

STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: Sept. 7, 2016

AT (OFFICE): NHPUC

ML
FROM: Michael Ladam, Director, Regulatory Innovation and Strategy

SUBJECT: CRS 16-219, Northern New England Telephone Operations, LLC
Petition for Licenses to Maintain Utility Cables Over and Across
Public Lands and Waters of the State of New Hampshire

TO: Commissioners
Debra Howland, Executive Director

CC: David K. Wiesner, Staff Attorney

Executive Summary: Staff recommends that the Commission grant licenses through an order *nisi* for the 53 crossings described in the Corrected List provided on June 23, 2016.

Background

On February 2, 2016, Northern New England Telephone Operations, LLC (FairPoint) submitted a petition seeking licenses under New Hampshire RSA 371:17 for 62 existing crossings of public waters and/or state-owned lands. On April 7, 2016, Staff recommended granting a license for these 62 crossings. However, in discussions and further review that followed, several discrepancies were discovered in the crossing descriptions – for example, the coordinates provided did not appear to match the towns and features of certain crossings. Staff asked FairPoint to submit a revised list of crossings for consideration.

On June 23, 2016, FairPoint submitted a revised list of crossings. The revised list eliminates nine crossings that FairPoint determined were duplicate locations. FairPoint asks that the 53 crossings on the revised list be granted licenses.

These crossings were constructed at undetermined times and were not previously licensed. FairPoint developed an inventory listing of such crossings as part of its effort to comply with, and take advantage of, a recent law allowing telecommunications carriers to obtain retrospective licenses for existing crossings between existing poles (New Hampshire RSA 371:17-b). That statute directs the Commission to issue licenses for such crossings without investigation.

The crossings submitted in this docket did not appear to qualify for retrospective licensing under RSA 371:17-b, since they are not constructed between two poles but rather involve manhole and pedestal terminations. FairPoint separately filed a

notification in docket CRS 15-243 regarding 212 pole-to-pole crossings under RSA 371:17-b.

The Commission has previously addressed newly-reported or discovered unlicensed telecommunications crossings by directing the carrier to obtain a crossings license under RSA 371:17, as in Order No. 25,139 issued on August 17, 2010 and Order No. 25,175 issued on November 30, 2010. Staff recommended to FairPoint that the company petition to have these crossings licensed under that statute.

RSA 371:17 does not specify the level of investigation and review required before the Commission issues a license. In previous petitions seeking licenses before construction occurs, Staff has undertaken a relatively detailed and intensive investigation focused on safety and compliance. For example, Staff has independently calculated cable sag based on crossing and pole dimensions and ice loading projections.

Although the 53 crossings that are the subject of this docket do not appear to qualify for licensing under RSA 371:17-b, Staff believes that both RSA 371:17-a and 371:17-b – each enacted in 2013 – provide useful guidance regarding the appropriate standard of review and level of investigation to be performed for retrospectively reported telecommunications cable crossings. Both statutes call for licensing “by notification” of such crossings without Commission investigation. In this docket, where the crossings have been in place for years without complaint or incident, Staff considers the same standard of review and level of investigation to be generally appropriate.

Staff has confirmed that the coordinates provided for each of these crossings appear to be located in New Hampshire and appear to be in the town listed for each. FairPoint has provided a notarized affidavit attesting that these crossings are “necessary to meet the reasonable requirements of service to the public,” that these crossings are believed to have been completed in compliance with relevant safety codes, and that they are being maintained in accordance with the National Electrical Safety Code.

Staff recommends that the Commission grant a license for these 53 crossings through issuance of an order *nisi*.

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

Executive.Director@puc.nh.gov

amanda.noonan@puc.nh.gov

david.wiesner@puc.nh.gov

michael.ladam@puc.nh.gov

ocalitigation@oca.nh.gov

robert.meehan@fairpoint.com

Docket #: 16-219-1 Printed: September 07, 2016

FILING INSTRUCTIONS:

- a) **Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:**
- DEBRA A HOWLAND
EXECUTIVE DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) **Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.**
- c) **Serve a written copy on each person on the service list not able to receive electronic mail.**