

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

NEW HAMPSHIRE OPTICAL SYSTEMS, INC.
DT 12-107

OBJECTION TO segTEL'S MOTION FOR CLARIFICATION

New Hampshire Optical Systems, Inc. ("NHOS") objects to segTEL's Motion For Clarification, which requests the Commission to issue an order clarifying the scope of its investigation in DT 12-107.

1. segTEL filed its Motion on April 24, 2013, for the stated purpose of obtaining support for its then-pending motion for reconsideration of an April 3, 2012 Superior Court Order dismissing segTEL's claims in the case of segTEL, Inc. v. University Systems of New Hampshire, et al., Case No. 217-2013-CV-00023. In the April 3 Order, the Superior Court (Smukler, J.) held it "should defer to the PUC's primary jurisdiction to establish make-ready policies and to adjudicate the make-ready dispute." See April 3 Order at 6.

2. The reason for segTEL's Motion is now moot. In an Order issued April 25, 2013, the Superior Court denied segTEL's motion for reconsideration. The Superior Court noted its dismissal of segTEL's claims is without prejudice to segTEL bringing another action in Superior Court, "after the PUC has had a full opportunity to resolve all pertinent issues that are within its primary jurisdiction." See April 25 Order (emphasis added).

3. As a result of the April 25 Order, the Superior Court litigation is concluded, and the record in that matter is closed. The sole reason advanced by segTEL for its motion for clarification in this proceeding – namely, to obtain information that might convince Judge Smukler to reconsider the April 3 Order – has been eliminated.

4. On May 2, 2013, segTEL submitted a letter to the Commission which argued that further clarification of the issues in DT 12-107 “will be of valuable assistance to the Superior Court.” This is inaccurate. Once again, the Superior Court litigation is concluded. In the April 25 Order, the Superior Court was clear segTEL may not re-file its claims until after the Commission resolves all issues in DT 12-107 that are within the Commission’s primary jurisdiction.

5. In other words, a further statement by the Commission as to which claims are, or are not, within its jurisdiction will not allow segTEL to immediately re-file claims in Superior Court. Rather, the April 25 Order is unequivocal that segTEL may not re-file its claims until after all issues within the Commission’s primary jurisdiction are resolved.

6. The Superior Court properly held it could not resolve any of segTEL’s claims until after the Commission resolves the make-ready issues giving rise to those claims. For example, segTEL’s claims alleged NHOS improperly engaged in “self-help” and trespassed on segTEL’s licensed space. Before the Superior Court could entertain claims based on those allegations, the Commission must determine the remedies available to NHOS when segTEL failed to perform required make-ready in a timely fashion and under reasonable terms. This issue is squarely before the Commission in DT 12-107. In Order No 25,407, issued September 5, 2012, the Commission ruled the scope of its investigation “shall include consideration of whether NHOS has faced unfair or unreasonable delays to access the utility poles during the construction of its Middle-Mile project, and, if so, possible remedies.” (Emphasis added.)

WHEREFORE, NHOS respectfully requests that the Commission:

A. Deny segTEL’s Motion for Clarification; and

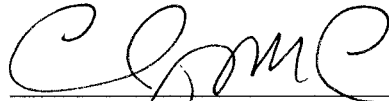
B. Order such other and further relief as it may determine to be just, reasonable, and consistent with the public interest.

Respectfully submitted,

NEW HAMPSHIRE OPTICAL SYSTEMS, INC.

By its Attorneys,

Date: May 6, 2013



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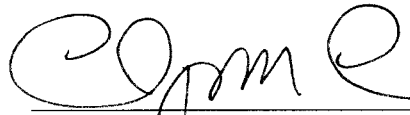
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CERTIFICATE OF SERVICE

I hereby certify that on the above date I have forwarded a copy of the foregoing to the persons listed on the service list via electronic mail, and U.S. mail for those unable to be served electronically.



Christopher H.M. Carter, Esq.

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