

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DT 12-215**

**SOVERNET FIBER CORP.**

**Petition for Authority to Construct and Maintain Fiber Optic Communications Cable  
Over and Across Two Different New Hampshire Public Waters**

**Order *Nisi* Granting License**

**ORDER NO. 25,548**

**July 18, 2013**

**I. SUMMARY OF PETITION**

On July 17, 2012, Sovernet Fiber Corp. d/b/a Vermont FiberConnect (Sovernet) filed a petition pursuant to RSA 371:17 requesting a license to construct and maintain fiber optic communications cables over and across the following four public water locations in the City of Lebanon, New Hampshire:

- the Mascoma River along Route 4 opposite Glen Road;
- the Mascoma River across Buckingham Place at Route 4;
- the Mascoma River along Route 4 easterly of High Street; and
- the Connecticut River along Bridge Street.

According to the petition, the fiber is part of an 800-mile network that will connect over 340 schools, libraries, hospitals and government facilities in Vermont, as well as several adjoining areas of New Hampshire and Massachusetts.

Following correspondence<sup>1</sup> from and communications with Commission Staff informing Sovernet that, among other deficiencies, the existing cables at the crossings may not be in compliance with the clearance requirements of the National Electrical Safety Code (NESC) and

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<sup>1</sup> Staff deficiency letters of October 1, 2012 and February 19, 2013.

requesting that the company investigate and, if necessary, bring the attachments into compliance, Sovernet filed revisions to its petitions on January 9, 2013 and April 22, 2013. On July 8, 2013, Staff filed a memorandum with the Commission recommending that the licenses be granted.

***A. History***

According to the petition, the Commission has authorized Sovernet to provide local exchange services in New Hampshire (Authorization No. CL 06-001-11). The petition states that Sovernet is constructing and will own, maintain and operate a fiber optic, middle mile network that will connect approximately 340 community anchor institutions, in accordance with the requirements of a grant to the Vermont Telecommunications Authority by the National Telecommunications Information Administration and the Vermont Department of Libraries. Small portions of the grant-funded network will extend into New Hampshire.

***B. Crossing Locations and Construction***

According to the petition, Sovernet proposes to place overhead line crossings consisting of strand, duct, cable and over-lash wire at three locations across the Mascoma River and one location across the Connecticut River in Lebanon on existing utility poles within existing public rights-of-way. Information regarding the specific river crossings and pole attachments is set forth as follows:

- Mascoma River parallel to the north side of Route 4 opposite Glen Road, between utility pole N/GP 44; FP 82 on the western side of the river and utility pole N/GP 45; FP 291-1 on the eastern side (Glen Road crossing).
- Mascoma River across Buckingham Place parallel to the south side of Route 4, between utility pole N/GP 291/35; FP 311/132 on the western side and utility pole N/GP 157/47; FP 311/133 on the eastern side (Buckingham Place crossing).

- Mascoma River parallel to the north side of Route 4 between Foundry Street and Water Street, from utility pole N/GP 53/2; FP 60 on the western side to utility pole N/GP 53/1; FP 60/5 on the eastern side (High Street crossing).
- Connecticut River parallel to the southern side of Bridge Street in Lebanon between Commercial Street in Lebanon and Prospect Street in White River Junction Vermont, from utility pole FP 311/8 on the eastern side and utility pole FP 311/5 on the western side (Bridge Street crossing).

Sovernet provided attachments to its petition depicting the technical and design information and proposed construction of each crossing. The petition and attachments describe the configurations of the proposed crossings as well as the vertical clearance with sag for each crossing using heavy load conditions. The petition asserts that the crossings are classified as waterways not suitable for sailing in accordance with NESC Table 232-1.

### *C. Regulatory Requirements*

The petition indicates that permits from the New Hampshire Department of Environmental Services (NHDES) and the New Hampshire Department of Transportation (NHDOT) are not required for this project. The petition states that Sovernet has submitted an application to the United States Army Corps of Engineers (USACE), New England District for New Hampshire and Vermont to construct and maintain a fiber optic communications cable over the Connecticut River.

In addition, Staff's recommendation memorandum dated July 8, 2013 notes that the Mascoma River crossing at Glen Road also crosses railroad property on state-owned land. Staff stated that, upon further investigation, Sovernet informed Staff that because the Glen Road crossing is over a state-owned railroad property, Sovernet will separately seek approval for that crossing, including approval from the NHDOT.

***D. Property Rights***

According to the petition, each proposed crossing will be placed between two existing utility poles within an existing public right-of-way.

***E. Public Interest***

According to the petition, the proposed communication wires will not substantially affect the rights of the public in the public waters of either the Mascoma River or the Connecticut River. The petition also states that minimum safe line clearances above the water surface and affected shorelines will be maintained at all times and that the use and enjoyment by the public of the Mascoma and Connecticut Rivers 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 initial petition, Staff noted several deficiencies and notified Sovernet and the pole owner, Northern New England Telephone Operations, LLC d/b/a FairPoint Communications (FairPoint). Subsequent to filing the petition, Sovernet and FairPoint undertook a field inspection of the sites and filed revised project documentation. Commission Staff filed a memorandum on July 8, 2013, stating that the proposed construction and sagging designs are in conformance with the applicable sections of the NESC. Staff recommended approval of Sovernet's petition, subject to certain conditions related to ensuring the safe construction, installation, operation and maintenance of the proposed crossings.

### 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, 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](http://des.nh.gov/organization/divisions/water/dam/public_waters/index.htm).

Based on the information presented in Sovernet's petition and Staff's memorandum recommending approval of the water crossings, we find the proposed crossings necessary for Sovernet to meet the reasonable requirements of reliable service to the public, 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 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 Sovernet's petition or to request a hearing. We note that Sovernet is responsible for obtaining any and all other permits for the construction, installation, operation and maintenance 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. In addition, because the Connecticut River crossing requires the authorization of the United States Army Corps of Engineers, we require notice of that crossing to be forwarded to the USACE. We also require notice of each crossing to be sent to the City of Lebanon and, as a courtesy, to the Town of Hartford in Vermont.

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/2012/12-215.html>.

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

**ORDERED *NISI***, that subject to the effective date below, Sovernet is authorized, pursuant to RSA 371:17, *et seq.*, to construct, install, operate and maintain 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 Sovernet shall ensure that all make ready work is performed pursuant to the submitted drawings; and it is

**FURTHER ORDERED**, that Sovernet shall construct, install, operate and maintain the approved crossings, including any future alterations, to conform with the requirements of the National Electrical Safety Code, in accordance with N.H. Code Admin. Rules Puc 433.01 and Puc 1303.07, and all other applicable safety standards in existence at that time; and it is

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

**FURTHER ORDERED**, that Sovernet 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, the United States Army Corps of Engineers, any other federal, state, or local authorities, and any of the affected municipalities for 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 Sovernet shall provide a copy of this Order *Nisi* to the: (i) City Clerk of Lebanon, New Hampshire and the Town Clerk of Hartford, Vermont; (ii) New Hampshire Attorney General and the owners of the lands bordering on said public waters at the locations of the crossings, pursuant to RSA 371:19; (iii) the New Hampshire Department of Environmental Services; (iv) the United States Army Corps of Engineers; and (v) 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 July 26, 2013, and to be documented by affidavit filed with this office on or before August 13, 2013; and it is

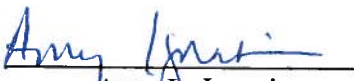
**FURTHER ORDERED**, that Sovernet shall cause a summary of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to occur no later than July 26, 2013 and to be documented by affidavit filed with this office on or before August 13, 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 August 2, 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 August 9, 2013; and it is

**FURTHER ORDERED**, that this Order *Nisi* shall be effective August 16, 2013, unless Sovernet fails to satisfy the publication and service obligations set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

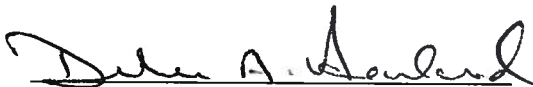
By order of the Public Utilities Commission of New Hampshire this eighteenth day of July, 2013.

  
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Amy L. 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