

May 2, 2013

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



Re: *In re New Hampshire Optical Systems, LLC — Petition for an Investigation into Proposed Charges for Utility Pole Make Ready, DT 12-107*

Dear Ms. Howland:

segTEL, Inc. ("segTEL") respectfully requests the opportunity to bring to the Commission's attention information that was not available at the time segTEL filed its April 24, 2013 Motion for Clarification of the Nature and Scope of Proceeding and Specification of Pending Issues ("Motion for Clarification").¹

By an order dated April 25, 2013 (attached), the Superior Court granted in part and denied in part segTEL's motion for reconsideration, described in segTEL's Motion for Clarification, page 6. In its order, the Superior Court:

clarifie[d] that the dismissal [of segTEL's Superior Court complaint] is without prejudice to any claims that are justiciable — including a claim for money damages — that remain after the PUC has had a full opportunity to resolve all pertinent issues that are within its primary jurisdiction.

The Superior Court's April 25th order underscores why clarification of the issues that are before the Commission in this docket is of crucial importance to determine which issues may proceed in which forum. As set forth in its Motion for Clarification, segTEL believes that the Superior Court misapprehended the set of issues before the Commission as the result of sweeping and inaccurate statements by NHOS that "segTEL's [Superior Court complaint] concerns the same work, issues, and disputes that are now being investigated and resolved by the PUC." Motion for Clarification at 5. segTEL believes, however, that its claims *against NHOS* in the Superior Court for trespass, interference with contract, unfair trade practices, retrospective damages, and injunctive relief simply are not before the Commission in this docket. *Id.* at 8. Therefore, clarification of the issues that are — and, more important, those that are *not* — before

¹ To the extent that this request may be considered an amendment of segTEL's Motion for Clarification, segTEL states that it is justified by the fact that the Superior Court order was issued after segTEL filed its Motion for Clarification. This letter is being served on all parties on the service list. The filing of this letter will encourage the just resolution of the proceeding and will not cause undue delay. The letter brings additional, relevant information before the Commission, but does not broaden the scope of segTEL's motion or change the issues raised by that motion. *See* Puc 203.10.

HOME OFFICE

**FAGELBAUM &
HELLER LLP**

Ms. Debra A. Howland, Executive Director and Secretary
Re: *NHOS Petition Regarding Utility Pole Make Ready*, DT 12-107
May 2, 2013
Page 2

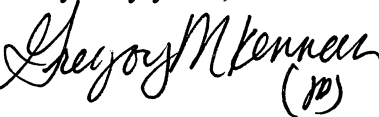
the Commission will be of valuable assistance to the Superior Court in determining how to proceed without interference in what the Court perceives as the province of the Commission.

As set forth in its motion for clarification, segTEL believes that the issues that are not before the Commission include (but are not limited to):

- (1) claims for damages sought by segTEL against NHOS;
- (2) any claim for trespass caused by NHOS' engaging in "self-help" attachments outside of the usual and customary "make-ready" process or any claim for permission to make attachments in violation of the National Electrical Code, National Electric Safety Code, Rural Utility Service Standards and/or the Telcordia Blue Book;
- (3) any claim for interference with contractual relations arising from NHOS' attachments made outside of the usual and customary "make-ready" process or attachments made in violation of the National Electrical Code, National Electric Safety Code, Rural Utility Service Standards and/or the Telcordia Blue Book; or
- (4) claims by segTEL for injunctive relief as the result of NHOS' violations and practices described above.

In light of the Superior Court's April 25th order, segTEL reiterates that its ability to obtain timely relief on claims that are not before the Commission is in doubt because the Superior Court is deferring to the Commission on matters that the Court perceives are within the Commission's "primary jurisdiction" in this docket. Accordingly, segTEL respectfully reiterates its request, as set forth in its Motion for Clarification, that the Commission clarify and confirm the nature and scope of this proceeding and specify the issues that are, and are not, pending in this docket.

Thank you, and please contact me if you have any questions.

Very truly yours,

Gregory M. Kennan

cc: Service List