

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DT 08-146

**Request for Arbitration regarding Failure to Provide Access to
Utility Poles by Public Service of New Hampshire**

segTEL, INC.

REQUEST FOR RECONSIDERATION WITH HEARING OF ORDER NUMBER 25,090

May 5, 2010

OVERVIEW

On November 14, 2008, segTEL, Inc. (segTEL) filed a Request for Arbitration Regarding Failure to Provide Access to Utility Poles by Public Service Company of New Hampshire (PSNH). segTEL stated that it sought access to 101 electric “transbuton” poles in New London and Sunapee, owned by PSNH, for the attachment of telecommunications cables. The poles in question are located on private property pursuant to private easement rights obtained by PSNH. PSNH said that it did not have authority to grant the request, leading to segTEL’s request for arbitration.

On August 6, 2009, the New Hampshire Public Utilities Commission (Commission) issued a secretarial letter providing the parties with an opportunity to present oral argument on the issues on September 15, 2009, and instructing any party wishing to be heard to provide a written request to the Commission by August 31, 2009. Absent such a request, the Commission determined that it would decide this case on the papers filed as of June 10, 2009. On October 1, 2009, the Commission issued a secretarial letter stating that, because the Commission had not received any written requests for hearing, it would decide the case on the papers.

On April 7, 2010, the Commission issued Order No. 25,090 (Order), denying the request of segTEL for arbitration regarding the failure of PSNH to provide access to utility poles pursuant to a Pole Attachment Agreement between segTEL and PSNH. Commissioner Below dissented.

segTEL requests that the Commission reconsider its decision in Order No. 25,090, and grant a hearing on this matter pursuant to NH RDA 541:3 for the reasons set forth herein.

ARGUMENT

The Commission may grant a rehearing pursuant to RSA 541:3 when the requesting party specifies matters that were either “overlooked or mistakenly conceived” by the deciding tribunal. *See Dumais v. State*, 118 N.H. 309, 311 (1978). In circumstances where new evidence is presented, the petitioner for such relief must explain why new evidence could not have been presented in the underlying proceeding. *See O’Loughlin v. N.H. Personnel Comm’n*, 117 N.H. 999, 1004 (1977).

The Order of the Commission was issued based on paper filings by the parties. segTEL agreed to the Commission determining this matter on the basis of legal briefs because it believed that the Commission would not need to make any findings of fact in coming to its determination. The parties submitted to the Commission a Stipulation of Facts which segTEL believed was sufficient.

The Commission, however, made findings of fact in coming to its decision. segTEL believes these findings of fact were misconceived, and therefore requests that this Commission conduct a hearing pursuant to RSA 541:3 to adjudicate these facts.

Further, segTEL requests that the Commission reconsider its decision in Order No. 25,090 to the extent that its Order relied on the facts the Commission established, as well as for these additional reasons:

1) The Commission determined that “transmission of high or low voltage electric current” as used in the earlier deeds does not encompass “telecommunications and information services.” *See* Order p 23. Yet, in his dissent, Commissioner Below notes that in the evolution of early electrical distribution, telecommunications was an appurtenant use considered in the normal course of developing a right of way. Further, the noun “transmission,” in its normal usage, encompasses information:

1. a. The act or process of transmitting.
 - b. The fact of being transmitted.
2. Something, *such as a message*, that is transmitted.
3. An automotive assembly of gears and associated parts by which power is transmitted from the engine to a driving axle. Also called *gearbox*.
4. The sending of a signal, picture, or *other information* from a transmitter.

See The American Heritage® Dictionary of the English Language, Fourth Edition copyright ©2000 by Houghton Mifflin Company. Updated in 2009. [Emphasis added.]

2) The Commission determined that “intelligence” as used in the later deeds “relates to the transmission of intelligence data with respect to the operation and control of an electric utility transmission and distribution system such as what is now provided through Supervisory Control and Data Acquisition or SCADA systems, electronic controls, and other similar internal communications functions.” *See* Order p 24. Such a construction is much more narrow than -- and falls outside of -- the normal meaning and use of the word “intelligence.” The Commission agrees that SCADA itself is communications. And yet, the Commission’s Order purports to suggest that SCADA, because it is an “internal” communications function, is somehow special or different than telecommunications services. This is not supported by the facts. *See, e.g.,* Newton’s Telecom Dictionary (24th Edition), states, in pertinent part, “Traditionally such systems made use of telephone lines. . . SCADA was designed for modems and analog lines.” An analog line is a telecommunications service.

3) The Commission states as a general matter that the easements do not refer to or encompass the transmission of telegraph, telephone and other forms of telecommunications. *See* Order p. 28. Commissioner Below, in his dissent, states, “It is not clear to me, however, that telecommunications and information services conveyed over fiber optic lines are completely distinct from the transmission of high or low voltage electric current.”

segTEL believes that the Commission’s narrow interpretation of the wording of all of the deeds at issue here is not the only reasonable interpretation, and that this constitutes a fact “mistakenly conceived” sufficient to meet the standard for a rehearing.

CONCLUSION

Wherefore, segTEL respectfully requests that the Commission reconsider its Order in the matter, and grant a rehearing on the interpretation of the language in the earlier and later deeds at issue here.

Respectfully submitted,

segTEL, INC.

by its General Counsel,



CAROLYN COLE, Esq.

P.O. Box 610

Lebanon, NH 03766

(603) 676-8225