

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 12-013

NEW HAMPSHIRE OPTICAL SYSTEMS, INC.

**Petition for Authorization to Construct and Maintain Fiber Optic Communications Cable
Over and Across Public Waters in Swanzey and Merrimack
(Segment 4 -Keene to Manchester)**

Order *Nisi* Granting License

ORDER NO. 25,438

December 10, 2012

I. SUMMARY OF THE PETITION

On January 11, 2012, New Hampshire Optical Systems, Inc. (NHOS)¹ filed a petition pursuant to RSA 371:17 requesting licenses to construct and maintain fiber optic communications cables at four locations in the towns of Swanzey and Merrimack over and across public waters of the rivers and brooks listed below. Staff completed an initial review of the petition on July 10, 2012, and notified NHOS of certain deficiencies. NHOS filed revisions to its petition on September 26 and October 17, 2012.

The fiber optic cable NHOS proposes to install over the listed water bodies will be part of the Network New Hampshire Now (NNHN) Middle Mile Fiber network, which NHOS states will extend the availability of internet access and broadband communications to areas of New Hampshire presently receiving limited or no service. According to the petition, the project is funded by a grant from the Federal Broadband Technology Opportunities Program (BTOP). In adherence with BTOP guidelines, NHOS asserts that it will build and maintain an open access, non-discriminatory network offering: (1) broadband providers the ability to economically

¹ On August 13, 2010, the Commission authorized NHOS to provide competitive local exchange services in New Hampshire. See *CLEC Authorization CL-08-002-10 (Docket No. DT 10-215)*.

expand their services areas, (2) companies the opportunity to build private networks they own and control, and (3) users more choice and affordability in their internet access and communications products.

A. Crossing Locations and Construction

The proposed crossings are part of Segment 4 (Keene to Manchester) of NHOS's 700-mile long broadband build-out containing a total of 17 segments. According to the petition, each proposed crossing will be placed between existing utility poles in existing public rights-of-way.

The locations of the crossings are as follows:

- Across Martin Brook, parallel to the east side of Route 32 in the vicinity of Blake Road in Swanzey, between utility poles E-383/246, T-128/129 and E-383/247, T 128/130. (Reference TID 56)
- Across Martin Brook, parallel to the east side of Route 32, in the vicinity of Swanzey Lake Road in Swanzey, between utility poles E-44/ 131, T- 196/118 and E-44/132, T- 196/127. (Reference TID 57)
- Across the South Branch Ashuelot River, parallel to the west side of Route 32, in Swanzey, between utility poles E-365/10, T-19642/10 and E-365/9, T-19642/9. (Reference TID 58)
- Across the Souhegan River, parallel to the west side of the Daniel Webster Highway between Woodbury Street and Railroad Avenue, in Merrimack, between utility poles E-1/352, T-109/185 and E-1/353, T-109/184. (Reference TID 266)

NHOS's petition describes the configurations of the proposed cable crossings as well as the clearance and sag requirements for each crossing. According to NHOS, sag and tension calculations were done pursuant to applicable National Electrical Safety Code (NESC) and statutory 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

NHOS affirms that each of the proposed water crossings will be placed on existing utility poles within existing public rights-of way.

II. SUMMARY OF STAFF REVIEW

Pursuant to its review of the petition and discussions with NHOS, Commission Staff filed a memorandum on October 23, 2012, finding the proposed construction and sagging design to be in conformance with the applicable sections of the NESC. Staff recommended approval of NHOS's petition for a license to construct and maintain fiber optic lines over and across the rivers and brooks listed above, subject to certain conditions related to ensuring the safe operation and maintenance of the proposed crossings. *See* Staff Recommendation of Kate Bailey, dated October 23, 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, means 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.

Based on the information presented in NHOS's petition and Staff's memorandum recommending approval, we find the proposed crossings necessary for NHOS to meet the reasonable requirements of reliable service to the public within NHOS'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 crossings are consistent with 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 NHOS's petition or to request a hearing. We note that NHOS 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. Staff has observed that it is unclear whether existing attachments owned by other utilities or the pole owners at these locations are properly licensed and in compliance with the NESC or whether relocations might be necessary as a result. We note that all attaching entities are responsible for ensuring that their attachments are in compliance with applicable standards and requirements, as mandated under Puc 1303.07. To the extent NHOS is required for any reason to relocate its attachments, it should file proposed relocation plans with the Commission prior to making alterations. 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 crossings be sent to the NHDES and the NHDOT. We also require notice of each crossing to the affected towns.

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/2012/12-013.html>.

Based upon the foregoing, it is hereby

ORDERED NISI, that subject to the effective date below, NHOS 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 all construction and future alterations to these approved crossings 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 NHOS 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 either of the affected municipalities for these crossings, be filed with this Commission; and it is

FURTHER ORDERED, that NHOS shall provide a copy of this order to the (i) Town Clerks of Swanzey and Merrimack, (ii) New Hampshire Attorney General and owners of the land bordering on said public waters at the locations of the crossings, pursuant to RSA 371:19,

(iii) the Department of Environmental Services, and (iv) the Department of Transportation by first class mail, no later than December 19, 2012 and to be documented by affidavit filed with this office on or before January 4, 2013; 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 December 19, 2012 and to be documented by affidavit filed with this office on or before January 4, 2013; 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 December 26, 2012 for the Commission's consideration; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than January 2, 2013; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective January 7, 2013, 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 tenth day of
December, 2012.

Amy Ignatius
Amy E. Ignatius
Chairman

Michael D. Harrington
Michael D. Harrington (KNS)
Commissioner

Robert R. Scott
Robert R. Scott (KNS)
Commissioner

Attested by:

Debra A. Howland
Debra A. Howland
Executive Director