

STATE OF NEW HAMPSHIRE

Inter-Department Communication



DATE: August 24, 2018
AT (OFFICE): NHPUC

FROM: Kath Mullholand, Director – Regulatory Innovation and Strategy Division
David K. Wiesner, Staff Attorney

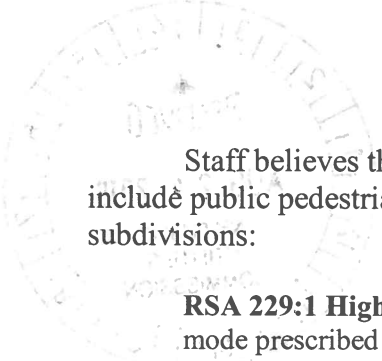
SUBJECT: Docket No. DT 18-098
Northern New England Telephone Operations LLC d/b/a Consolidated Communications-NNE (“CCI”) Petition for a License to Construct and Maintain a Telecommunication Cable Over and Across the Merrimack River in the Town of Hooksett, New Hampshire
Staff Recommendation

TO: Commissioners
Debra Howland, Executive Director
Randall Knepper, Director, Safety and Security Division
Paul Kasper, Assistant Director, Safety and Security Division

On June 21, 2018, Northern New England Telephone Operations LLC d/b/a Consolidated Communications-NNE, (“CCI”) filed a petition pursuant to RSA 371:17 for a license to construct and maintain a telecommunications cable, to be placed in a four-inch duct attached to the Lilac Bridge over and across the public waters of the Merrimack River in the Town of Hooksett, New Hampshire. This is a relocation of an existing telecommunication cable crossing the river. CCI’s previous cable was removed and is being relocated due to a New Hampshire Department of Transportation project to construct a new pedestrian bridge (Lilac Bridge). The conduit CCI proposes to use is a pre-existing conduit that is included in the bridge clearance requirements and installed by the contractor responsible for the construction and compliance of the Lilac Bridge¹.

Staff reviewed RSA 371:17 and its requirements in the context of CCI’s request. Staff notes that the Commission has previously decided that a crossing attached to a highway bridge that will not hang lower than the bridge clearance does not require a license under RSA 371:17. *See Northern Utilities, Inc.*, Order No. 26,021 (May 26, 2017) (citing *Public Utilities: Licensing of Crossings Over Public Waters and State-Owned Land*, 35 NHPUC 94, 94-95 (1953)). In its 1953 order, the Commission determined that Commission licenses need not be obtained for “crossings having supports attached to public highway bridges, except where such crossings are below the bridge clearance,” but such crossings are not excepted “from compliance with established minimum safety standards.”

¹ The information that the conduit was pre-existing was not contained in the petition but was confirmed in an e-mail from Robert Meehan of CCI on July 16, 2018.



Staff believes that the statutory definition of “highway” is broad enough to include public pedestrian bridges that are built or accepted by the State or its political subdivisions:

RSA 229:1 Highways Defined. – Highways are only such as are laid out in the mode prescribed therefor by statute, or roads which have been constructed for or are currently used for motor vehicle, bicycle, or *pedestrian public travel* over land which has been conveyed to a city or town or to the state by deed of a fee or easement interest, or roads which have been dedicated to the public use and accepted by the city or town in which such roads are located, or roads which have been used as such for public travel, other than travel to and from a toll bridge or ferry, for 20 years prior to January 1, 1968, *and shall include the bridges thereon*. Highway does not include any bridge, trail, or path intended for use by off highway recreational vehicles, as defined in RSA 215-A:1, or snowmobiles, as defined in RSA 215-C:1. [Emphasis added.]

Staff found no judicial or regulatory precedent or other guidance that is inconsistent with the conclusion that public pedestrian bridges may be included within the definition of “highway.”

Accordingly, Staff believes that a license need not be obtained for this crossing, which has supports, in the form of conduit, attached to a public “highway” bridge that is not below the bridge clearance (although the crossing is not excepted from compliance with the National Electrical Safety Code). Staff recommends that the Commission adopt the foregoing analysis and dismiss CCI’s petition as unnecessary so that the docket can be closed.

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

kathryn.mullholand@puc.nh.gov

ocalitigation@oca.nh.gov

randy.knepper@puc.nh.gov

robert.meehan@consolidated.com

Docket #: 18-098-1 Printed: August 24, 2018

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.**