

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DT 12-089**

**KEARSARGE TELEPHONE COMPANY D/B/A TDS TELECOM**

**Petition for Authorization to Construct and Maintain Telecommunications Lines  
Over and Across the Merrimack River in the Town of Boscawen**

**Order *Nisi* Granting License**

**O R D E R   N O. 25,421**

**October 8, 2012**

**I. SUMMARY OF THE PETITION**

On April 9, 2012, Kearsarge Telephone Company d/b/a TDS Telecom (TDS) filed a petition pursuant to RSA 371:17 requesting a license to construct and maintain telecommunication lines over and across the Merrimack River in the Town of Boscawen. In its petition TDS states that the new fiber optic line will help to accommodate growth demand and obtain a greater degree of service reliability. TDS further states that the use and enjoyment by the public of the river will not be diminished in any material respect as a result of the overhead line-crossing.

***A. Crossing Locations and Construction***

According to the petition, the proposed crossing will be placed between existing utility poles in existing public rights-of-way. The location of the single water crossing is as follows:

- The Merrimack River in Boscawen, between utility pole CE21 NET 27/18 on the western side of the river near Commercial Street and utility pole CE1 NET 27/19 on the eastern side of the river near Hannah Dustin Drive.

TDS's petition describes the configurations of the proposed cable crossings as well as the clearance and sag requirements for the crossing. According to TDS, sag and tension calculations

were done pursuant to applicable National Electrical Safety Code (NESC) and statutory requirements. TDS states that the Merrimack River has been classified as suitable for sail boating at this location and that the project clearances are based on ten-year flood elevation requirements.

***B. Regulatory Requirements***

According to the petition, permits from neither the New Hampshire Department of Environmental Services (NHDES) nor the New Hampshire Department of Transportation (NHDOT) are required for this project.

***C. Property Rights***

TDS affirms that the proposed water crossing will be placed on existing utility poles jointly owned by Unitil and Fairpoint Communications.

**II. SUMMARY OF STAFF REVIEW**

Pursuant to its review of the petition and discussions with TDS, Commission Staff filed a memorandum on September 18, 2012, finding the proposed construction and sagging design to be in conformance with the applicable sections of the NESC. Staff noted in its memorandum that the Boscawen section of the Merrimack River is upstream of Concord and therefore the crossing does not require Army Corps of Engineers approval. Staff recommended approval of TDS's petition for a license to construct and maintain fiber optic lines over and across the Merrimack River at the location requested, subject to certain conditions related to ensuring the safe operation and maintenance of the proposed crossings, and the resubmission of the petition to reflect the correct utility pole notation. *See* Staff Recommendation of Michael Ladam dated September 18, 2012.

### 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, includes 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 TDS's petition and Staff's memorandum recommending approval, we find the proposed crossings necessary for TDS to meet the reasonable requirements of reliable service to the public within TDS's authorized service territory, 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 crossing is 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 TDS's petition or to request a hearing. We note that TDS is responsible for obtaining any and all other permits required 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 roads and bridges, we require that notice of the proposed crossing be sent to the NHDES and the NHDOT. We also require notice of the crossing to the affected town.

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/2012/12-089.html>.

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

**ORDERED NISI,** that subject to the effective date below, TDS 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 described in its petition and depicted in its filings; and it is

**FURTHER ORDERED,** that TDS submit a revised petition indicating the correct pole reference numbers; and

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

**FURTHER ORDERED,** that all construction and future alterations to the approved crossing shall conform to 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 TDS submit any future proposed alterations to the crossing license granted herein at least 60 days prior to any such alteration(s); and it is

**FURTHER ORDERED**, that copies of all permits, 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 the affected municipality for this crossing, be filed with this Commission; and it is

**FURTHER ORDERED**, that TDS shall provide a copy of this order to the (i) Town Clerk of Boscawen, (ii) New Hampshire Attorney General and owners of the land bordering on said public waters at the locations 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 October 18, 2012 and to be documented by affidavit filed with this office on or before November 7, 2012; and it is

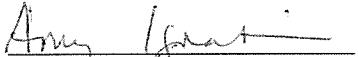
**FURTHER ORDERED**, that the Petitioner shall cause a summary of this Order *Nisi* and a link to the Commission's website where the Order appears in full to be published once in a statewide newspaper of general circulation, or of circulation in those portions of the state where operations are conducted, such publication to be no later than October 18, 2012 and to be documented by affidavit filed with this office on or before November 7, 2012; 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 October 25, 2012 for the Commission's consideration; and it is

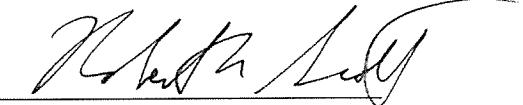
**FURTHER ORDERED**, that any party interested in submitting comments or requesting a hearing shall do so no later than November 1, 2012; and it is

**FURTHER ORDERED**, that this Order *Nisi* shall be effective November 7, 2012, unless the Petitioner fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

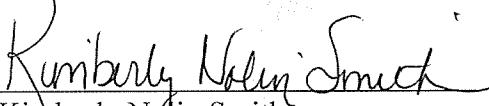
By order of the Public Utilities Commission of New Hampshire this eighth day of October, 2012.

  
Amy D. Ignatius  
Chairman

  
Michael D. Harrington  
Commissioner

  
Robert R. Scott  
Commissioner

Attested by:

  
Kimberly Nolin Smith  
Assistant Secretary