

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 10-193

JOHN S. DERR AND THOMAS S. DERR

**Petition for License to Construct and Maintain Electric Lines
Under Squam Lake in the Town of Center Harbor**

Order *Nisi* Granting License

O R D E R N O. 25,406

September 4, 2012

On July 26, 2010, John S. Derr and Thomas S. Derr (together, "Derr Brothers") filed a petition pursuant to RSA 371:17 requesting a license to construct and maintain electric cable and conduit lines under and across the public waters of Squam Lake in the Town of Center Harbor, New Hampshire. By their petition, the Derr Brothers seek to license crossings updated in 1996, and again updated in 2011-2012 during the pendency of this docket.

According to the petition, the Derr Brothers seek to establish a proper license under RSA 371:17 for a series of underwater electric cable and conduit installations serving Kimball Island, an island in Squam Lake owned by the Kimball Island Trust. The Derr Brothers, through their contractor, had previously secured a license under RSA 371:17 for the installations originally built in 1979, via Commission Order No. 13,712 (July 2, 1979), in Docket No. DE 79-124. The Derr Brothers, on the basis of faulty advice given by another contractor, did not secure a prior license under RSA 371:17 for improvements made in 1996 to a portion of the underwater crossing installations. The Derr Brothers' petition seeks to remedy this defect, to bring the installations into compliance with RSA 371:17, and to facilitate conveyance of a submarine

distribution service line to the electric utility serving Center Harbor, the New Hampshire Electric Cooperative, Inc. (NHEC).

In preparation for such conveyance to NHEC, and under NHEC's overall technical direction, the Derr Brothers integrated certain improvements to the underwater installations during the pendency of this docket in 2011-2012, with a proper license from the New Hampshire Department of Environmental Services (NHDES), as discussed in a Staff recommendation filed on June 22, 2011 regarding the status of the Derr Brothers' petition. The Derr Brothers state that the requested license is necessary for the provision of electric service by NHEC to Kimball Island, would meet all safety standards, and would not substantially affect the rights of the public in the public waters of Squam Lake. Accordingly, the Derr Brothers request that the Commission approve the license petition and, by means of an order *nisi*, grant them a license to construct and maintain underwater electric cable and conduit crossings under and across the public waters of Squam Lake, as specified in their petition.

The crossings for which license is sought by the Derr Brothers are as follows: Segment 1, an underwater crossing of Squam Lake from an above-ground pole owned by NHEC at Center Harbor Neck to a pad-mounted transformer on Kimball Island (Segment 1 is to be conveyed to NHEC); Segment 2, from a point approximately 100 feet north of the pad-mounted transformer, under Squam Lake for approximately 2600 feet, to a small rocky gap on the eastern shore of Kimball Island; and Segment 3, from this small rocky gap on the eastern shore of Kimball Island, under Squam Lake for approximately 100 feet to a point located on Kimball Island shoreline owned by Thomas S. Derr.

On August 15, 2012, based on its review of the filing, related communications with the Derr Brothers, and an on-site visit to view the installations on June 27, 2012, Commission Staff filed a recommendation that the Derr Brothers' petition be approved subject to a series of conditions related to ensuring safe operation of the proposed underwater electric cable and conduit crossings of Squam Lake (Safety Conditions). Safe ongoing operation of the installations across these public waters is an inherent component of the public rights standard specified by RSA 371:20. *See* Staff Recommendation of Randall Knepper, dated August 15, 2012.

RSA 371:17 provides that "[e]very corporation and individual desiring to cross any public water or land for any purpose herein defined shall petition the [C]ommission for a license in the same manner prescribed for a public utility." Permissible purposes include the construction of an electric cable under the public waters of this State., Squam Lake is listed on the NHDES official list of public waters, therefore the Derr Brothers' proposed crossing of portions of Squam Lake is governed by RSA 371:17.

See http://des.nh.gov/organization/divisions/water/dam/public_waters/index.htm

Based on the information presented by the Derr Brothers and the review and recommendation of Staff, we find that the license requested by the Derr Brothers pursuant to RSA 371:17 may be exercised, subject to the Safety Conditions requested by Staff, without substantially affecting the public rights in the affected public waters, including the right to safe enjoyment of such waters, as required for approval under RSA 371:20. We find that the crossing is for the public good and we approve the petition on a *nisi* basis in order to provide any

interested party the opportunity to submit comments on said petition or to request a hearing, subject to the following Safety Conditions:

1. Protective covering of the electric cable shall be maintained in any area that is less than 6 feet deep either via conduit, concrete covering, or equivalent protective methods;
2. All future alterations to the crossings that may affect the public shall conform to the requirements of both the 2002 and 2007 editions of the National Electrical Safety Code (NESC) (Part 3), and be submitted to the Commission for its consideration 60 days prior to such alterations; and
3. The Derr Brothers or their assignees shall maintain and operate the crossings in conformance with the NESC Part 3.

The petition and subsequent docket filings are posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2010/10-193.html>

Based upon the foregoing, it is hereby

ORDERED *Nisi*, that subject to the effective date below, John S. Derr and Thomas S. Derr are authorized, pursuant to RSA 371:17, *et. seq.*, to construct, maintain and operate the underwater electric cable and conduit installations under the public waters described in their petition and depicted in their July 26, 2010 filing, and supplemental filings with this Commission; and it is

FURTHER ORDERED, that John S. Derr and Thomas S. Derr, and their assignees, comply with all of the Safety Conditions listed in this Order *Nisi*; and it is

FURTHER ORDERED, that John S. Derr and Thomas S. Derr shall provide a copy of this Order *Nisi* to the (i) Town Clerk of Center Harbor, New Hampshire, (ii) the New Hampshire

Attorney General, (iii) and the New Hampshire Department of Environmental Services, by first class mail, no later than September 14, 2012, and to be documented by affidavit filed with this office on or before October 4, 2012; and it is

FURTHER ORDERED, that the Petitioners shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than September 14, 2012 and to be documented by affidavit filed with this office on or before October 4, 2012; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than September 21, 2012 for the Commission's consideration; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than September 28, 2012; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 4, 2012, unless John S. Derr and Thomas S. Derr fail to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this fourth day of
September, 2012.

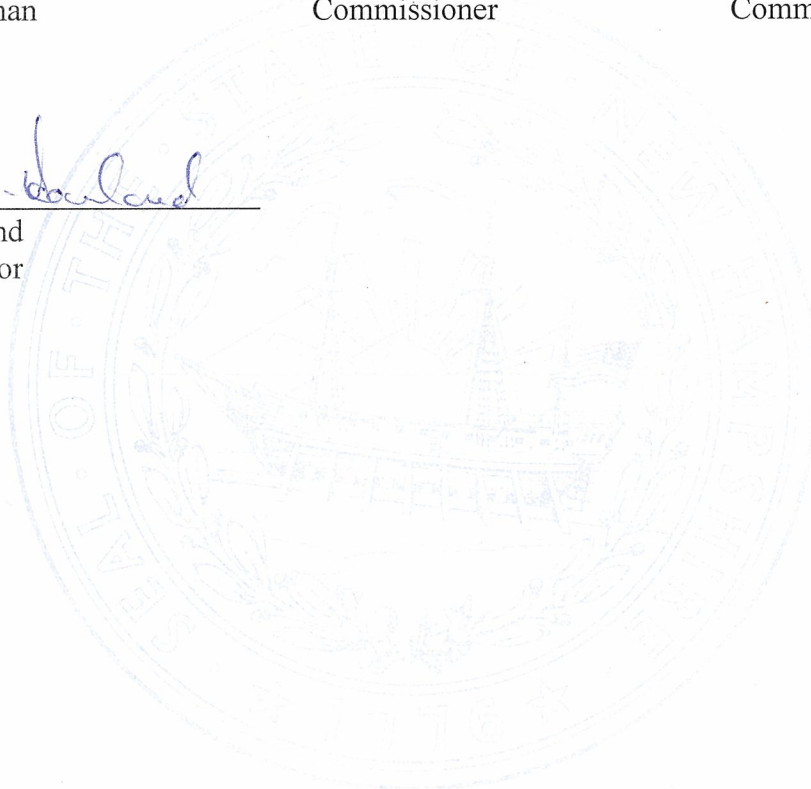
Amy L. Ignatius
Amy L. Ignatius
Chairman

Michael D. Harrington
Michael D. Harrington (KNS)
Commissioner

Robert R. Scott
Robert R. Scott
Commissioner

Attested by:

Debra A. Howland
Debra A. Howland
Executive Director



SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

Executive.Director@puc.nh.gov
amanda.noonan@puc.nh.gov
edward.damon@puc.nh.gov
Meredith.A.Hatfield@oca.nh.gov
mike@ridgesend.com
randy.knepper@puc.nh.gov
shakyace@yahoo.com
tderr@email.smith.edu
tom.frantz@puc.nh.gov

Docket #: 10-193-1 Printed: September 04, 2012

FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with: DEBRA A HOWLAND
EXEC DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.