

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 08-146

segTEL, INC.

**Request for Arbitration regarding Failure to Provide Access to
Utility Poles by Public Service Company of New Hampshire**

Order Denying in Part and Granting in Part segTEL's Motion for Rehearing

ORDER NO. 25,109

June 4, 2010

I. INTRODUCTION

The moving party in this case, segTEL, Inc. (segTEL), is a Competitive Local Exchange Carrier (CLEC) seeking permission to attach telecommunications cables to poles owned by Public Service Company of New Hampshire (PSNH). The poles in question are 101 electric "transbution" poles located on private property pursuant to private easement rights obtained by PSNH in the towns of New London and Sunapee.

On April 7, 2010, the Commission issued Order No. 25,090 (Order), which concluded that PSNH did not have the authority to permit the segTEL attachments. On May 7, 2010, segTEL moved for rehearing and PSNH objected on May 11, 2010.

II. POSITIONS OF THE PARTIES

A. segTEL

Although segTEL acknowledged that the parties had agreed to submit questions concerning the interpretation of the easements on the papers and without a hearing, segTEL asserted that the Commission made new findings of facts, not contained in the parties' stipulated

facts, in arriving at its conclusions. segTEL claimed that the findings of fact were misconceived. segTEL asked the Commission to reconsider its interpretation of the phrase “transmission of high or low voltage electric current” as used in the earlier deeds and the word “intelligence” as used in the later deeds.

On the meaning of “transmission of high or low voltage electric current” segTEL argued that, based upon the evolution of electrical distribution systems, telecommunications was an appurtenant use. segTEL further asserted that the word “transmission” encompasses information. With regard to the meaning of intelligence, segTEL argued that electric utilities have always transmitted intelligence data along distribution and transmission lines for supervision and control of those lines. Current systems for this function are referred to as Supervisory Control and Data Acquisition (SCADA). According to segTEL, SCADA systems make use of modems and analog lines, which are traditionally considered telecommunications lines.

B. PSNH

PSNH characterized segTEL’s motion as a restatement of its earlier briefs and arguments in the case. PSNH argued that segTEL had ample opportunity to request a factual hearing and that having agreed to submit the case on the briefs, oral arguments and stipulated facts, segTEL cannot now change its mind and request an evidentiary hearing. PSNH observed that the Commission followed the precedent set out in *Lussier v. New England Power Company*, 133 N.H. 753 (1990) and found that the easements were clear and their meaning unambiguous. As a result, according to PSNH, the Commission did not need to resort to extrinsic evidence in order to determine the reasonable meaning of the words used in the easement deeds. PSNH argued

that the Commission's interpretation of the easements was reasonable and that no grounds for rehearing exist.

III. COMMISSION ANALYSIS

segTEL seeks rehearing pursuant to RSA 541:3, asserting that the Commission overlooked or misconceived certain matters when it interpreted the language in the easement deeds held by PSNH. *See Dumais v. State*, 118 N.H. 309, 311 (1978). To prevail on a motion for rehearing, a moving party must demonstrate that an administrative agency's order is unlawful or unreasonable. *See* RSA 541:3 and RSA 541:4.

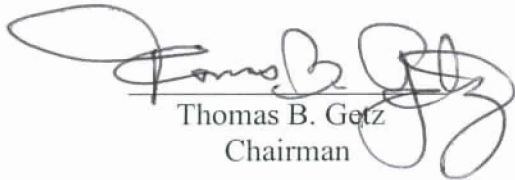
With regard to our determination that "transmission of high or low voltage electric current" in the earlier deeds does not include telecommunications, we found this easement language unambiguous and pursuant to the standard set out in *Lussier* we did not resort to extrinsic evidence to reach our interpretation, nor did we make any additional factual findings. segTEL's arguments on rehearing do not persuade us otherwise. As a result, we will not reconsider our interpretation of the earlier deeds.

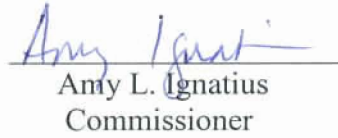
Our interpretation of "intelligence" in the later deeds was also based upon a finding that the language was unambiguous. Based upon segTEL's arguments regarding the use of SCADA and other practices concerning utilities' supervision and control of the electric distribution and transmission system, however, we have determined to grant rehearing on the interpretation of "intelligence" in the later deeds.

ORDERED, that segTEL's motion for rehearing is DENIED in part and GRANTED in part as discussed herein; and it is

FURTHER ORDERED, that the parties and Staff shall submit a proposed procedural schedule by June 25, 2010 for Commission consideration.

By order of the Public Utilities Commission of New Hampshire this fourth day of June,
2010.


Thomas B. Getz
Chairman


Amy L. Ignatius
Commissioner

Attested by:


Lori A. Davis
Assistant Secretary

Concurrence and Dissent of Commissioner Clifton C. Below

Consistent with my original concurrence and dissent in this case, I would grant rehearing on both issues to develop the factual record as I believe that the majority mistakenly conceived that both phrases, “transmission of high or low voltage electric current” and “for transmitting electric current and/or intelligence” as used in the deeds, were unambiguous and plain in their meaning so as to exclude transmission of telecommunications by a telecommunications service provider.