

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DT 12-070**

**NEW HAMPSHIRE OPTICAL SYSTEMS, INC.**

**Petition for Authorization to Construct and Maintain Fiber Optic Communications Cable  
Over and Across Two Public Water Body Crossings of the Sugar River in Newport  
(Segment 2)**

**Order *Nisi* Granting License**

**ORDER NO. 25,429**

**October 23, 2012**

**I. SUMMARY OF THE PETITION**

On March 16, 2012, New Hampshire Optical Systems, Inc. (NHOS)<sup>1</sup> filed a petition pursuant to RSA 371:17 requesting a license to construct and maintain fiber optic cables over and across the public waters of the Sugar River at two points located in Newport, New Hampshire, listed below. Following Staff's review, NHOS filed revisions to its petition on September 25, 2012.

The fiber optic cable NHOS proposes to install over the listed water crossings will be part of the Network New Hampshire Now (NNHN) Middle Mile Fiber network, which NHOS states will extend the availability of internet access and broadband communications to areas of New Hampshire presently receiving limited, or no service. According to the petition, the project is funded by a grant from the Federal Broadband Technology Opportunities Program (BTOP). In adherence with BTOP guidelines, NHOS asserts that it will build and maintain an open access,

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<sup>1</sup> On August 13, 2010, the Commission authorized NHOS to provide competitive local exchange services in New Hampshire. See *CLEC Authorization CL-08-002-10 (Docket No. DT 10-215)*.

non-discriminatory network offering; (1) broadband providers the ability to economically expand their services areas, (2) companies the opportunity to build private networks they own and control, and (3) users more choice and affordability in their internet access and communications products.

***A. Crossing Locations and Construction***

According to the petition, all of the proposed crossings will be placed between existing utility poles in existing public rights-of-way. NHOS attached diagrams to its petitions providing the exact distances between poles for each river crossing.

The water crossings are located as follows:

- Across the Sugar River, adjacent to the west side of Route 11/103 between Elm Street and South Main Street between utility poles E 2/32, T 306/84 and E 2/30, T 306/85 in Newport, and
- Across the Sugar River adjacent to the north side of Route 103 in the vicinity of Ayers Road between utility poles E 26/69, T 937/41, and E 26/68, T 937/40 in Newport.

NHOS's petition describes the configurations of the proposed cable crossings as well as the clearance and sag requirements for each crossing. According to NHOS, sag and tension calculations were done pursuant to applicable National Electrical Safety Code (NESC) and statutory requirements.

### ***B. Regulatory Requirements***

According to the petition, permits from the New Hampshire Department of Environmental Services (NHDES) or the New Hampshire Department of Transportation (NHDOT) are not required for this project.

### ***C. Property Rights***

NHOS affirms that each of the proposed crossings will be placed within existing public rights-of-way, on existing utility poles.

## **II. SUMMARY OF STAFF REVIEW**

Upon review of the petition, the Commission Staff filed a memorandum on September 14, 2012, finding the proposed construction and sagging designs to be in conformance with the applicable sections of the NESC. Staff recommended approval of NHOS's petition, subject to certain conditions related to ensuring the safe operation and maintenance of the proposed crossings. *See* Staff Recommendation of Leszek Stachow, filed on September 14, 2012.

## **III. COMMISSION ANALYSIS**

RSA 371:17 requires utilities and corporations to petition the Commission for a license to construct and maintain cable, conduit or poles and associated wires and fixtures over, under or across any public waters of the state, whenever such facilities are necessary to meet the reasonable requirements of service to the public. Public waters, as defined in RSA 371:17, means all ponds of more than 10 acres, tidewater bodies, and such streams or portions thereof as the Commission may prescribe. The NHDES is assigned responsibility under RSA 271:20 for preparing, maintaining, and publishing an official list of all public waters in the state. Each body

of water listed in the instant petition is included in the official list, which is maintained at [http://des.nh.gov/organization/divisions/water/dam/public\\_waters/index.htm](http://des.nh.gov/organization/divisions/water/dam/public_waters/index.htm).

Based on the information presented in NHOS's petition and Staff's memorandum recommending approval of the crossings, we find the proposed crossings necessary for NHOS to meet the reasonable requirements of reliable service to the public within NHOS's authorized service territory, as required by RSA 371:17, and that the requested license may be exercised without substantially affecting the public rights in the affected public waters, as required for approval under RSA 371:20. We find the crossings are in the public good and therefore approve the petition on a *nisi* basis, subject to the conditions recommended by Staff. Our decision is issued on a *nisi* basis in order to provide any interested party the opportunity to submit comments on NHOS's petition or to request a hearing. We note that NHOS is responsible for obtaining any and all other permits for the installation of the proposed crossings from any federal, state, and local authorities having jurisdiction. Finally, inasmuch as NHDES is responsible by statute for maintaining the official list of public waters, and given NHDOT's oversight of railroads, roads, and bridges, we require that notice of the proposed crossings be sent to NHDES and NHDOT. We also require notice of each crossing to the town of Newport.

The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2012/12-070.html>.

**Based upon the foregoing, it is hereby**

**ORDERED *NISI***, that subject to the effective date below, NHOS is authorized, pursuant to RSA 371:17 *et seq.*, to construct, maintain and operate fiber optic and other lines over and across the public waters described in its petition and depicted in its filings; and it is

**FURTHER ORDERED**, that all construction and future alterations of these approved crossings shall conform to the requirements of the National Electrical Safety Code, in accordance with N.H. Code Admin. Rules Puc 306.01 and Puc 1303.07 and all other applicable safety standards in existence at that time; and it is

**FURTHER ORDERED**, that NHOS submit any future proposed alterations to the crossing license granted herein at least 60 days prior to any such alteration(s); and it is

**FURTHER ORDERED**, that copies of all permits, if any, required by the New Hampshire Department of Environmental Services, the New Hampshire Department of Transportation, any other federal, state, or local authorities, and any of the affected municipalities, for these crossings be filed in this docket with this Commission; and it is

**FURTHER ORDERED**, that NHOS shall provide a copy of this order to the: (i) Town Clerk of Newport, New Hampshire; (ii) New Hampshire Attorney General and the owners of the land bordering on said public waters at the location of the crossing, pursuant to RSA 371:19; (iii) the Department of Environmental Services; and (iv) pursuant to RSA 422-B:13, the New Hampshire Department of Transportation and the Office of Secretary, U.S. Department of Commerce by first class mail, no later than November 2, 2012, and to be documented by affidavit filed with this office on or before November 19, 2012; and it is

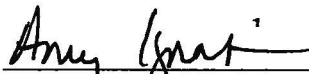
**FURTHER ORDERED**, that NHOS shall cause a copy of a summary of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than November 2, 2012 and to be documented by affidavit filed with this office on or before November 19, 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 November 9, 2012 for the Commission's consideration; and it is

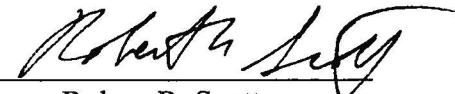
**FURTHER ORDERED**, that any party interested in responding to such comments or request for hearing shall do so no later than November 16, 2012; and it is

**FURTHER ORDERED**, that this Order *Nisi* shall be effective November 22, 2012, unless NHOS fails 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 twenty-third day of October, 2012.

  
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Amy C. Ignatius  
Chairman

  
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Michael D. Harrington  
Commissioner

  
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Robert R. Scott  
Commissioner

Attested by:

  
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Debra A. Howland  
Executive Director