

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 12-007

NEW HAMPSHIRE OPTICAL SYSTEMS, INC.

**Petition for Authorization to Construct and Maintain Fiber Optic Communications Cable
Over and Across Eleven Bodies of Public Waters
between Keene and Enfield (Segment 1)**

Order *Nisi* Granting License

ORDER NO. 25,419

September 27, 2012

I. SUMMARY OF THE PETITION

On January 11, 2012, 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 the six bodies of public waters listed below, located in eight New Hampshire towns. Following discussions with Staff, NHOS filed revisions to its petition on February 27 and March 16, 2012.

The fiber optic cable NHOS proposes to install over the listed water 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 asserts that it will build and maintain an open access, non-discriminatory network offering: (1) broadband providers the ability to economically

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)*.

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

The proposed crossings are all part of Segment 1 (Keene to Enfield) of NHOS's 700 mile broadband build-out containing in total 17 segments. The locations of the crossings are as follows:

- Gilsum: The Ashuelot River crossing parallels the easterly side of the Gilsum Road bridge (Route 10) in the vicinity of Centennial Road, between electric Poles 29/139 and 29/140.
- Sullivan: The Ashuelot crossing parallels the southerly side of Route 10 in the vicinity of Mack Road, between electric Poles 29/159 and 29/160.
- Marlow: The Ashuelot crossing parallels the easterly side of Route 10/123 in the vicinity of Washington Pond Road, between electric Poles 3/7 and 3/8.
- Lempster: The Dodge Brook crossing parallels the easterly side of Route 10 near the intersection of Dodge Hollow Road and Hamlin Road, between electric Poles 13/105 and 13/106; the Giles Brook crossing parallels the easterly side of Route 10 near Brook Road, between electric Poles 13/7 and 13/7.5; the Babb Brook crossing parallels the easterly side of Route 10 near Brook Road, between electric Poles 13/4 and 13/5.
- Sunapee: The Sugar River crossings parallel the northerly side of Route 11 near the intersection of Sleeper Road and Riverside Drive, between electric Poles 30C/7 and 30C/8; and the easterly side of Sunapee Lake Road bridge near Main Street and Chase Street, between electric Poles 4X/2 and 4X/3.
- Enfield: The Mascoma River crossing parallels the westerly side of the Shaker Hill Road bridge in the vicinity of Main Street and Depot Street, between electric Poles 31/1 and 31/2.
- Goshen: The Sugar River crossing parallels the easterly side of Route 10 in the vicinity of Mummy Road East, between electric Poles 27/176.5 and 27/177.

- Newport: The Sugar River crossing parallels the easterly side of Route 10/103 in the vicinity of a former functioning dam and spillway north of the intersection of Laurel Street and River Street, between electric Poles 216A/4A and 34/1.

NHOS's 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 petition, permits from neither the New Hampshire Department of Environmental Services (NHDES) nor the New Hampshire Department of Transportation (NHDOT) are required for this project.

C. Property Rights

NHOS affirms that each of the proposed water crossings will be installed on existing utility poles within existing public rights-of-way.

II. SUMMARY OF STAFF REVIEW

Pursuant to its review of the petition and discussions with NHOS, Commission Staff filed two memoranda on September 10, 2012, finding the proposed construction and sagging design 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 10, 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 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, and contained in the ordering clauses below. 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 roads and bridges, we require that notice of the proposed crossings be sent to the NHDES and the 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/2012/12-007.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 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 Gilsum, Sullivan, Marlow, Lempster, Sunapee, Enfield, Goshen and Newport, (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 8, 2012, and to be documented by affidavit filed with this office on or before October 29, 2012; and it is

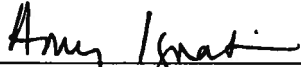
FURTHER ORDERED, that the Petitioner shall cause a summary of this Order *Nisi* and a link to the Commission's website where the Order appears in full to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than October 8, 2012 and to be documented by affidavit filed with this office on or before October 29, 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 15, 2012 for the Commission's consideration; and it is

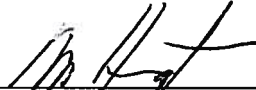
FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than October 22, 2012; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective October 29, 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-seventh day
of September, 2012.



Amy D. Ignatius
Chairman

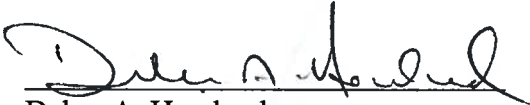


Michael D. Harrington
Commissioner



Robert R. Scott
Commissioner

Attested by:



Debra A. Howland
Executive Director