

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 15-041

UNITIL ENERGY SYSTEMS, INC.

**Petition for License to Cross and Maintain Electric Lines
Over Tide Mill Creek in Hampton**

**Order *Nisi* Granting License to Cross and Maintain Electric Lines
Over Tide Mill Creek in Hampton**

ORDER NO. 25,780

April 24, 2015

In this Order *Nisi*, the Commission grants Unitil Energy Systems, Inc., a license to relocate, construct and maintain poles, circuits, and electric and other lines over and across the public waters of Tide Mill Creek in the town of Hampton. This order is being issued on a *nisi* basis to ensure that all interested parties receive notice of the Commission's order and have the opportunity to comment or request a hearing prior to the date set forth in the ordering clauses below.

I. SUMMARY OF PETITION

On January 29, 2015, Unitil Energy Systems, Inc. (UES), filed a petition, pursuant to RSA 371:17, for a license to relocate its existing 34.5kV circuit known as the "3353 line," in Hampton, New Hampshire. The exhibits accompanying the petition showed the relocation of a second 34.5kV circuit known as the "3342" line. In subsequent conversations with Commission Staff (Staff), UES clarified that it was seeking to relocate both lines over Tide Mill Creek.¹ The exhibits showed that both relocated lines will cross the public waters of Tide Mill Creek, near where the creek joins the Hampton River. The relocated lines are expected to result in timelier

¹ Although Unitil's petition requested a license to cross the Hampton River, the accompanying exhibits make clear that the lines would cross Tide Mill Creek, a tributary to the Hampton River.

and more economical repairs and maintenance, and to improve the reliability of service to Hampton Beach area customers. 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>.

A. History

UES states that the existing lines need to be upgraded due to age and condition.² The lines' existing water crossings are on the east side of the New Hampshire Route 101 (Route 101) Bridge, within a salt marsh. Rather than rebuild the line crossings in their current location, UES proposes to relocate them to one crossing in a more accessible location, outside of the salt marsh and along Route 101.

B. Crossing Location and Construction

To accommodate the new line crossing, UES proposes to build and install new structures on the east and west sides of Tide Mill Creek. The new crossing will span 300 feet and be located adjacent to where the Hampton River passes under Route 101. Unlike the existing crossing, the new crossing will be located within the New Hampshire Department of Transportation (NHDOT) right-of-way.

UES provided attachments to its petition depicting the technical and design information and proposed construction of the crossing. The attachments describe the configuration, clearance, and sag requirements for both the 3353 line and the 3342 line. UES asserts that the material, height, and location of the support structures, as well as the conductor size, spacing, material, and clearance over the public waters, will comply with applicable requirements of the

² UES's petition refers only to the 3353 line. The attachments to the petition, including drawings, also reference another 34.5kV line known as the "3342 line." For purposes of its decision, the Commission has construed UES's references to the 3353 line as also referencing the 3342 line.

2012 National Electrical Safety Code (NESC). UES also asserts that the proposed crossing's sag and tension comply with NESC.

C. Regulatory Requirements

Due to the location of the new crossing, UES obtained a New Hampshire Department of Environmental Services (NHDES) wetlands and non-site-specific permit. NHDES approved Permit 2014-02743 on December 29, 2014.

Also, a NHDOT "Use & Occupancy Agreement" is required for the crossing. At the time of its filing, UES's Use & Occupancy application was pending NHDOT approval.

D. Property Rights

UES states that the new structures and wires associated with this crossing are located within a limited-access right-of-way easement running along Route 101 and owned by the NHDOT. Consequently, UES asserts that no abutters will be affected by the new crossing.

The new pole line along Route 101 will be jointly owned with FairPoint Communications. UES states that FairPoint may need an aerial cable crossing license from the Commission in the future.

E. Public Interest

According to UES, the proposed construction and line crossing will enable more economical repairs and improve the reliability of service to customers in the Hampton Beach area. The new crossing will not substantially affect the rights of the public in the public waters of the Tide Mill Creek or the Hampton River, as UES will maintain at all times the minimum safe line clearances above the water surface and affected shorelines.

II. SUMMARY OF STAFF REVIEW

Staff filed memoranda on March 23, April 3, and April 15, 2015. Staff recommended approval of UES's crossing without condition. Staff noted that the primary function of the lines is to connect and serve the residents and businesses in Hampton Beach. Staff agreed that the lines are an integral part of UES's distribution system supplying power to the Hampton Beach area. Staff noted the benefits of the relocated crossing, including a reduced number of poles within the marshland, and concluded that the proposed construction and sagging designs conform to the applicable sections of the NESC, which is incorporated by reference in the Commission's rules. *See* N.H. Code Admin. Rules Puc 306.01(a) (1) (utility must construct, install, operate, and maintain its plant, structures, equipment and lines in accordance with "good utility practice") and Puc 306.01(b) (1) ("good utility practice" means in accordance with the standards established by National Electrical Safety Code C2-2012). In closing, Staff observed that the proposed structures supporting the crossing will have space, with sufficient highway and water clearance, for only one attachment, presumably FairPoint's.

III. COMMISSION ANALYSIS

RSA 371:17 (Rights in Public Waters and Lands) 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. As defined in RSA 371:17, "public waters" include all ponds of more than 10 acres, tidewater bodies, and such streams or portions thereof as the Commission may prescribe. The Commission shall approve the petition if it finds that the water-crossing license, "subject to such modifications and

conditions, if any, and for such period as the commission may determine, may be exercised without substantially affecting the public rights in said waters.” RSA 371:20.

NHDES is assigned responsibility under RSA 271:20 for preparing, maintaining, and publishing an official list of all public waters in the state. DES’s official public waters list identifies the Tide Mill Creek as tidal water and the Hampton River as a public river.³

Based on the information presented in UES’s petition and Staff’s recommendations, we find that the proposed crossing is necessary for UES 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 that the crossing is for the public good and therefore approve the petition. We issue our decision on a *nisi* basis to provide any interested person the opportunity to submit comments on UES’s petition or to request a hearing, as described in the ordering paragraphs below.

UES is responsible for obtaining any and all permits necessary for the construction and installation of the proposed crossing from any federal, state, and local authorities having jurisdiction. As recommended by Staff, our approval is limited to the poles, circuits, and electric and other lines specified in UES’s petition and attachments and Staff’s recommendations. Because NHDES is responsible by statute for maintaining the official list of public waters, and because NHDOT is responsible by statute for oversight of railroads, roads, and bridges, we require UES to send notice of the proposed crossing to NHDES and NHDOT. We also require UES to send notice of the crossing to the Town of Hampton.

³ See http://des.nh.gov/organization/divisions/water/dam/public_waters/index.htm.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, UES is authorized, pursuant to RSA 371:17 *et seq.*, to construct, install, operate and maintain new poles, circuits, and electric and other lines over and across the public waters, as described in its petition and depicted in its filings, and described and depicted in Staff's recommendations; and it is

FURTHER ORDERED, that UES shall construct, install, operate, and maintain the lines consistent with the provisions of the NESC, in accordance with N.H. Code Admin. Rules Puc 306.01 and Puc 1303.07, as may be applicable, and as amended from time to time, and all other applicable safety standards in existence at that time; and it is

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

FURTHER ORDERED, that UES shall maintain proper clearances for its lines and cables at all times across the entire span pursuant to NESC 232B and 235C; and it is

FURTHER ORDERED, that, to the extent not already filed, UES shall file copies of all permits or agreements, if any, required for the crossing by NHDES, NHDOT, any other federal, state, or local authorities, and any of the affected municipalities, no later than receiving the permit or entering into the agreement, or 30 days from the date of this Order *Nisi*, whichever occurs first; and it is

FURTHER ORDERED, that UES shall provide a copy of this Order *Nisi* by first-class mail, no later than May 4, 2015, to (i) the Town Clerk of Hampton; (ii) the New Hampshire Attorney General and any owners of the land bordering on said public waters at the location of

the crossing, pursuant to RSA 371:19; (iii) the NHDES; and (iv) pursuant to RSA 422-B:13, the NHDOT and the Office of Secretary, U.S. Department of Commerce, and to be documented by affidavit filed with this office on or before May 19, 2015; and it is

FURTHER ORDERED, that UES 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 no later than May 4, 2015, and to be documented by affidavit filed with this office on or before May 19, 2015; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* may submit written comments or file for the Commission's consideration a written request for a hearing which states the reason and basis for a hearing no later than May 11, 2015; and it is

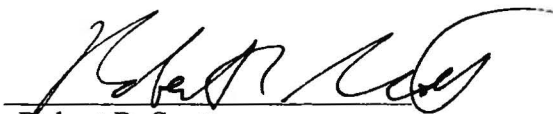
FURTHER ORDERED, that any person interested in responding to such comments or request for hearing shall do so no later than May 18, 2015; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective May 22, 2015, unless UES 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-fourth day of April, 2015.



Martin P. Honigberg
Chairman



Robert R. Scott
Commissioner

Attested by:



Debra A. Howland
Executive Director