

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

CRS 16-219

NORTHERN NEW ENGLAND TELEPHONE OPERATIONS, LLC

**Petition for Licenses to Maintain Utility Cables Over and Across
Public Lands and Waters of the State of New Hampshire**

Order *Nisi* Granting Licenses

ORDER NO. 25,949

September 30, 2016

In this order *nisi*, the Commission grants the request of Northern New England Telephone Operations, LLC (FairPoint), for licenses under RSA 371:17 to maintain 53 existing telecommunications cable crossings over public waters and/or state-owned lands. This order is being issued on a *nisi* basis to ensure that all interested parties receive notice of the Commission's order and have the opportunity to comment or request a hearing prior to the date set forth for comment in the ordering clauses below.

I. SUMMARY OF PETITION

On February 2, 2016, FairPoint submitted a petition seeking licenses under RSA 371:17 to operate and maintain a number of existing telecommunications cable crossings over public waters and/or state-owned lands. These crossings were constructed at undetermined times and were not previously licensed. On June 17, 2015, FairPoint had submitted an inventory listing of such crossings as part of its effort to avail itself of RSA 371:17-b, which permitted telecommunications carriers to obtain licenses for existing and previously unlicensed crossings between existing poles, provided they filed a notification listing of such crossings on or before June 19, 2015. That statute directs the Commission to issue licenses for such crossings without

investigation. As explained below, Staff determined that RSA 371:17-b was not the appropriate means for FairPoint to proceed with the crossings that are the subject of this docket.

FairPoint filed with its petition the affidavit of Eddie Mendonca, a former Network Engineering Manager in the FairPoint Engineering Department, in which he attested that, to the best of his knowledge and belief, the existing crossings were constructed in accordance with then applicable safety standards and are currently maintained in compliance with established safety standards as set forth in the National Electrical Safety Code (NESC). Mr. Mendonca further attested that, to the best of his knowledge and belief, in those instances where required, the “crossings are also in compliance with attachment and/or occupancy licenses issued by the owners of the attachments or landing points.”

FairPoint represented in its petition that “many of these crossings have been in place and functional for decades.” According to FairPoint, the crossings are necessary to meet the reasonable requirements for service to the public, and have been in place for an extended period of time without complaint or detriment to the public use and enjoyment of the waterways and public lands. FairPoint concluded that its petition should be granted because the crossing licenses are necessary and can be issued “without substantially affecting the public rights in said waters or lands,” citing RSA 371:20.

On June 23, 2016, FairPoint submitted a corrected list of existing crossing locations, providing information for each crossing including specific GPS coordinates and pole, manhole, or pedestal numbers on each side of a crossing. FairPoint indicated that nine of the crossings included in the initial list filed with its petition had been determined to be duplicates and

therefore were removed, resulting in a final list of 53 existing crossings for which it is seeking licenses. A listing of those 53 crossings and their locations is attached to this order.

The petition, crossings list, affidavit, and other supporting documents, together with any 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://puc.nh.gov/Regulatory/Docketbk/2016/16-219.html>.

II. STAFF'S RECOMMENDATION

On March 29, 2016, Commission Staff (Staff) filed a memorandum recommending that the Commission grant the licenses as requested in FairPoint's petition. On September 7, 2016, Staff filed a supplemental memorandum based on its review of the corrected list of 53 existing crossings submitted by FairPoint on June 23, 2016, in which Staff recommended that the Commission grant licenses under RSA 371:17 for all of the crossings.

According to Staff, notwithstanding their inclusion in the 2015 filing, the existing crossings do not appear to qualify for retrospective licensing under RSA 371:17-b, since they are not constructed between two poles but rather involve manhole and pedestal terminations. Staff maintained that the Commission has previously addressed newly-reported or discovered unlicensed telecommunications crossings by directing the carrier to obtain a license under RSA 371:17, citing Order No. 25,139 (August 17, 2010) and Order No. 25,175 (November 30, 2010). Staff stated it had recommended to FairPoint that it petition to have the existing crossings licensed under that statute.

Although RSA 371:17 does not specify the level of investigation and review required before the Commission issues a crossing license, Staff noted that, in previous petitions seeking

licenses before construction occurs, Staff has undertaken a relatively detailed investigation focused on safety and compliance, such as independent calculations of cable sag based on crossing and pole dimensions and ice loading projections.

Staff indicated its belief that, although FairPoint's existing crossings do not appear to qualify for licensing under RSA 371:17-b, both RSA 371:17-a and RSA 371:17-b provide useful guidance regarding the appropriate standard of review and level of investigation to be performed for existing, unlicensed telecommunications cable crossings. According to Staff, both of those statutes, which were enacted in 2013, call for licensing of certain crossings "by notification" and without Commission investigation; and similarly in this docket, where the crossings have been in place for years without complaint or incident, Staff considers this "same standard of review and level of investigation to be generally appropriate."

Staff confirmed that the coordinates provided for each of the 53 existing crossings appear to be located in New Hampshire and appear to be in the town listed for the crossing. Staff noted that FairPoint had provided a notarized affidavit attesting that the crossings are "necessary to meet the reasonable requirements of service to the public," that the crossings are believed to have been completed in compliance with relevant safety codes, and that the crossings are being maintained in accordance with the NESC. Based on its review of the petition, corrected crossings list information, and supporting affidavit, Staff recommended that the Commission grant licenses for the 53 existing crossings through issuance of an order *nisi*.

III. COMMISSION ANALYSIS

Pursuant to RSA 371:17, utilities must obtain a license from the Commission to "construct a pipeline, cable, or conduit, or a line of poles or towers and wires and fixtures

thereon, over, under or across any of the public waters of this state, or over, under or across any of the land owned by this state,” when such facilities are necessary “to meet the reasonable requirements of service to the public.” RSA 371:20 authorizes the Commission to grant a license if it “may be exercised without substantially affecting the public rights in said waters or lands.” RSA 371:17 defines public waters to include “all ponds of more than 10 acres, tidewater bodies, and such streams or portions thereof as the Commission may prescribe.” The New Hampshire Department of Environmental Services (NHDES) prepares, maintains, and publishes an official list of all public waters in the state. The bodies of water listed in the instant petition are included in the NHDES official list, which is electronically maintained at:

http://des.nh.gov/organization/divisions/water/dam/public_waters/index.htm.

Based on the information presented in FairPoint’s petition and Staff’s recommendation, we find that FairPoint’s 53 existing crossings are necessary for it to meet the reasonable requirements of reliable service to the public, as required by RSA 371:17, and that the requested licenses may be exercised without substantially affecting the public rights in the affected public waters, as required for approval under RSA 371:20. We note in particular that FairPoint has confirmed by affidavit that the crossings are currently maintained in compliance with the NESC.

In view of the special and limited circumstances described in Staff’s memorandum, we agree it is appropriate to rely on FairPoint’s representations without further intensive investigation regarding these existing telecommunications cable crossings, which have been in place for many years without complaint or incident. This conclusion does not affect the Commission’s authority to require safe operation and maintenance of the existing crossings, to

inspect and investigate the existing crossings, and potentially to sanction demonstrated instances of non-compliance with the NESC and other applicable safety standards.

The Commission recently articulated the scope of its review and investigation generally applicable to new proposed utility crossings under RSA 371:17, which “focus[es] on the functional use and safety of the proposed crossings.” *Northern Pass Transmission LLC, et al.*, Order No. 25,910 (June 28, 2016) at 11. Our review of the instant petition is consistent with that focus. The less intensive level of investigation applied to FairPoint’s 53 existing crossings in this proceeding is warranted because the crossings have been in place for many years without complaint or incident, and because the crossings would have been eligible for license through notification but for the fact that they involve manhole and pedestal terminations rather than having been constructed between two poles.¹ This is a narrow and limited exception that would be applicable only in circumstances substantially the same as FairPoint’s as described above.

We therefore approve the petition, subject to the conditions contained in the ordering clauses set forth below related to ensuring safe operation and maintenance of the crossings. We issue our decision on a *nisi* basis to provide any interested person the opportunity to submit comments on FairPoint’s petition or to request a hearing.

We note that FairPoint is responsible for obtaining any and all other permits for the operation and maintenance of the existing crossings from any federal, state, and local authorities having jurisdiction. Because NHDES is responsible for maintaining the official list of public waters, we require that notice of these licenses and any subsequent alterations thereto be sent to NHDES. We also require notice to be provided to the municipalities in which the crossings are

¹ Under RSA 371:17-b, such crossings were required to be identified by June 19, 2015. As noted above, FairPoint included these crossings in the list filed with the Commission on June 17, 2015.

located and to all owners of land bordering on the public waters at the location of any of these crossings, as required by RSA 371:19.

Based upon the foregoing, it is hereby

ORDERED *Nisi*, that subject to the effective date below, FairPoint is authorized pursuant to RSA 371:17 to operate and maintain telecommunications cables over, under and across the public waters and/or state lands described in its petition and in the crossing list attached to this Order *Nisi*; and it is

FURTHER ORDERED, that this approval is limited to the operation and maintenance or alteration of telecommunications cables under consideration in this docket, and it is conditioned on the requirement that FairPoint operates and maintains, and, if applicable, alters, the cables consistent with the provisions of the NESC, as may be applicable and as amended from time to time, and all other applicable safety standards in existence at that time; and it is

FURTHER ORDERED, that FairPoint shall submit any future proposed alteration(s) to the crossing licenses granted herein at least 60 days prior to any such alteration(s); and it is

FURTHER ORDERED, that FairPoint shall provide a copy of this Order *Nisi* to (i) the Town or City Clerks of the towns or cities in which the crossings are located; (ii) the New Hampshire Attorney General and all owners of the land bordering on public waters at the location of the crossings, as required by RSA 371:19; and (iii) the New Hampshire Department of Environmental Services, no later than October 10, 2016, and to be documented by affidavit filed with the Commission on or before October 27, 2016; and it is

FURTHER ORDERED, that FairPoint shall cause a summary of this Order *Nisi*, issued concurrently with this Order, 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 10, 2016, and to be documented by affidavit filed with the Commission on or before October 27, 2016; and it is

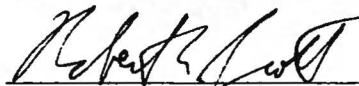
FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than October 17, 2016, for the Commission's consideration; and it is

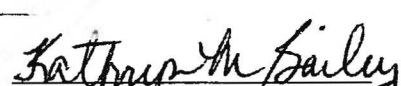
FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than October 24, 2016; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective on October 30, 2016, unless FairPoint 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 thirtieth day of September, 2016.


Martin P. Honigberg
Chairman


Robert R. Scott
Commissioner


Kathryn M. Bailey
Commissioner

Attested by:


Debra A. Howland
Executive Director

Idx.	Town(s)	Over	Pole Numbers	Manhole Numbers	Pedestal Numbers	Lat.	Long.
1	Portsmouth / Badgers Island Kittery, ME	Piscataqua River		66A PTSM to 67A KTRY		43.079292	- 70.752625
2	Barrington	Mendum's Pond	11E/26		11E -24	43.167960	- 71.063030
3	Bartlett	RR Crossings with the State of NH			1 to 2	44.077744	- 71.140080
4	Belmont / Tilton	Winnisquam Lake		49B to 49C		43.502105	- 71.512029
5	Berlin	Androscoggin River	75/1	59		44.482476	- 71.167334
6	Holderness	Squam Lake	46A/8		46A/8A	43.750955	- 71.542651
7	Chichester	Sanborn Brook		108X/5	108A/116	43.276762	- 71.365816
8	Concord	Merrimack River	127/5 to 127/5-1			43.208793	- 71.531476
9	Concord	Merrimack River	170/42	#28		43.228304	- 71.537820
10	Concord	Merrimack River	P170/42		46	43.193413	- 71.523535
11	Conway	Saco River		MH22 TO 21		43.980994	- 71.115092
12	East Concord	Merrimack River	118/1 to 118/2			43.229142	- 71.537748
13	Gilford	Lake Winnepesaukee	917/1		45/34A	43.613310	- 71.381354
14	Gilford	Lake Winnepesaukee	45/34A		45/34A-1	43.617373	- 71.372790
15	Gilford	Lake Winnepesaukee	14/6	12		43.603260	- 71.429794
16	Gilford	Lazy Brook	p 141/45		141/3	43.512879	- 71.454262
17	Hampton	Tide Mill Creek		44 to 45		42.922210	- 70.823190
18	Holderness	Squam Lake	46A/8		46A/8B	43.750802	- 71.536262
19	Hooksett	Merrimack River	P 47/38 Merrimack St	MH 50/1		43.103022	- 71.466775
20	Jefferson	Priscilla Brook	P2/44 to P2/45; P2/55 to P2/56			44.392480	- 71.477436

21	Kingston	Great Pond			KSP3 to KSP3-1	42.926570	- 71.060720
22	Laconia	Lake Winnepesaukee	14/6	12		43.602509	- 71.430157
23	Laconia	Lake Winnisquam	4480/4		Ped 1	43.560760	- 71.512020
24	Laconia	RR Crossings with the State of NH	300/67	817A		43.547508	- 71.462937
25	Laconia	RR Crossings with the State of NH	928/3	MH 811		43.537175	- 71.466966
26	Laconia	Opechee Bay		11 to 12		43.530594	- 71.467573
27	Laconia	Opechee Bay		811 to 810		43.535723	- 71.468499
28	Litchfield / Merrimack	Merrimack River		1A5 to 1A6		42.859059	- 71.485586
29	Meredith	Lake Winnepesaukee	1582/1		1584-1	43.626056	- 71.442889
30	Meredith	Lake Winnepesaukee	1640/33		100M-16	43.646237	- 71.409606
31	Moultonborough	Lake Winnepesaukee	85/91		850/1	43.629630	- 71.336110
32	Moultonborough	Lake Winnepesaukee	158/14 to 158A/1			43.649595	- 71.328548
33	Moultonborough	Lake Winnepesaukee	85/14		85/10	43.664113	- 71.348922
34	Moultonborough	Lake Winnepesaukee	858/12		87CE/2	43.641226	- 71.339840
35	Moultonborough / Tuftonboro	Lake Winnepesaukee	85/91		850/1	43.627272	- 71.334685
36	Moultonborough	Lake Winnepesaukee	41/19		Ped 41A/1	43.725494	- 71.402493
37	Moultonborough	Lake Winnepesaukee	85/14		85/10	43.664909	- 71.347950
38	North Conway	Elm Brook	6-30/1		6-30/2	44.047176	- 71.158794
39	Portsmouth	Piscataqua River		413 to 421		43.086490	- 70.760240
40	Sunapee	Lake Sunapee	67DC/1		67DC/1	43.370501	- 72.059098
41	Lyme NH / East Thetford, VT	Connecticut River	329/37 to 329/38			43.812115	- 72.183079
42	Tuftonboro	Lake Winnepesaukee	87CE-14		87CE-15	43.628891	- 71.314983
43	Tuftonboro	Lake Winnepesaukee	87CC/9 to 87CC/11		87CC/10	43.637153	- 71.319403
44	Meredith	Lake	100/225			43.635098	-

		Winnepesaukee	to 1640/33				71.410084
45	Waterville Valley	Mad River			11-3 to 11-1	43.963454	- 71.514191
46	Tuftonboro	Lake Winnepesaukee			934E/21 to 934BE- 1-2	43.647705	- 71.304071
47	Wolfeboro	Lake Wentworth	105/275S		927/1	43.609824	- 71.153094
48	Amherst	Beaver Brook	39/14 to 39/15			42.866494	- 71.623453
49	Amherst	Pulpit Brook	155/25 to 155/26			42.923979	- 71.579970
50	Canaan	Indian River	901/9 to 901/10			43.643255	- 72.051546
51	New Boston	Piscataquog River	154/378E to 154/378D			43.005691	- 71.664125
52	Peterborough	Nubanusit Brook	5/98 to 5/100			42.886881	- 71.984523
53	Salem	Beaver Brook	4/9 to 4/13			42.733152	- 71.318400