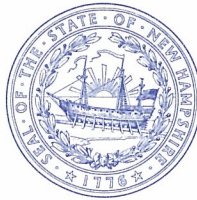


THE STATE OF NEW HAMPSHIRE

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February 12, 2009

Debra A. Howland, Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429



Re: DT 08-146 segTEL, Inc. Request for Arbitration
Hearings Examiner's Report of February 3, 2009 Prehearing Conference

Dear Ms. Howland:

I was designated as a Hearing Examiner pursuant to RSA 363:17 to conduct the prehearing conference in this case and report to the Commission.

Appearances

The following persons appeared at the prehearing conference: Jeremy Katz on behalf of segTEL, Inc. (segTEL), Christopher Allwarden, Esq. on behalf of Public Service Company of New Hampshire (PSNH), Scott Wade on behalf of Unitil Energy Systems, Inc. (UES), and F. Anne Ross, Esq. on behalf of Staff. The Office of Consumer Advocate (OCA) had filed a notice of participation but did not appear. Subsequently on February 3, the OCA filed a letter stating that its previous notice of participation had been filed in error and that it desired to withdraw.

Preliminary Positions of the Parties

At the prehearing conference, segTEL and PSNH presented their preliminary positions. segTEL primarily addressed various state and federal regulatory law issues while PSNH addressed, among other things, the scope of PSNH's property rights pursuant to the easements granted by the private property owners, an issue of state property law at least in the first instance. UES made no substantive comments on the issues and Staff took no preliminary position.

Recommendation Regarding Petition for Intervention

segTEL filed its affidavit of publication on January 30, 2009. UES filed a petition for intervention on February 3, which was late-filed because the order of notice specified January 29, 2009 as the deadline for filing intervention petitions. The petition stated in part that issues related to access to electric distribution poles located on private property, pursuant to easement rights obtained

by the utility, for the attachment of telecommunication cables by a third party, may have a significant impact upon its customers and investors. The petition further stated that UES's interests are not adequately represented by any other party.

No party objected to UES's petition. It may be found that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding. In addition, it may be found that intervention would be in the interests of justice and not impair the orderly and prompt conduct of the proceeding. Accordingly, I recommend that UES's petition be granted.

Recommendation Regarding Report of Technical Session

Subsequent to the prehearing conference, the parties and Staff met in a technical session and filed a report on February 9, 2009. They agreed upon several matters, namely:

1. Although arbitration is not appropriate, the case should be treated as a petition for dispute resolution under N.H. Code Admin. Rules Puc 1304.02, 1304.03 and 203;
2. Certain listed documents should be admitted as full exhibits;
3. A preliminary procedural schedule, including a round of discovery and a technical session to be held on February 27, 2009;
4. Before developing a further procedural schedule, the Commission should rule on PSNH's motion to dismiss and its motion to strike segTEL's objection to motion to dismiss; and
5. If the Commission denies PSNH's motion to dismiss, the current property owners of the real estate subject to PSNH's easements should be identified and given at least 30 days notice of the proceeding and an opportunity to participate.

These understandings appear to be reasonable as they aid in the disposition of the proceeding. I recommend that the parties report by March 4, 2009 the results of their February 27 technical session. In that report they should set forth any further stipulation of facts and their recommendations regarding (i) the record on which the Commission's ruling on the motion to dismiss will be based and (ii) the procedural schedule relevant to PSNH's motion to dismiss and further proceedings if its motion to dismiss is denied.

To further aid in the disposition of the proceeding, I recommend that the Commission rule on PSNH's motion to strike segTEL's objection to motion to dismiss at an early date. In the motion, PSNH states that segTEL did not timely file its objection to PSNH's motion to dismiss. I observe that PSNH did not allege that it has been prejudiced by segTEL's delay and that the arguments and citations included in segTEL's motion may be useful in helping the Commission to rule on PSNH's motion to dismiss and may perhaps diminish the need for additional pleadings or oral argument in the future.

Please let me know if you have any questions or if I can be of further assistance.

Sincerely,

A handwritten signature in blue ink that reads "Edward N. Damon". The signature is written in a cursive style with a large, stylized "E" and "D".

Edward N. Damon, Esq.
Director, Legal Division and
Hearings Examiner

cc Service List