

BEFORE THE NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

NEW HAMPSHIRE OPTICAL SYSTEMS, INC.
DT 12-107

NHOS'S RESPONSES TO PUC QUESTIONS

Date Request Received: September 5, 2012
Request No. NHPUC 1-1

Date of Response: October 2, 2012
Witness: Darren LaCroix

1. Provide a specific list of entities with which NHOS currently has outstanding disputes related to pole attachments in connection with its "Middle Mile" construction project.

ANSWER:

- A. segTEL, a division of Tech Valley
- B. BayRing
- C. TelJet
- D. FairPoint Communications*

*Unitil, PSNH, TDS Telecom, NHEC, and Liberty Utilities/National Grid are joint owners of poles as to which NHOS has outstanding disputes. It is NHOS's understanding that the incumbent telephone companies, primarily FairPoint, manage the communications space on the poles and assume responsibility for communications with other attaching entities.

NHOS'S RESPONSES TO PUC QUESTIONS

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2. For each entity with which NHOS has a pole-attachment dispute, please list the specific poles involved, including the town or city in which they are located, the road on which they are located, the owner of each specific pole, and the existing third-party attachments made to the pole. State the specific nature of the dispute (amount of excessive make-ready charges, whether advanced payment of make-ready charges is required, delayed make-ready by third party attacher, etc.) by location or group of poles.

ANSWER:

Pole owner surveys conducted in response to NHOS's licensing applications identify the specific poles requiring third party make-ready work. The "Form 3s" issued by the pole owners outline the make-ready work required, including the third party attachments that must be rearranged to accommodate NHOS's facilities. With respect to the existing attachers identified below – segTEL, BayRing, and TelJet – disputes over make-ready work have prevented the completion of the third part make-ready dictated by the pole owners. NHOS has compiled, for each third party, a list of the specific poles requiring make-ready work by that third party.

The disputes with these third parties are not limited to the poles identified in the Form 3s as requiring make-ready work. This is because the third parties have ignored the pole owners' engineering and survey process, and have insisted on surveying all poles along an NHOS application where they have attachments– including poles that were not identified by the pole owners as requiring make-ready. Based on their surveys, the third parties have intentionally increased the scope by creating new, additional make-ready. This additional make-ready was not called for by the pole owners, and its completion should not be required before NHOS may make its attachments. Often the alleged additional make-ready is based on pre-existing conditions that were not caused by NHOS and is not the responsibility of NHOS to correct. In many cases the

demands for additional make-ready would require the pole owners to repeat their entire make-ready process and force other attachers to revisit their work as well. The third parties' conduct has trapped NHOS in a perpetual cycle of surveying and make-ready work. This conduct has delayed the completion of the make-ready for NHOS's facilities, substantially increased the costs to NHOS, and prevented NHOS from constructing its facilities on any routes where these third parties have attachments. NHOS also has compiled, for each third party, a list of the poles affected by that party's conduct.

A. segTEL

1. Poles Involved: A complete list of poles that, according to the pole owners' Form 3s, require segTEL make-ready is attached as Exhibit A (Poles with segTEL Make-Ready).¹ A complete list of poles affected by segTEL's conduct is attached as Exhibit B (Poles affected by segTEL).

2. Nature of Dispute: segTEL has impeded NHOS's ability to undertake work on the Middle-Mile Project by charging rates that are excessive, and therefore not just and reasonable, and by manipulating the make-ready process to delay the completion of work required to support NHOS's attachments to utility poles.

(a) Excessive Make-Ready Charges: segTEL has demanded that NHOS pay excessive prices for the performance of necessary make-ready work and provided no detailed cost information to substantiate its price demands.

In response to NHOS's requests for detailed cost information, segTEL has produced a rate sheet. See Exhibit C (segTEL Rate Schedule). The rates listed on this sheet are heavily inflated and do not reflect the cost of performing the required make-ready work. NHOS believes that segTEL's demand for excessive rates violates the intent of Article 7 of the Pole Attachment

¹ For the PUC's convenience, an Exhibit List of all exhibits cited in NHOS's responses is attached.

Agreement (“PAA”), which allows existing attachers to be reimbursed for rearrangement “costs” alone. See, e.g., Article 7.1.5 (licensee shall not be required to bear “costs of rearranging its facilities”); Article 7.1.6 (licensee may seek reimbursement of “rearrangement costs”); Article 7.1.7 (licensee not required to “bear any of the costs of rearranging”). In addition, allowing segTEL to charge rates that would provide huge profits from what is ultimately a monopolistic process cannot be considered just and reasonable pursuant to Puc 1301.01 and RSA 374:34-a and could provide a means of effectively denying access to utility poles.

The excessive nature of segTEL’s rates is illustrated by the quoted rate in segTEL’s Rate Schedule for lowering a single attachment on a utility pole. This single line item accounts for the majority of third party make-ready work required for the NHOS attachments. segTEL’s rate sheet lists a construction fee of \$214.50 per lower. This fee is exclusive of additional costs charged for surveys, administration and traffic management and travel. In contrast, as a result of price quotes received in response to an industry-wide Request for Proposal (“RFP”) issued by Waveguide, Inc., NHOS’s construction affiliate, see Exhibit D (Waveguide RFP 3100-0001, with price quotes), Waveguide has signed contracts with telecommunications contractors from the New Hampshire area with prices ranging from \$22.00 to \$44.68 per lower, including traffic management and travel.

By letter dated January 20, 2012, NHOS attempted to negotiate a mutually beneficial solution with segTEL over make-ready charges. See Exhibit E (1/20/12 NHOS letter to segTEL re: make-ready proposal). In that letter, NHOS proposed the following alternative solutions: (a) NHOS would pay segTEL market rates to perform the necessary make-ready work; (b) NHOS would negotiate rates with segTEL’s contractor, manage the relationship with the contractor, and pay the contractor directly while providing segTEL full visibility to the work performed; or (c)

NHOS's contractor would perform the make-ready work under segTEL's supervision at no cost to segTEL and NHOS would place money in escrow to ensure the quality of the work. On February 10, 2012, segTEL rejected all three alternatives. See Exhibit F (2/10/12 segTEL response to NHOS make-ready proposal).

(b) Manipulation of Make-Ready Process: Instead of conducting the make-ready work necessary to accommodate the NHOS attachments as prescribed by the engineering work performed by the pole owners, segTEL performed its own engineering survey to reflect its own interpretation of applicable codes. This has unnecessarily increased costs and caused significant delays.

segTEL's conduct does not conform to the requirements of the standard PAA that, NHOS believes, is utilized by FairPoint and other New Hampshire pole owners. See Exhibit G (Sample NH Pole Attachment Agreement – FairPoint). Article 7.1.5 of the PAA provides, in part, that if access to a utility pole is required for a new attacher (*i.e.*, NHOS in this instance), an existing attacher/licensee “will upon written notice from the Licensor either rearrange its Attachments on the Utility Pole or transfer them to a replacement Utility Pole as reasonably determined by Licensor.” (Emphasis added). This provision is clear that segTEL must rearrange its facilities as required by the pole owners, not according to segTEL's own engineering.

Another delay tactic used by segTEL is to reject the pole owners' engineering survey on the basis that the proposed NHOS attachment would create a code violation, when in fact the condition causing the alleged violation (a) was created by a prior attachment unrelated to NHOS, and/or (b) reflects a common industry practice that has no adverse safety impact (*e.g.*, minor spacing variations from code). An example of this is described below, in connection with segTEL's surveys of utility poles in Manchester.

segTEL's lack of concern for code compliance when installing its own attachments demonstrates that segTEL's protests regarding the code compliance and other issues is a subterfuge designed to delay NHOS from constructing the Middle Mile Project. This is illustrated by segTEL's recent conduct on pole lines in Laconia and Franklin.

Laconia, NH: Along Route 106 in Laconia, segTEL consistently built out of compliance with code by failing to maintain the required clearances to other communication and power cables, and by frequently attaching with j-hooks. A map indicating the locations of violations, together with photographs (segTEL facilities are identified by the yellow fiber tags) and a spreadsheet documenting the results of an independent survey of each pole, is attached as Exhibit H (Data re: segTEL attachments in Laconia). As this evidence shows, when segTEL installed its facilities along the Route 106 line, it did so without completing required make-ready work or complying with applicable standards.

When MetroCast performed pole surveys of the Route 106 line which were needed for the NHOS facilities, it identified many of the violations caused by segTEL's failure to conduct make-ready work. MetroCast added the cost of remedying those violations to invoices sent to NHOS.

Franklin, NH: On August 29, 2012, while NHOS was meeting with PUC Staff and other interested parties at a technical session convened in Docket DT 12-246, segTEL improperly installed its own facilities in space already licensed to NHOS on utility poles in Franklin. segTEL did not attach its facilities at the height licensed to it, it failed to complete the required make-ready work, it failed to maintain clearances from existing attachments, and it made unsafe attachments on j-hooks. In addition, segTEL did not notify NHOS or the City of Franklin of their need to relocate facilities as documented by the pole owners' engineering, and

instead crowded existing attachments and deliberately took self-help measures by relocating facilities without the consent of the owners of those facilities or the pole owners. Further, segTEL compromised the integrity of the pole line by failing to maintain the four inch clearance between bolt holes as mandated by code.

On December 16, 2011, NHOS was licensed by FairPoint to attach its facilities to the Franklin pole line. This was 12 days before segTEL began the survey process required for it to be licensed on the Franklin line. At the time of segTEL's conduct described above, NHOS had just completed the make-ready work required to attach its facilities at its licensed attachment height. When NHOS dispatched technicians to build at the licensed height, it found that segTEL had blocked them from doing so. Neither segTEL nor the pole owners provided any notice to NHOS of the need to relocate its facilities to a new location on the poles to provide for segTEL's new attachments. Instead, only after segTEL had improperly attached its facilities to the poles, FairPoint informed NHOS that it would have to relocate its attachments to make room for the illegal attachments by segTEL. The result was that NHOS incurred significant additional time and expense, and segTEL was not required to remove its attachments even though it had placed them at NHOS's licensed attachment without providing any notice to relocate and in a manner that was not in compliance with code. Not providing NHOS any notification to relocate to accommodate segTEL's attachment is in clear violation of Puc 1303.06, which states that "A pole owner shall provide an attaching entity [NHOS] no less than 60 days' written notice prior to... Modifying the facilities."

A map indicating the locations of segTEL's violations on the Franklin line, together with photographs and a spreadsheet documenting the results of an independent survey of each pole, are attached as Exhibit I (Data re: segTEL attachments in Franklin).

(c) segTEL Surveys: segTEL has unreasonably, and unnecessarily, delayed the completion of the survey process required for make-ready work to begin. segTEL also has raised meritless challenges to the pole owners' make-ready engineering, and contested completed third party relocations undertaken to accommodate the NHOS attachments.

On May 4, 2012, NHOS sent make-ready notice to segTEL for the Middle-Mile Project. See Exhibit J (NHOS relocation notices to segTEL). The notice identified approximately 6,000 poles with segTEL attachments. Since then, segTEL has completed walkout surveys for just 522 of the 6,000 poles. This equates to fewer than four poles per calendar day. At this rate, the walkout surveys will not be completed until late 2016. This projection reflects only the time needed to conduct the surveys, and does not take into account performance of the make-ready work itself.

segTEL's conduct with respect to the Middle-Mile Project stands in stark contrast to segTEL's own written procedures regarding make-ready work. See Exhibit K (segTEL Make-Ready Agreement). Those procedures require segTEL to provide a cost quote for make-ready work within five days of receiving a make-ready request, and to complete the work within 20 days of pre-payment for the work. To date, segTEL has provided no quotes to NHOS and has completed no make-ready work, despite the fact that 21 weeks have passed since NHOS's first make-ready notice to segTEL.

One cause of delay has been segTEL's attempt to hold NHOS responsible for correcting pole violations created by segTEL. This is illustrated by segTEL's survey notes associated with two poles in Manchester: pole #106/9 Douglas Street, and pole #70/4 Douglas Street. See Exhibit L (Pole #106/9 photo with survey notes); Exhibit M (Pole #70/4 photo with survey notes). For each of the two poles, the pole owners had instructed NHOS to attach 12 inches

above segTEL, and advised further that no additional make-ready was required. On the two poles, segTEL is located above cable television (CATV). segTEL apparently had installed its facility less than the requisite 12 inches above CATV. This can be seen from the fact that the segTEL survey alleged that the NHOS spacing directive would result in less than 24 inches between NHOS and CATV. The segTEL survey further alleged that NHOS could not “make a compliant attachment without the pole owner re-writing new work to be done in the field (i.e. pole replacement, electrical move).”

If, as segTEL alleged, NHOS’s attachment would result in less than 24 inches between the three facilities, this could only be because segTEL had already improperly attached less than 12 inches above CATV. Otherwise, the violation could not be created by locating NHOS’s facility an additional 12 inches above segTEL’s existing attachment. Accordingly, segTEL’s demand that these poles be re-engineered to support the NHOS attachment is unfounded, and evidences an attempt to obstruct and delay NHOS’s construction of the Middle-Mile Project.

NHOS and FairPoint have been forced to expend substantial time and resources to investigate these and other allegations by segTEL, only to find that the allegations lack merit. NHOS is prepared to provide evidence of other instances where the segTEL surveys have raised unfounded claims regarding the NHOS attachment.

B. BayRing

1. Poles Involved: A complete list of poles that, according to the pole owners’ Form 3s, require BayRing make-ready is attached as Exhibit N (Poles with BayRing make-ready). A complete list of poles affected by BayRing’s conduct is attached as Exhibit O (Poles affected by BayRing).

2. Nature of Dispute: BayRing published a rate sheet that is nearly identical to segTEL's. See Exhibit P (BayRing Rate Sheet). As such, the nature of the dispute with BayRing over make-ready charges is the same as the dispute with segTEL. As recently as September 20, 2012, during discussions between NHOS and BayRing, BayRing alleged it is entitled to payment of the rates in its rate sheet because FairPoint charges the same rates, and because those rates are necessary to allow BayRing to recoup some of the cost of building its network. As described above, NHOS believes that BayRing's rate demands are inconsistent with the PAA, which allows existing attachers to recoup only "costs" to perform make-ready, as well as the "just and reasonable" standard set forth in RSA Chapter 374 and the Puc 1300 rules.

C. TelJet

1. Poles Involved: A complete list of poles that, according to the pole owners' Form 3s, require make-ready is attached as Exhibit Q (Poles with TelJet make-ready). A complete list of poles affected by TelJet's conduct is attached as Exhibit R (Poles affected by TelJet).

2. Nature of Dispute: On June 12, 2012, NHOS sent TelJet a notice for make-ready work on 36 poles in Keene, Swanzey and Merrimack. See Exhibit S (NHOS relocation notices to TelJet). In response, on August 30, 2012, TelJet quoted \$12,670.24 for this work, representing an average cost of \$351.95 per pole. See Exhibit T (8/30/12 TelJet make-ready quote). The make-ready work required of segTEL consists of 32 lowers and 4 pole transfers, the actual cost of which is a mere fraction of the quoted cost. One contractor frequently used by TelJet responded to the Waveguide RFP and quoted a price of \$22 per lower and \$36 per transfer, including traffic management. Using these rates, the construction associated with TelJet's moves would cost only \$848.

D. NH Pole owners

1. Poles Involved: An Excel spreadsheet identifying all poles where there is a dispute over third party make-ready is attached as Exhibit U (List of poles affected by make-ready dispute).

2. Nature of Dispute: The pole owners have failed to ensure reasonable access to their poles, or to manage third party make-ready work in accordance with the terms of the PAA.

Article 5.4 of the PAA provides that the pole owner/licensor “shall make commercially reasonable efforts to complete Make-ready Work within six (6) months of receipt of payment for Make-ready Work from Licensee, except for reasons beyond Licensor’s control.” Article 1.11 defines “Make-ready Work” broadly to mean “All work, including, but not limited to rearrangement and/or transfer of existing facilities ... required to accommodate the attachment of licensee’s facilities to a pole.”

Article 7.1.5 provides that if a new licensee needs to attach its facilities to a utility pole with an existing attachment, the owner of the existing attachment “will upon written notice from the Licensor either rearrange its Attachments on the Utility Pole or transfer them to a replacement Utility Pole as reasonably determined by Licensor.”

Article 7.1.6, in turn, covers circumstances where a “Licensee does not rearrange or transfer its Attachments within fifteen (15) days after receipt of written notice from [Licensor] requesting such rearrangement or transfer.” Article 7.1.6 states that, if the Licensee fails to move its facilities after such notice, the Licensor “may perform or have performed such rearrangement or transfer.”

NHOS has worked diligently to obtain the pole owners’ support in removing roadblocks to access placed by existing attachers. Yet, even though NHOS is now paying rent (attachment

fees) to the pole owners, and has paid in excess of \$8,000,000 in pole owner survey and make-ready costs, the pole owners have not exercised their rights under the PAA to provide pole access for NHOS.

As noted above, as the primary incumbent telephone company on utility poles within the scope of the Middle-Mile Project, FairPoint is typically responsible for managing the communications space on the pole. Between May and July of 2011, NHOS submitted the majority of the applications required for construction of approximately 760 miles of fiber cable for the Middle-Mile Project. Pursuant to Article 4.2 of the PAA, NHOS designated a desired priority for completing pre-construction surveys and make-ready work. FairPoint completed much of the make-ready work associated with its own facilities, and to date it has collected over \$3,000,000 in fees from NHOS for pre-construction surveys and make-ready charges. Despite this, FairPoint has not made all “commercially reasonable efforts” to obtain the relocation of facilities owned by third party attachers. In particular, FairPoint has not promptly notified third party attachers of their make-ready obligations and, when those attachers have failed to move their attachments in accordance with FairPoint’s pre-construction surveys; FairPoint has not exercised its right to undertake the rearrangement itself directly or through a third party contractor.

As noted, Article 5.4 of the PAA provides that pole owners must make “commercially reasonable efforts” to ensure that make-ready work is completed within six months of notice, which equates to approximately 180 days. Similarly, Puc 1303.12 requires make-ready to be completed within 150 days. (Like the PAA, Puc 1302.07 defines make-ready work broadly to mean “all work... required to accommodate the attachment of the facilities of the party requesting attachment to the pole.”)

While FairPoint and the other joint pole owners have completed the majority their own rearrangements on the poles, they have not enforced the provisions of Articles 7.1.5 and 7.1.6 of the PAA to require existing attachers like segTEL to complete third party make-ready to accommodate NHOS's attachments.

On March 16, 2012, NHOS asked FairPoint to consider exercising its authority under Article 7.1.6 of the PAA to issue notices requiring existing attachers to complete make-ready work within 15 days. On June 11, 2012, FairPoint issued a 15 day notice to segTEL. See Exhibit V (6/11/12 FairPoint 15 day notice to segTEL). However, when segTEL failed to comply with the notice, FairPoint did not exercise its right under the PAA to perform the work itself or authorize another party to do so on its behalf. This cannot be considered part of a "commercially reasonable" effort within the meaning of Article 5.4 of the PAA.

NHOS'S RESPONSES TO PUC QUESTIONS

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Witness: Darren LaCroix

3. *For each location of poles for which a delay has occurred, provide:*
- (a) *A dated copy of the notice you provided to the third-party attacher to arrange the make-ready work;*
 - (b) *The date on which the third-party attacher provided you with an estimate of the project cost and schedule;*
 - (c) *The date on which you provided any pre-payment charged by the third-party attacher;*
 - (d) *The date by which you expected the third-party attacher to be moved;*
 - (e) *The date on which the third-party attacher reported completion of the make-ready work;*
 - (f) *Any and all correspondence between NHOS and the third-party attacher relative to the poles in dispute;*
 - (g) *Whether you believe the processing of this third-party make-ready work violated New Hampshire law, New Hampshire rules, or the Pole Attachment Agreement. If so, provide specific citations of law, rule, or agreement sections.*

ANSWER:

As explained above, at this time NHOS's disputes with BayRing and TelJet concern make-ready costs, not delays in performing make-ready work. Although pricing disputes with BayRing and TelJet, if not resolved, could lead to delays, this has not yet occurred. Accordingly, Question 3, which pertains specifically to delays, is not applicable to BayRing and TelJet. However, because Questions 3(a) and 3(g) seek information that may be helpful to the PUC regarding issues other than delay, NHOS has responded to these Questions with respect to BayRing and TelJet.

3(a). Dated copy of make-ready notice.

A. segTEL: Copies of the make-ready notices that NHOS sent to segTEL, and that FairPoint sent to segTEL on NHOS's behalf, are attached as Exhibit J (NHOS relocation notices to segTEL).

B. BayRing: Copies of the make-ready notices to BayRing are attached as Exhibit W (NHOS relocation notices to BayRing).

C. TelJet: Copies of the make-ready notices to TelJet, together with a summary of the applications that accompanied each notice, are attached as Exhibit S (NHOS relocation notices to TelJet).

3b. Date third-party attacher provided project cost and schedule.

segTEL

1. Cost Estimate: None provided. While, segTEL has provided a rate sheet, the rate sheet does not contain information to show how the listed rates were derived.

2. Schedule: On June 19, 2012, FairPoint informed NHOS that, in response to a 15 day notice from FairPoint, segTEL had agreed it would complete make-ready work for the first 345 relocations by July 31, 2012. See Exhibit X (6/19/12 FairPoint email re: segTEL make-ready). To date, segTEL has not completed any make-ready work or provided a schedule for completion.

3c. Date NHOS made any pre-payment demanded by third-party attacher.

segTEL: segTEL's make-ready procedures require pre-payment upon issuance of price quotes by segTEL. Because segTEL has not issued price quotes to NHOS, there has been no opportunity or demand for pre-payment.

3d. *Date NHOS expected third-party attachers to be moved.*

segTEL: NHOS sent relocation requests to segTEL on May 4, 2012. Based on SegTEL's documented make-ready procedures, NHOS expected that the work would begin starting in early June 2012.

As noted, on or about June 13, 2012 FairPoint sent a 15 day notice to segTEL for 345 poles. NHOS expected that work outlined in the notice would be completed by the first week of July. After FairPoint failed to enforce the 15 day notice, and instead agreed with segTEL to a July 31 completion date, NHOS expected that segTEL comply with the July 31 deadline. To date, segTEL has not completed any make-ready work.

3e. *Date third-party attacher reported completion of make-ready work.*

segTEL: No make-ready work completed.

3f. *Correspondence between NHOS and third-party attacher re: poles in dispute.*

- A. segTEL: see Exhibit Y (NHOS-segTEL Correspondence).
- B. BayRing: see Exhibit Z (NHOS-BayRing Correspondence).
- C. TelJet: see Exhibit AA (NHOS-TelJet Correspondence).

3g. *Whether processing of third-party make-ready work violated New Hampshire law, New Hampshire rules, or the Pole Attachment Agreement.*

The processing of requests for third-party make-ready by pole owners, including FairPoint, and existing attachers, including segTEL, violated New Hampshire statutes, the PUC rules, and the PAA.

The requirement that access to utility poles be provided under terms that are “nondiscriminatory” and “just and reasonable” is explicit in the provisions of RSA Chapter 374 governing pole access. See RSA 374:2 (requiring that charges demanded by any public utility

“shall be just and reasonable”); RSA 374:34-a, VI (pole owners required to provide nondiscriminatory access to poles).

This requirement also is explicit in the PUC rules. Puc 1303.01 requires pole owners to provide access to their poles on terms that are “just, reasonable and nondiscriminatory.”

Furthermore, as shown above, responsibility for ensuring that third party make-ready is performed in a manner consistent with statutory and regulatory standards falls on the pole owners through the PAA. In particular, Article 5.4 requires a pole owner to “make commercially reasonable efforts to ensure that all make-ready is completed with 180 days; Articles 7.1.5 and 7.1.6 then grant the pole owner the authority to require existing attachers to perform the required work.

When a new attacher enters into the PAA, and undertakes a contractual obligation to pay licensing fees, attachment fees and make-ready fees to the pole owners, the new attacher reasonably expects and should be able to rely on the pole owners exercising their rights under the PAAs to require existing attachers to allow timely access under terms that are just and reasonable. This is particularly true since the PAA does not expressly grant new attachers a remedy against existing attachers. Instead, the new attacher’s primary recourse is to seek the pole owner’s assistance in resolving disputes and ensuring timely access.

Here, the pole owners, in particular FairPoint, have failed to ensure that NHOS is afforded nondiscriminatory, just and reasonable access to its poles. FairPoint’s failure to enforce its rights under the PAA has resulted in a denial of access.

Puc 1303.06 provides that the pole owners must give an attaching entity at least 60 days’ written notice before modifying facilities. When segTEL occupied NHOS’s licensed attachment in Franklin without providing NHOS any notice to relocate, FairPoint allowed segTEL to remain

at NHOS's licensed attachment and simply told NHOS to immediately relocate to accommodate segTEL.

Puc 1303.07 requires that all pole attachments comply with specified standards and shall not interfere with the facilities of other attaching entities. segTEL's attachments to numerous poles fail to meet this standard. In addition, FairPoint has violated this provision by knowingly allowing such illegal attachments to be placed and maintained on its poles.

NHOS'S RESPONSES TO PUC QUESTIONS

Date Request Received: September 5, 2012
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Witness: Darren LaCroix

4. *What is the total number of poles for which NHOS has submitted a request for license to the pole owners? Of this number, on how many poles have NHOS been unable to make attachment due to third-parties to date?*

ANSWER:

NHOS has submitted applications covering 21,728 poles. Of this total, the disputes described in response to Question 2, above, affect NHOS's ability to attach to approximately 10,292 poles.

NHOS'S RESPONSES TO PUC QUESTIONS

Date Request Received: September 5, 2012
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Witness: Darren LaCroix

5. For each of the entities listed in response to question 1, identify separately the number of poles involving each entity. (e.g. if segTEL, BayRing and MetroCast are identified in response to question 1, how many of the poles in the project involve segTEL attachments, how many poles involve BayRing attachments and how many poles involve MetroCast attachments?)

ANSWER:

The pole owners' Form 3s identify the poles listed in the NHOS licensing applications which require third party make-ready work. (The number of poles requiring make-ready is provided in response to Question 6, below.) However, the entities listed in response to Question 1 – segTEL, BayRing and TelJet – have attachments on additional poles that, according to the pole owners' surveys and engineering, do not require make-ready. NHOS has not been provided with information about those additional poles.

NHOS'S RESPONSES TO PUC QUESTIONS

Date Request Received: September 5, 2012
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6. For each of the entities listed in response to question 1, identify separately the number of poles requiring make-ready by the entity, for which NHOS has requested the entity perform make-ready.

ANSWER:

The numbers below represent the poles requiring make-ready, according to the pole owners' Form 3s.

- A. segTEL: 3020 Poles
- B. BayRing: 973 Poles
- C. TelJet: 36 Poles

NHOS'S RESPONSES TO PUC QUESTIONS

Date Request Received: September 5, 2012
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Witness: Darren LaCroix

7. *For each of the entities listed in response to question 1, identify separately the number of poles requiring make-ready which have been completed.*

ANSWER:

- A. segTEL: 0 poles
- B. BayRing: 0 poles
- C. TelJet: 0 poles

NHOS'S RESPONSES TO PUC QUESTIONS

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8. For each location or group of poles in dispute, please state what actions NHOS has taken to communicate its concerns with the pole owners.

ANSWER:

NHOS and its partners have approached each of the largest New Hampshire pole owners (FairPoint, PSNH, Unitil, NHEC, TDS and Liberty Utilities/National Grid) for assistance in managing the relocation of third party facilities. NHOS has focused its efforts on obtaining assistance from FairPoint, as FairPoint is a joint owner on nearly 95 percent of the poles at issue and had until July shown interest in exercising their right under the PAA. In addition, in the past FairPoint has exercised these rights and traditionally has been responsible for managing the communications space on the poles it owns jointly.

On May 29, 2012, NHOS met with FairPoint, which agreed to issue 15-day notices to segTEL and MetroCast and, if make-ready was not completed after 15 days, to allow NHOS to engage a third party contractor as FairPoint's agent to conduct make-ready work.

On June 13, 2012, FairPoint confirmed to NHOS that it had sent 15 day notices. See Exhibit BB (6/13/12 FairPoint email re: 15 day notices). FairPoint advised that if the existing attachers had not suitably relocated their facilities within 15 days, FairPoint would authorize NHOS to hire a third-party contractor, Eustis Cable, or other approved contractor, to have the make-ready work performed.

On June 19, 2012, FairPoint informed NHOS that because segTEL purportedly had "committed" to completing the required make-ready work by the end of July, FairPoint was rescinding its prior authorization allowing Eustis Cable to perform the work. Instead, FairPoint

advised that “[n]o authorization for the movement of Segtel’s [sic] cable will be given till [the July] time frame has expired.” See Exhibit X (6/19/12 FairPoint email re: segTEL make-ready commitment). Finally, on July 6, 2012, in response to NHOS’s continued inquiries into the status of the make-ready process, FairPoint informed NHOS that FairPoint “will not be issuing any more 15-day notices to segTEL or MetroCast on behalf of NHOS.” See Exhibit CC (7/6/12 FairPoint email re: 15 day notice rescinded). In addition, FairPoint asserted that it “is not the mediator for disagreements,” and denied having the authority “to authorize relocation of CLEC plant.” Finally, FairPoint advised it would “not accept liability for any unauthorized relocation of CLEC plant,” and that NHOS was required to work out on its own “mutually acceptable arrangements with segTEL and MetroCast

NHOS'S RESPONSES TO PUC QUESTIONS

Date Request Received: September 5, 2012
Request No. NHPUC 1-9

Date of Response: October 2, 2012
Witness: Darren LaCroix

9. For each instance where NHOS believes charges for third-party make-ready are unjust, unreasonable or unfair, identify the relevant pole location or group of poles and provide a copy of the charges received from the third-party attacher.

ANSWER:

A. SegTEL: As noted, segTEL has refused to provide NHOS with a firm price quote, and NHOS believes that segTEL's rate sheet lists rates that are unreasonable. segTEL presumably seeks to apply these rates to all poles where segTEL has make-ready.

B. BayRing: BayRing not yet provided NHOS with a firm price quote, and NHOS believes that BayRing's rate sheet lists rates that are unreasonable. BayRing presumably seeks to apply these rates to all poles where BayRing has make-ready.

C. TelJet: A list of the 36 poles requiring TelJet make-ready is attached as Exhibit Q. TelJet's quote of \$12,670.24 for this work is attached as Exhibit T.

NHOS'S RESPONSES TO PUC QUESTIONS

Date Request Received: September 5, 2012
Request No. NHPUC 1-10

Date of Response: October 2, 2012
Witness: Darren LaCroix

10. Refer to your Petition of April 24, 2012, Paragraph 14. Provide a copy of each application NHOS submitted to a pole owner, for which a third-party attacher assessed survey fees for poles on which it had no facilities. Identify those poles, the attacher assessing survey fees, and the amount involved.

ANSWER:

The issue referenced above related to initial negotiations with MetroCast. This issue has been resolved.

NHOS'S RESPONSES TO PUC QUESTIONS

Date Request Received: September 5, 2012
Request No. NHPUC 1-11

Date of Response: October 2, 2012
Witness: Darren LaCroix

11. Refer to your Amendment to NHOS Petition for Investigation of August 2, 2012, Paragraph 16. Describe each instance in which a third-party attacher has demanded that NHOS pay for "make-ready work that is unrelated to new attachments." Provide town, pole location, and pole numbers. Identify the third-party attacher and the make-ready work which the third-party attacher claimed was necessary and the related changes that the attacher demanded. For each such instance provide a copy of the make-ready survey provided by the pole owner.

ANSWER:

The issues related to NHOS being asked to pay for make-ready work that is unrelated to new attachments referred to invoices received from MetroCast. NHOS and MetroCast have worked through the majority of these issues. NHOS appreciates MetroCast's assistance toward that end and make-ready work is getting done. NHOS believes that the 15 day relocation notices FairPoint sent to MetroCast assisted NHOS in resolving these issues.

A. segTEL: segTEL has not provided any quotes or invoices for make-ready. NHOS hopes that the quotes/invoices will only include work for which NHOS is the cause.

B. BayRing: BayRing has not provided any quotes or invoices for make-ready. NHOS hopes that the quotes/invoices will only include work for which NHOS is the cause.

C. TelJet: Quotes from TelJet do not contain enough detail to reveal the scope of work being charged to NHOS. However, NHOS has no indication that the rates quoted by TelJet are for work unrelated to the NHOS attachments.

NHOS'S RESPONSES TO PUC QUESTIONS

Date Request Received: September 5, 2012
Request No. NHPUC 1-12

Date of Response: October 2, 2012
Witness: Darren LaCroix

12. Refer to your Petition of April 24, 2012, Paragraph 6. Provide a copy of those pages of the Request for Proposal (RFP) describing the make-ready work on which you received bids, and provide all bids received in response to the work statement.

ANSWER:

Copies of RFP 3100-0001, issued by Waveguide on March 6, 2012, and of price quotes received in response to the RFP, are enclosed as Exhibit D. The quoted prices include the cost of traffic management and are based on the Davis Bacon Act prevailing wage. Contractors that submitted price quotes in response to the RFP included the following entities: Advanced Communications USA, Broadband Access Services, Eustis Cable Enterprises, Henkels & McCoy, MasTec North America, Phoenix Communications, Streamline Maintenance Group and Todd Cable Construction. These contractors each fall into one of the following three categories:

(a) National Contractor: These contractors typically act as a prime contractor and hire local contractors to conduct the work under their direction. They are not typically used by a local CLEC or CATV provider to conduct make-ready because their rates typically are not competitive for this type of work.

(b) Out-of-Town Contractor: These contractors typically conduct work with their own crews but their rates reflect the added overhead and cost burden associated with extended travel. They are not typically used by a local CLEC or CATV provider to conduct make-ready because their rates are typically not competitive for this type of work.

(c) Regional Contractor: These contractors are located in this region and will conduct the work with their own crews without the burden associated with extended travel. The

pricing from these contractors best represents the rates that a local CLEC or CATV could negotiate for make-ready work.

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