

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 11-280

NEW HAMPSHIRE OPTICAL SYSTEMS, INC.

**Petition for Authorization to Construct and Maintain Fiber Optic Communications Cable
Over and Across 18 Public Water Bodies and 5 Railroads
between Concord and Lebanon (Segment 15)**

Order *Nisi* Granting License

ORDER NO. 25,417

September 25, 2012

I. SUMMARY OF THE PETITION

On December 20, 2011, New Hampshire Optical Systems, Inc. (NHOS)¹ filed a petition pursuant to RSA 371:17 requesting a license to construct and maintain fiber optic cables over and across state owned railroad property and the public waters of the rivers and brooks listed below, located in 11 New Hampshire towns and cities. Following discussions with Staff, NHOS filed revisions to its petition on February 13, February 23, and March 2, 2012.

The fiber optic cable NHOS proposes to install over the listed river and railroad crossings 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 affirms that it will build and maintain an open access, non-discriminatory network offering; (1) broadband providers the ability to

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)*.

economically 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

According to the petition, all but one of the proposed crossings will be placed between existing utility poles in existing public rights-of-way. NHOS attached diagrams to its petitions providing the exact distances between poles and the height of each pole for each river and railroad crossing.

The water crossings are located as follows:

- Franklin: Two Winnepesaukee River crossings parallel the southerly side of Central Street bridge (Route 3/11) in the vicinity of Peabody Road and River Street, between Poles 1/22 and 1/23, and the southerly side of the Central Street bridge (Route 3/11) near East Bow Street, between Poles 1/42 and 1/43.
- Laconia: One Winnepesaukee River crossing parallels the easterly side of the New Salem Street bridge near the intersection of Winnisquam Avenue and Fair Street, between Poles 180/16 and 180/17.
- Hanover: Two Mink Brook crossings parallel a dirt access road that extends from Buck Road in the vicinity of Lebanon Street (Route 120), between Poles 197/2 and 197/3; and the westerly side of Great Hollow Road near the intersection of Greensboro Road and Etna Road, between Poles 83/3 and 83/4.
- Concord: One Contoocook River crossing parallels the westerly side of the Village Street (Route 3) bridge, between Poles 736/1 and 554/1.
- Ashland: One Squam River crossing parallels the northerly side of the Winnepesaukee Scenic Railroad Bridge, between Poles 4/6 and 4/7; one Pemigewasset River crossing is located approximately 200 feet north of the Daniel Webster Highway bridge in the vicinity of North Ashland Road, between Poles 380/452 and 380/453.
- Canaan: Three Indian River crossings parallel the southerly side of Route 4 near Gristmill Hill Road, between Poles 7613/33 and 7613/34; the westerly side of Dorchester Road (Route 118), between Poles 116/27 and 116/28; and the southerly side of Route 4 between Roberts Road and Upper Grafton Road, between Poles 116/34 and 116/35.

- Canaan: Three Mascoma River crossings parallel the northerly side of Route 4 in the vicinity of Lafortune Road, between Poles 116/81 and 116/82; the westerly side of Route 4 in the vicinity of Goose Pond Road, between Poles 412/177 and 412/178; and the southerly side of Route 4 in the vicinity of the intersection of West Farms Road and Blackwater Road, between Poles 412/148 and 412/149.
- Lebanon: Four Mascoma River crossings parallel the westerly side of Route 4 near Route 4A and Sunset Rock Road, between Poles 110D/10 and 110D/14; approximately 125 feet east of an existing covered bridge in the vicinity of the Hardy Hill Road cul de sac and Riverside Drive, between Poles 203/2 and 203/3; on the Bank Street Extension in the vicinity of Riverdale Drive, between Poles 1/32 and 1/33; and on Hanover Street (Route 120), between Poles 119/1 and 225/3.

The railroad crossings are located as follows:

- Northfield: at Main Street in Northfield near the intersection of Prospect and Park Streets, between Poles 63/10 and 63/8;
- Laconia: at New Salem Street near the intersection of Winnisquam Avenue and Fair Street, between Poles 180/14 and 180/15;
- New Hampton: at Winona Road, between Poles 380/331 and 380/300;
- Bridgewater: at John Jeness Road, between Poles 380/458 and 380/457; and
- Tilton: at Main Street, east of Mechanic Street, between Poles 64/8 and 64/7.

NHOS' 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 petitions, permits from the New Hampshire Department of Environmental Services (NHDES) are not required for this project. A permit from the New Hampshire Department of Transportation (NHDOT) is required for one railroad crossing (Ref. TID 22.1 at Winona Road in New Hampton), because a new pole will need to be installed. NHOS states that it has received approval from the NHDOT to construct that crossing.

C. Property Rights

NHOS affirms that each of the proposed crossings will be placed within existing public rights-of way. The railroad crossing in New Hampton will require installation of one new pole; all other crossings will be placed on existing utility poles.

II. SUMMARY OF STAFF REVIEW

Upon review of the petition, as well as discussions with NHOS, the Commission Staff filed three memoranda on September 10, 2012, finding the proposed construction and sagging designs to be in conformance with the applicable sections of the NESC. Staff recommended approval of NHOS's petition, subject to certain conditions related to ensuring the safe operation and maintenance of the proposed crossings. *See* Staff Recommendations of Randall Knepper, dated September 5, 6 and 7, 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, or over, under, or across any railroads owned by 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 memoranda recommending approval of the crossings, 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 in the public good and therefore approve the petition on a *nisi* basis, subject to the conditions recommended by Staff. 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. Finally, inasmuch as NHDES is responsible by statute for maintaining the official list of public waters, and given NHDOT's oversight of railroads, roads and bridges, we require that notice of the proposed crossings be sent to NHDES and NHDOT. We also require notice of each crossing to the affected towns and cities.

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/2011/11-280.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 and railroads 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 306.01 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 any 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 Concord, Hanover, Ashland, Canaan, Northfield, Franklin, Laconia, New Hampton, Bridgewater, Lebanon, and Tilton, (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) pursuant to RSA 422-B:13, the New Hampshire Department of Transportation and the Office of Secretary, U.S. Department of Commerce by first class mail, no later than October 5, 2012, and to be documented by affidavit filed with this office on or before October 26, 2012; 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

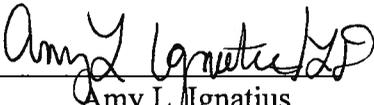
operations are conducted, such publication to be no later than October 5, 2012 and to be documented by affidavit filed with this office on or before October 26, 2012; and it is

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 October 12, 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 October 19, 2012; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 26, 2012, 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 twenty-fifth day of September, 2012.



Amy L. Ignatius
Chairman

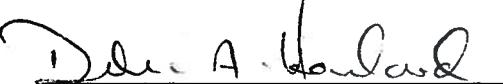


Michael D. Harrington
Commissioner



Robert R. Scott (KNS)
Commissioner

Attested by:



Debra A. Howland
Executive Director

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.

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Docket #: 11-280-1 Printed: September 25, 2012

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
EXEC 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.