, the Commissioners were
5 unable to attend this prehearing conference this morning,
6 and I've been asked to serve as a Hearings Examiner to
7 conduct the prehearing conference.

8 As I mentioned, this is a prehearing
9 conference in docket number DT 08-146. On November 14,
10 2008, segTEL, a registered competitive local exchange
11 carrier, filed a petition for arbitration or,
12 alternatively, adjudication regarding a denial by Public
13 Service Company of New Hampshire of access to electric
14 transbution poles for the attachment of telecommunications
15 cables. As segTEL describes it, "transbution" refers to
16 utility poles that carry low voltage electric facilities
17 that can accommodate both distribution and intrastate
18 transmission needs. SegTEL seeks to attach communications
19 cables or wires to approximately 100 such poles owned by
20 PSNH located on private property, pursuant to private
21 easement rights obtained by PSNH or its predecessors.

22 PSNH has filed an objection to segTEL's
23 petition and a Motion to Dismiss. SegTEL has objected to
24 PSNH's Motion to Dismiss. And, PSNH filed a motion to

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1 strike segTEL's objection. And, yesterday, Unitil Energy
2 Systems filed a Petition to Intervene. The petition is
3 late-filed, as under the order of notice the deadline for
4 filing Petitions to Intervene was January 29, 2009.

5 I'd like to start off by first taking
6 appearances.

7 MR. KATZ: Good morning. My name is
8 Jeremy Katz. I'm the Chief Executive Officer of segTEL.
9 I'm appearing pro se on behalf of my Company. And, with
10 me is Kathryn Mullholand, our Director of Operations.

11 MR. DAMON: Okay.

12 MR. WADE: How do you do. My name is
13 Scott Wade, with Unitil, Manager of Operations. Gary
14 Epler, our attorney, is unable to make it today.

15 MR. DAMON: Okay.

16 MR. ALLWARDEN: Good morning. Chris
17 Allwarden, attorney for Public Service Company of New
18 Hampshire. With me is Bob Hybsch, our Director of
19 Operations, Allen Desbiens, from our Regulatory Group, as
20 well as Catherine Eby, a paralegal in our Legal
21 Department.

22 MR. DAMON: Thank you.

23 MS. ROSS: Good morning, your Honor.
24 Anne Ross, with the Public Utilities Commission Staff.

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1 And, with me today is Rob Hunt, an attorney, and also Kate
2 -- I'm sorry, Kate Bailey, Director of the
3 Telecommunications Division, and also Josie Gage, in the
4 back of the room, who is a Utility Analyst.

5 MR. DAMON: Okay. Is the Office of
6 Consumer Advocate planning to attend today? Does anyone
7 know?

8 (No verbal response)

9 MR. DAMON: If I read the docket book
10 correctly, I believe they filed a Notice to Participate.

11 MS. ROSS: Yes, they did file a letter,
12 but we have not heard anything from them.

13 MR. DAMON: Would it be warranted for us
14 to make a call to the OCA to find out where they are and
15 to see if they intend to participate? Could you do that?

16 MS. BATEMAN: Sure.

17 MR. DAMON: Yes. Why don't we take a
18 brief recess while she does that and reports back.

19 (Brief recess taken at 10:08 a.m. and
20 the prehearing conference resumed at
21 10:10 a.m.)

22 MR. DAMON: Okay. Based on the results
23 of that telephone conversation, I expect the OCA will be
24 filing a notice of withdrawal of its participation.

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1 As I mentioned, Unitil yesterday filed a
2 Petition to Intervene. And, I guess a question I have of
3 you is, does the Company seek full and unlimited
4 intervention status or does it seek intervenor status with
5 limitations, such as those that interested utilities have
6 sometimes agreed to in other dockets?

7 MR. WADE: I guess, without my attorney
8 here, I'm not really all that familiar with these
9 proceedings. So, I guess I'm not too sure exactly what
10 the difference is of those, and I apologize for that.
11 But, if anybody wants to help me try to understand that, I
12 would. I'm here today to, at a minimum, at least
13 communicate that we have filed a Motion to Intervene, and
14 Unitil has interest in having similar concerns and the
15 effects of which on these matters as set forth by PSNH.
16 So, I'm not sure what the limitations are that you're
17 describing. You'll have to bear with me.

18 MR. DAMON: Well, for example, in the
19 EnergyNorth rate case, Unitil asked for full intervenor
20 status subject to certain voluntary limitations, okay?
21 That it would be entitled to receive all non-confidential
22 pleadings and other documents, all discovery that is not
23 confidential.

24 MR. WADE: Okay.

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1 MR. DAMON: And, all non-confidential
2 e-mails and other correspondence among the parties and
3 Staff, with the exception of materials related to
4 settlement negotiations and/or confidential matters. And,
5 it may attend and participate in non-confidential
6 technical sessions, but not attend settlement conferences
7 or negotiations, even in a monitoring role. And, Unitil
8 indicated in that case and, again, did not do so, did not
9 intend to present or cross-examine witnesses or file
10 closing briefs. And, that was done with the right to
11 withdraw or modify these voluntary limitations.

12 I guess the question I have for you is
13 how active does Unitil expect to be in these proceedings?

14 MR. WADE: We anticipate to be active.
15 We're looking for full party intervenor status is my
16 understanding. When you say "how active", I guess it's
17 difficult for me to judge that right now, depending upon
18 how it all rolls out.

19 MR. DAMON: Okay. Could I make a
20 request of you?

21 MR. WADE: Sure.

22 MR. DAMON: That you confer with
23 Mr. Epler and indicate the extent to which you wish to
24 participate, and whether these voluntary limitations are

1 ones that you are offering or not.

2 MR. WADE: Okay.

3 MR. DAMON: At any rate, for purposes of
4 today -- well, let me ask a question. Do any of the other
5 parties or participants want to weigh in on this question
6 at this time?

7 MR. KATZ: We have no objection to
8 Unitil's participation.

9 MS. ROSS: Staff has no objection to
10 Unitil's participation.

11 MR. ALLWARDEN: PSNH has no objection.

12 MR. DAMON: Okay. Well, that makes it
13 easier than I thought. Thank you. I will recommend then
14 to the Commission that the Commission grant Unitil's
15 petition.

16 I'd like to turn now to the preliminary
17 statements of position, starting with you.

18 MR. KATZ: Good morning, your Honor.
19 SegTEL has filed this complaint based on PSNH's unlawful
20 delay and denial of access to utility poles and
21 rights-of-way under its control. By way of brief
22 background, segTEL offers local access, transport, data,
23 broadband, and telephone services over fiber optic lines
24 that it attaches to the poles, conduits, ducts, and

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1 rights-of-way of incumbent electrical and telephone
2 utilities.

3 In January of 2008, segTEL applied to
4 attach to approximately 100 PSNH-owned utility poles in
5 Sullivan County, New Hampshire. As is usual and
6 customary, PSNH personnel engaged in a pre-attachment
7 safety survey to confirm that sufficient space existed for
8 segTEL to attach and that no modifications would need to
9 be made to accommodate segTEL's requested attachments. No
10 technical or safety impediments to segTEL's attachments
11 were identified. In early February of 2008, PSNH
12 deposited segTEL's payment of approximately \$1,100 as
13 compensation for the safety surveys.

14 By the second week of March 2008, the 45
15 day period to reject a pole attachment application had
16 passed and segTEL had not received any response from PSNH.
17 SegTEL repeatedly requested updates on the status of its
18 application and received no formal response from PSNH
19 until August the 6th, when PSNH rejected segTEL's pole
20 attachment application on the basis that its easements "do
21 not clearly allow PSNH to grant a third party
22 telecommunications company, such as segTEL, permission to
23 use and occupy PSNH's easement corridor for the
24 installation and operation of its private

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1 telecommunications line or cable."

2 The Commission has enumerated four
3 issues in this docket. The first, whether PSNH is
4 required to provide access to the poles in question under
5 federal and/or state law. In our complaint, we asked the
6 Commission to determine that PSNH's denial of access is
7 contrary to state and federal law. Since the prevailing
8 state law on pole attachments states that this Commission
9 is to be consistent with the current FCC rules on these
10 issues. I'm limiting my remarks this morning to the
11 status of FCC rulings, and will reserve later, if
12 necessary, state law argument to follow.

13 In complaints of this nature, the burden
14 of proof is on PSNH, according to 47 C.F.R. 1.1409, which
15 states that, in a case involving a denial of access, the
16 utility shall have the burden of proving that the denial
17 was lawful, once a prima facie case is established by the
18 complainant.

19 SegTEL is a competitive local exchange
20 carrier, duly authorized to do business in New Hampshire.
21 Section 224 of the Communications Act establishes that
22 access to poles, conduits, ducts, and rights-of way is an
23 affirmative right granted to competitive local exchange
24 carriers. In complaints before the FCC, the FCC has held

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1 that, by presenting evidence that a CLEC is duly
2 authorized, the complainant has established a prima facie
3 case that is entitled to pole access. At that point, the
4 burden shifts to the incumbent to show that it has
5 lawfully denied access. Therefore, since segTEL is
6 entitled to access, it is PSNH's burden to show that its
7 denial was lawful.

8 Since Section 224 allows exceptions to
9 attachment rights only for reasons of insufficient
10 capacity, safety, reliability, and generally applicable
11 engineering purposes, and PSNH's denial was based on none
12 of these, segTEL contends PSNH's denial was unlawful.
13 Therefore, PSNH is required to provide access to the poles
14 in question under federal and state law.

15 Second, the Commission asked whether
16 PSNH's response to segTEL's request for access to poles
17 was reasonable? In segTEL's complaint, we asked the
18 Commission to order PSNH to issue licenses to segTEL
19 without further delay. 47 C.F.R. 1.1403(b) requires that
20 access be granted within 45 days of a request. The fair
21 question to ask is "requires or what?"

22 The FCC has replied that a pole owner
23 must "deny a request for access within 45 days of
24 receiving such a request or it will otherwise be deemed

1 granted." And, this must be so, because the intent of the
2 pole attachment act was to ensure that no party can use
3 its control of facilities to impede the installation and
4 maintenance of telecommunications and cable equipment by
5 those seeking to compete in those fields. The FCC has
6 found that "Time is of the essence", and that regulators
7 must "seek to establish swift and specific enforcement
8 procedures that will allow for competition where access
9 can be provided."

10 In situations where an incumbent utility
11 owns bottleneck facilities, such as utility poles and
12 rights-of way, and time is of the essence in deployment,
13 competitive harm ensues when the incumbent fails to
14 provide timely access. No response or delayed responses
15 hamstring competitive deployment, harm competitors, and
16 increase costs. If the intent of a utility is to impede
17 access, then refusing to respond, ensuring that every
18 request for access leads to a Commission adjudication,
19 effectively denies a CLEC access to the affirmative right
20 granted by the U.S. Congress in Section 224 of the
21 Communications Act.

22 PSNH's response was unreasonable, by
23 virtue of the fact that it came 46 or more days after
24 segTEL's request. PSNH's response was additionally

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1 unreasonable because their concerns over a right-of-way
2 that existed for decades could and should have been
3 determined within 45 days of the application, and not six
4 months later after repeated escalation by segTEL.

5 Finally, nothing in PSNH's rejection
6 points to any allowable circumstance for the rejection of
7 a pole attachment application. Therefore, PSNH's response
8 was unreasonable, and segTEL's request should be deemed
9 granted as of the 45th day after segTEL's application.

10 Third, the Commission asked whether
11 segTEL has any responsibility under the law or the
12 agreement to separately obtain private rights-of-way in
13 order to attach? In our complaint, we asked the
14 Commission to determine (1) that CLEC attachers are
15 entitled to access to incumbent utility rights-of-way; and
16 (2) that electric utility rights-of-way are presumptively
17 compatible with the deployment of fiber optic cable.

18 47 U.S.C. 224 and RSA 374:34-A
19 explicitly provide CLECs, such as segTEL, the right to
20 access poles, conduits, ducts, and rights-of-way
21 controlled by incumbent utilities. Prior to the enactment
22 of the '96 Telecommunications Act, Congress had already
23 established both the entitlement to and the presumptive
24 compatibility of electric rights-of-way and easements with

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1 communications uses in 47 U.S.C. 621(a)(2), the Cable Act.
2 374:34-A anticipates starting where the FCC and Congress
3 left off in regulating the pole and right-of-way
4 attachments. There is a large body of federal precedent
5 on this issue. Section 224 of the Act, RSA 374:34-A, and
6 Section 253 of the Act all provide affirmative entitlement
7 to rights-of-way access to controlled by incumbent
8 utilities.

9 PSNH, in their rejection letter to
10 segTEL, argues that the private right-of-way easements
11 must clearly authorize competitive fiber optic attachments
12 in order for PSNH to be comfortable issuing an attachment
13 license. Such arguments were laid to rest when cable TV
14 was granted access to incumbent rights-of-way, and need
15 not be adjudicated here. Rather, the appropriate analysis
16 is whether any of PSNH's easements expressly prohibit
17 communications attachments. SegTEL contends that they do
18 not.

19 Finally, the Commission questioned
20 whether arbitration or some other informal means of
21 resolving disputes is appropriate? In our complaint, we
22 requested that the Commission accept segTEL's request for
23 arbitration in this matter. We believe arbitration is the
24 most efficient and reasonable means of resolving a dispute

1 for three reasons. First, there's a complete and copious
2 body of law. Most of the facts as well are agreed upon
3 between segTEL and PSNH. This is not a de novo review of
4 access; access to utility rights-of-way has been
5 thoroughly vetted by the FCC and the courts. Second, time
6 is of the essence. Third, the Commission has, in prior
7 proceedings, recognized the propriety of arbitration in
8 circumstances regarding access to poles, conduits, ducts,
9 and rights-of-way.

10 There are other questions that might
11 arise if segTEL's complaint is adjudicated. Specifically,
12 whether PSNH acted in a discriminatory manner when it
13 rejected segTEL's application? PSNH, under federal and
14 state law, has an obligation to treat all attachments in a
15 competitively neutral and nondiscriminatory manner. To
16 the extent that PSNH has provided other telecommunications
17 attachers with access to poles, conduit, and right-of-way
18 on similarly situated routes, yet rejected segTEL's
19 request, it has acted in a discriminatory manner. As an
20 incumbent utility, PSNH may not provide a competitive
21 preference to other carriers or to itself to the detriment
22 of any prospective attacher.

23 Additionally, whether any waiver of
24 temporary rules might be appropriate. SegTEL entered into

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1 a pole attachment agreement with PSNH under a federal
2 regulatory regime prior to the point where the
3 Commission's interim pole attachment rules were
4 instituted. To the extent that it may be necessary,
5 segTEL reserves the right to ask the Commission to waive
6 its temporary rules, specifically any rule that presumes
7 segTEL's pole attachment agreement with PSNH to be just,
8 reasonable, or voluntary.

9 In conclusion, I'd like to note it's now
10 been a year since segTEL has sought to attach on this
11 route. SegTEL's customers waiting for fiber optic service
12 include both a large college and a major hospital that are
13 the primary employers for the communities that we're
14 attempting to reach, along with other business and
15 residential customers. This delay in granting attachment
16 rights not only deprives segTEL of revenue and potential
17 profit, but also harms these and many other actual and
18 potential segTEL customers who stand to benefit from
19 innovative facilities-based fiber optic services.

20 Congress granted the affirmative right
21 of access to rights-of-way in order to ensure that
22 competitors were not unduly delayed or denied access. The
23 necessity and expense of adjudicating our right,
24 potentially each and every time segTEL would like to

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1 extend its network, simply undoes what Congress and the
2 New Hampshire Legislature have sought to do.

3 We ask that the Commission grant
4 segTEL's access to PSNH's poles, conduits, and
5 rights-of-way in a manner that ensures both the letter and
6 intent of the law is upheld. Thank you.

7 MR. DAMON: Thank you. Mr. Wade?

8 MR. WADE: Yes.

9 MR. DAMON: Do you have anything on the
10 merits as a preliminary statement?

11 MR. WADE: I think I've probably already
12 stated, as already stated, Unitil's Petition to Intervene,
13 have a full intervenor status. We have an interest in the
14 concerns and effects of this, similar to PSNH. And, we'll
15 be looking at it further and commenting as the docket goes
16 along. But, other than that --

17 MR. DAMON: Thank you. Mr. Allwarden.

18 MR. ALLWARDEN: Yes. Thank you. Good
19 morning. My commendation to Jeremy on a very well thought
20 out presentation. Unfortunately, I think there are some
21 mischaracterizations of this situation of the facts and
22 the law. I have addressed most of, if not all, of
23 Jeremy's comments in our filings. So, let me just briefly
24 summarize for your purposes what our position is.

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1 We filed a motion to strike, I think
2 that's clear. There was an objection to our original
3 Motion to Dismiss filed twelve days late. The facts are
4 set out in the motion. I don't think we need to go beyond
5 that, except I don't think there has been any excuse
6 presented by segTEL as to the reason why their objection
7 to our Motion to Dismiss was filed almost two weeks beyond
8 the PUC's own procedural rules.

9 With regard to the merits, I think we
10 originally moved to dismiss, because the original request
11 was to arbitrate a claim of denial of access. There
12 really is no basis to request an arbitration. The
13 original request for that submitted by segTEL had to do
14 with the arbitration procedures that are in place for
15 interconnections between CLECs and ILECs. I don't think
16 that applies here. So, if that's still the request, I
17 think it deserves dismissal.

18 To the extent there is some
19 jurisdictional issue with regard to a denial of pole
20 access, I suppose the Commission could consider that under
21 the current statute, which was recently enacted, 374:34-A.
22 But let me speak to that. Because I think the key that I
23 want you to understand today is that there has been really
24 no denial of pole access. We are not opposed to allowing

1 segTEL, under the right conditions, as we're allowed to
2 impose, to attach to the poles in this location. What we
3 have had to do is take a close look at the private
4 property issues involved here. And, I've gone into those
5 to some degree in the filings.

6 We have a different situation than the
7 usual pole attachment request. The usual pole attachment
8 request applies to poles in a street, subject to our
9 standard pole construction. And, those poles are in the
10 street by license of a municipality granted to Public
11 Service. This situation is a bit different. Here we have
12 a request to attach to 100 plus poles that are in a
13 private 100-foot wide right-of-way, where PSNH has
14 maintained for many years a 34 and a half kV power line.
15 That line serves today, it used to be known as
16 "transbution", in the Restructuring Settlement it's now
17 classified technically as "distribution". It serves a
18 distribution function. It doesn't have any
19 telecommunications attachments on it today. But the
20 underlying question becomes the issue of the rights to
21 have those poles in those locations.

22 Now, what segTEL doesn't want to
23 recognize is that the FCC rules, the FCC Federal Pole
24 Attachment Act, even the state law granting the Public

1 Utilities Commission jurisdiction over pole attachments,
2 reflects that a utility has an obligation to provide
3 access only to poles, ducts, conduits, right-of-ways that
4 are owned or controlled by it. And, that key language
5 "owned or controlled" has been interpreted by the FCC to
6 mean something. It has a meaning. It means that the
7 utility, in the context of right-of-way or easement
8 rights, has to own rights sufficient to allow access.
9 And, our position is that our easements, in this location,
10 do not clearly allow us to permit access by a third party
11 CLEC. It's as simple as that.

12 And, I think the FCC rulings very
13 clearly indicate that that becomes an issue of state law
14 interpretation of the easements of what's allowed. I
15 think that's the issue that the Commission has to face
16 here. Does the Commission wish to require Public Service,
17 in light of those easements, to require that we provide
18 access? I think there's a significant private property
19 right issue that has to be dealt with. And, I don't think
20 segTEL wants to deal with it. They just want to argue to
21 you and to the Commission, excuse me, that they have
22 federal access rights, and those federal access rights
23 basically entitle them to a utility pole attachment
24 wherever it may be. And, we disagree with that notion.

1 So, that's the fundamental issue I think
2 that is raised by their objection. Beyond that, I don't
3 know how we solve it. I'm sure we can discuss it. There
4 may be ways to work around that. We're willing to talk to
5 segTEL about that, see if there's a way that we can get
6 them what they need, which is the ability to attach, but
7 at the same time address what I consider to be some pretty
8 significant private property issues. Thank you.

9 MR. DAMON: Ms. Ross.

10 MS. ROSS: Thank you, your Honor. At
11 this point, Staff has not developed a position on the
12 substantive issues in this docket. We believe that it's
13 going to be necessary to conduct some discovery to flesh
14 out some issues concerning the nature of the easements and
15 the nature of PSNH's use of those easements and other
16 related issues.

17 With regard to the Motion to Dismiss,
18 Staff does not believe it's appropriate to dismiss this
19 docket at this point. However, we do agree with PSNH that
20 it isn't appropriate to apply the fast-track arbitration
21 procedure to this docket, because the docket does not deal
22 with the type of issues that are typically covered under
23 those fast-track arbitration agreements. Those are
24 generally -- Those generally involve interconnection

1 agreements between the incumbent telephone provider and a
2 competitive local exchange provider. Thank you.

3 MR. DAMON: Okay. Thank you. In terms
4 of the business to be conducted here today, I hope
5 everyone is not under the impression that I'm here to rule
6 on the Motion to Dismiss. I'm here to try to, you know,
7 do a prehearing conference and get the parties started on
8 a procedural schedule and so forth. But let me -- there
9 are a couple of questions I would like to ask the parties
10 while they're here in that connection.

11 First, a question of segTEL, Mr. Katz.
12 The Company has requested arbitration or, in the
13 alternative, adjudication as a complaint under RSA 365:1.
14 And, in view of that, well, I guess my question is, the
15 interim rules of the Commission, Part 1304, provide a
16 dispute resolution process for poles attachment disputes.
17 And, what is the relevance of that process to the
18 Company's original request?

19 MR. KATZ: Well, I think that we have a
20 bit of a disagreement with PSNH about whether or not
21 denial of access has actually occurred. To the extent
22 that we have made our attempt to access poles, and we
23 believe that we have either been denied or received a de
24 facto denial of access, we are attempting to access the

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1 Commission adjudicative process. Our attempts to resolve
2 the issue with the party have failed. And, we do -- And,
3 at the same time, we do think that arbitration is still
4 the appropriate mechanism for that, although we would
5 accept a formal adjudication, because taking from the
6 original arbitration language that was taken from DE
7 96-252, in situations where "both the need to use the
8 limited and valuable right-of-way would be a detriment to
9 either party was required as a process where situations
10 can be expediently and fairly handled" is the quote from
11 that case, you know, specifically recommending the
12 fast-track arbitration process.

13 MR. DAMON: Well, apart from
14 arbitration, which I understand is a separate procedure,
15 --

16 MR. KATZ: Yes.

17 MR. DAMON: -- you've mentioned, and as
18 does the order of notice, an adjudication or an
19 adjudicative procedure, but I think you've specifically
20 asked in that regard for the filing to be treated as a
21 complaint under RSA 365:1.

22 MR. KATZ: Yes.

23 MR. DAMON: And, I guess my question is,
24 is that all or are you also seeking, if necessary, to have

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1 your filing treated as a request for a dispute resolution
2 pursuant to the Commission's interim rules?

3 MR. KATZ: We would, we would
4 additionally, if it was appropriate, if the Commission
5 felt that it was more appropriate, request that it be
6 treated as a dispute resolution for denial of access under
7 the interim rules.

8 MR. DAMON: Okay. And, just so I
9 understand, and now this is a question for anyone who
10 wants to address it, what is the practical difference that
11 results from the form of the proceeding, whether it was an
12 arbitration, a complaint under 365:1, or a petition under
13 the dispute resolution process for pole attachments?

14 MR. KATZ: Well, segTEL's primary
15 concern is the speed in which this issue can be resolved.

16 MR. DAMON: Okay. Mr. Allwarden?

17 MR. ALLWARDEN: Well, I'm not a CLEC,
18 I'm not an ILEC, and I've never been in that type of
19 arbitration proceeding. I suspect that Jeremy meant what
20 he just said, and that is he's interested in a prompt
21 resolution of this question here. We're in favor of that.
22 I mean, we're not opposed to that. I don't know if an
23 arbitration is appropriate. But, obviously, if the
24 Commission feels it has jurisdiction, then it's going to

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1 proceed based on its procedural rules.

2 MR. DAMON: Uh-huh. Ms. Ross?

3 MS. ROSS: Staff has no further comment
4 on the ramifications of which, whether we go under 365:1
5 or the dispute resolution process of the 1300 rules. We
6 do observe that there is going to need to be some
7 discovery. So, whatever process the Commission chooses
8 should allow for some fact-gathering.

9 MR. DAMON: Uh-huh. Thank you. And,
10 Mr. Katz, another question for you. It wasn't perfectly
11 clear, I didn't think, from your filing, but for what
12 purposes does segTEL request access to PSNH's poles?

13 MR. KATZ: For the placement of fiber
14 optic cable.

15 MR. DAMON: And, what is fiber optic
16 cable to be used for in the locations in which they have
17 not granted your request?

18 MR. KATZ: To be used for local,
19 intrastate, and interstate telecommunications purposes, as
20 well as data and broadband applications.

21 MR. DAMON: Okay. Another question for
22 you is, for the purposes of this docket, does the Company
23 intend to engage an attorney to assist it?

24 MR. KATZ: Not at this time. SegTEL's a

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1 small New Hampshire based company. And, to the extent
2 that we would have to engage counsel each and every time
3 we might have a disagreement about our right to access, it
4 would simply make deployment even less possible or
5 feasible, you know, for us. So, not at this time.

6 MR. DAMON: Okay. Yes, I mean, that
7 choice I think is up to you, certainly. I just would
8 observe that I think that the use of an attorney might,
9 and I would underline that, help to aid in the resolution
10 of the proceeding, because there are, it seems to me, a
11 lot of legal questions here. It's something to consider.
12 And, to the extent this case sets any sort of precedent or
13 policy framework or approaches and so on, it might be
14 worth considering. That's a personal view, and just, you
15 know, --

16 MR. KATZ: Thank you.

17 MR. DAMON: Okay. Clearly, in the
18 technical session to follow, the parties need to discuss a
19 procedural schedule to be developed. And, I would ask
20 that, when that is finished, that you provide me with a
21 copy of that, so that I can include that in my report to
22 the Commission.

23 Just a couple of other observations on
24 the state of the proceeding here. I think one thing is

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1 that the Motion to Dismiss probably needs to be acted on
2 in a fairly speedy time frame here, and right at the --
3 and near the outset, although it may be subject to some
4 further fact-gathering or possibly the filing of an agreed
5 statement of facts, to the extent there's any, that that
6 can be accomplished.

7 So, in terms of the matters to be
8 explored during the tech session, let me just urge that
9 the parties discuss whether a stipulation or an agreed
10 statement of facts is a means of -- is a practical means
11 of getting the questions, the legal questions regarding
12 PSNH's Motion to Dismiss before the Commission. Or, if
13 not, what limited additional discovery is necessary to
14 allow the Commission to make a ruling on the motion.

15 I know there's been a lot of legal
16 argument, both in the papers that have been filed to date
17 and again this morning. I would also ask that parties
18 consider whether any further briefing is appropriate or
19 not, and whether oral argument on the Motion to Dismiss is
20 appropriate.

21 Another request regarding the procedural
22 schedule would be that it not only cover the steps through
23 the Motion to Dismiss, but also, to the extent feasible,
24 cover the steps after that, through the completion of the

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1 docket, so that we don't have to keep coming back and
2 getting an additional procedural schedule.

3 Is there anything else to come before
4 the prehearing conference this morning?

5 (No verbal response)

6 MR. DAMON: Okay. Hearing none, I'll
7 close the prehearing conference and allow the parties to
8 engage in a technical session.

9 (Whereupon the prehearing conference
10 ended at 10:41 a.m. and the parties and
11 Staff held a technical session
12 thereafter.)
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