

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 12-112

NEW HAMPSHIRE OPTICAL SYSTEMS, INC.

**Petition for Authority to Construct and Maintain Fiber Optic Communications Cable
Over and Across One Water and 2 Different Railroads for Segment 6-Littleton to Lancaster**

Order *Nisi* Granting Licenses

ORDER NO. 25,518

June 6, 2013

I. SUMMARY OF THE PETITIONS

On April 27, 2012, New Hampshire Optical Systems, Inc. (NHOS)¹ filed petitions pursuant to RSA 371:17 requesting licenses to construct and maintain fiber optic communications cables over and across (1) the public waterway of the Israel River in Lancaster, New Hampshire; (2) the New Hampshire Central Railroad located parallel to Littleton Road in the vicinity of Union Street in Whitefield, New Hampshire; and (3) the New Hampshire Central Railroad near the junction of Jefferson Road and King Square in Whitefield, New Hampshire. The railroad crossings are over and across properties acquired by the State of New Hampshire and are also subject to RSA 373:1-a.

Following correspondence² from and communications with Commission Staff, NHOS filed revisions to its petitions on March 1 and April 29, 2013. Staff also informed the pole owners, Public Service Company of New Hampshire (PSNH) and FairPoint Communications, by

¹ 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)*.

² Staff deficiency letters of November 1, 2012 and April 11, 2013.

letter dated November 1, 2012, that existing cables at both railroad crossings may not be in compliance with the vertical clearance requirements of the National Electrical Safety Code (NESC) under heavy load conditions and requested that the companies investigate and, if necessary, bring the poles into compliance. On May 2, 2013, Staff filed a memorandum with the Commission recommending that the licenses be granted. Staff's memorandum indicated that in late March the pole owners advised Staff that two poles had been replaced, that NHOS's April 29th submission confirmed that the crossings were in compliance, and that all other inconsistencies and deficiencies outlined in Staff's deficiency letters had been resolved.

A. History

The fiber optic cable NHOS proposes to install 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 petitions, 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, 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.

B. Crossing Locations and Construction

According to the petitions, the proposed crossings are all part of Segment 6 (Littleton to Lancaster) of NHOS's 700-mile broadband build-out, which consists of 17 segments in total.

The locations of the crossings are as follows:

- Israel River in Lancaster, NH
 - Between Utility Pole E 23/2C-T-90B/3 and Pole E 23/2B-T-90B/2 (TID 129), near Middle and Mechanic Streets in the vicinity of Main Street
- Union Street, across the New Hampshire Central railroad in Whitefield, NH
 - Between Utility Pole E 42/19-T-196/1 and Pole E 42/20-T-196C/2 (TID 127), parallel to Littleton Road and in the vicinity of Union Street
- Lancaster Road, across the New Hampshire Central railroad in Whitefield, NH
 - Between Utility Pole E 42/14-T-1/5 and Pole E 42/15-T-1/4.5 (TID 128), near the junction of Jefferson Road and King Square

The petitions state that the construction is necessary in order to meet reasonable requirements of service to the public by providing telecommunications services to customers in New Hampshire.

According to the petitions, the proposed crossings have been designed and will be constructed, maintained and operated by NHOS, its affiliates and contractors, in accordance with the NESC. NHOS provided attachments to its petitions depicting the technical and design information and proposed construction of each crossing. The petitions and attachments describe the configurations of the proposed crossings as well as the clearance and sag requirements for each crossing and show that sag and tension calculations were done pursuant to applicable NESC requirements.

C. Regulatory Requirements

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

D. Property Rights

According to the petitions, each proposed crossing will be placed between two existing utility poles in the existing public right-of-way. Subsequent to filing the petitions, joint pole owners FairPoint Communications and PSNH attested to Staff that there is sufficient clearance for NHOS's cable at the crossings.

E. Public Interest

According to the petitions, the proposed communications wires will not substantially affect the rights of the public. The petitions also state that minimum safe line clearances will be maintained at all times and that the use and enjoyment by the public will not be diminished in any material respect as a result of the overhead line and cable crossings.

II. SUMMARY OF STAFF REVIEW

After reviewing the petitions and subsequent filings, Commission Staff filed a memorandum on May 2, 2013, stating that the proposed construction and sagging designs are in conformance with the applicable sections of the NESC. Staff recommended approval of NHOS's petitions, subject to certain conditions related to ensuring the safe construction, operation and maintenance of the proposed crossings. *See* Staff Recommendation of Leszek Stachow, dated May 2, 2013.

III. COMMISSION ANALYSIS

RSA 371:17 requires public 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, or any of the land owned by 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, include 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.

Based on the information presented in NHOS's petitions 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, as required by RSA 371:17, and that the requested licenses may be exercised without substantially affecting the public rights in the affected public waters and lands, as required for approval under RSA 371:20. We also authorize NHOS to construct the crossings over the railroad rights-of-way in a manner which will not impact any existing or anticipated uses of such railroad rights-of-way, and we find that the use of such railroad rights-of-way by the railroad or the public will not be diminished as a result of the overhead line crossings.

We find the crossings are in the public good and therefore approve the petitions on a *nisi* basis, subject to the conditions recommended by Staff, and contained in the ordering clauses set out below. Our decision is issued on a *nisi* basis in order to provide any interested party the opportunity to submit comments on NHOS's petitions 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 be sent to the Towns of Lancaster and Whitefield.

The petitions 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/2012/12-112.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 and state-owned railroad properties described in its petitions and depicted in its filings; and it is

FURTHER ORDERED, that NHOS shall construct, operate and maintain the approved crossings and related attachments, including any future alterations, to conform with the requirements of the National Electrical Safety Code, in accordance with N.H. Code Admin. Rules Puc 306.01, Puc 433.01 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 alteration(s) to the crossing licenses granted herein and related attachments at least 60 days prior to any such alteration(s); and it is

FURTHER ORDERED, that NHOS shall maintain proper clearances between its cables and those adjacent to it at all times across the entire span pursuant to NESC 235C2b and 235H; and it is

FURTHER ORDERED, that NHOS shall file copies of all permits or agreements, 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 any of the crossings, no later than receiving the permit or executing the agreement or 30 days from the date of this Order *Nisi*, whichever occurs first; and it is

FURTHER ORDERED, that NHOS shall provide a copy of this Order *Nisi* to the: (i) Town Clerks of Littleton and Whitefield, 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 June 14, 2013, and to be documented by affidavit filed with this office on or before July 2, 2013; and it is

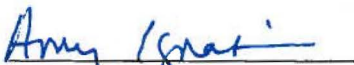
FURTHER ORDERED, that NHOS shall cause a summary of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to occur no later than June 14, 2013 and to be documented by affidavit filed with this office on or before July 2, 2013; 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 June 21, 2013 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 June 28, 2013; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective July 5, 2013, 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 sixth day of June, 2013.



Amy L. Ignatius
Chairman

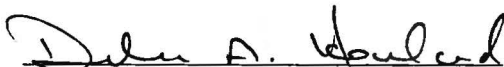


Michael D. Harrington
Commissioner



Robert R. Scott
Commissioner

Attested by:



Debra A. Howland
Executive Director