

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DT 12-351**

**SEGTEL, INC.**

**Petition for a License to Construct and Maintain a Fiber Optic Cable  
Over and Across the Contoocook River in Penacook**

**Order *Nisi* Granting License**

**ORDER NO. 25,443**

**December 21, 2012**

**I. SUMMARY OF THE PETITION**

On June 13, 2011, segTEL, Inc. (segTEL) filed a petition pursuant to RSA 371:17 requesting a license to construct and maintain fiber optic cable over and across public waters of the Contoocook River in Penacook, New Hampshire. On February 14, 2012, segTEL submitted a letter withdrawing the filing based on its interpretation of a prior Commission decision not to require a license for fiber attached to a bridge, stating that the licensing requirements of RSA 371:17 “shall not include crossings having supports attached to public highway bridges, except where such crossings are below the bridge clearance.” Subsequently, Staff informed segTEL that a license is needed in the Penacook location because the crossing is not physically attached to the bridge. Staff performed an initial review of the petition in April 2012 and requested that segTEL submit a revised petition. segTEL filed a revised petition on October 17, 2012. According to the petition, the fiber optic cable segTEL proposes to install over the Contoocook River will help to accommodate growth demand and to obtain a greater level of service reliability.

### ***A. Crossing Location and Construction***

The proposed cable line will cross the Contoocook River adjacent to the Village Street Bridge in the center of Penacook. segTEL's filing describes the configurations of the proposed cable crossing as well as the clearance and sag requirements, and includes an engineering profile drawing in support of the petition. According to segTEL, sag and tension calculations were done pursuant to applicable National Electrical Safety Code (NESC) requirements. segTEL affirms that the new line crossing has been designed and will be constructed, maintained and operated by segTEL or its affiliates and contractors.

### ***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***

The petition states that the proposed water crossing will be placed on existing utility poles jointly owned by Unitil Energy Systems, Inc. and FairPoint Communications. segTEL submits that granting the license will not substantially affect the rights of the public in the public waters of the Contoocook River. segTEL assures that minimum safe line clearances above the water surface will be maintained at all times, and that the use and enjoyment by the public of the river will not be diminished in any material respect as a result of the overhead line crossing.

## **II. SUMMARY OF STAFF REVIEW**

Pursuant to its review of the petition and discussions with segTEL, Commission Staff filed a memorandum on October 22, 2012, finding the proposed construction and sagging design

to be in conformance with the applicable sections of the NESC and consistent with N.H. Code Admin. Rules Puc 433.01(a). Staff noted that the proposed crossing will not substantially affect the public rights in the waters and lands, and concluded that segTEL has demonstrated a public need for the proposed crossing. Staff recommended approval of segTEL's petition, subject to certain conditions related to ensuring the safe operation and maintenance of the proposed crossings. *See* Staff Recommendation of Kate Bailey dated October 22, 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. The 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](http://des.nh.gov/organization/divisions/water/dam/public_waters/index.htm).

Based on the information presented in segTEL's petition and Staff's memorandum recommending approval, we find the proposed crossings necessary for segTEL to meet the reasonable requirements of reliable service to the public within segTEL's authorized service territory, as required by RSA 371:17, and that the requested license may be exercised without substantially affecting public rights in the affected public waters, as required for approval under RSA 371:20. We find the crossing to be consistent with 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 set out below. Our decision is issued on a *nisi* basis in order to provide any interested party the opportunity to submit comments on segTEL's petition or to request a hearing. We note that segTEL is responsible for obtaining any and all other permits required for the installation of the proposed crossing from any federal, state, and local authorities having jurisdiction. Staff has observed that it is unclear whether existing attachments owned by other utilities or the pole owners at these locations are properly licensed and in compliance with the NESC or whether relocations might be necessary as a result. We note that all attaching entities are responsible for ensuring that their attachments are in compliance with applicable standards and requirements, as mandated under Puc 1303.07. To the extent segTEL is required for any reason to relocate its attachments, it should file proposed relocation plans with the Commission prior to making alterations. Finally, inasmuch as NHDES is responsible by statute for maintaining the official list of public waters, and given the 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 town.

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/2011/11-136.html>.

**Based upon the foregoing, it is hereby**

**ORDERED *NISI***, that subject to the effective date below, segTEL is authorized, pursuant to RSA 371:17 *et seq.*, to construct, maintain and operate fiber optic cable 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 this approved crossing shall conform to the requirements of the National Electrical Safety Code, in accordance with N.H. Code Admin. Rules Puc 433.01 and Puc 1303.07 and all other applicable safety standards in existence at that time; and it is

**FURTHER ORDERED**, that segTEL submit any future proposed alterations to the crossing license granted herein prior to any such alteration(s); and it is

**FURTHER ORDERED**, that copies of all permits, if any, required for this crossing by the New Hampshire Department of Environmental Services, the New Hampshire Department of Transportation, any other federal, state or local authorities, or the affected municipality be filed with this Commission; and it is

**FURTHER ORDERED**, that segTEL shall provide a copy of this order to the (i) Town Clerk of Penacook, (ii) New Hampshire Attorney General and owners of the land bordering on said public waters at the location of the crossing, pursuant to RSA 371:19, (iii) the New Hampshire Department of Environmental Services, and (iv) the New Hampshire Department of Transportation by first class mail, no later than January 8, 2013 and to be documented by affidavit filed with this office on or before January 22, 2013; and it is


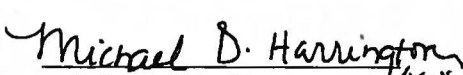
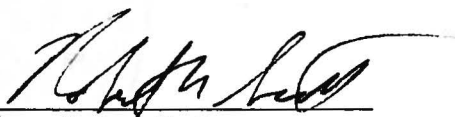
**FURTHER ORDERED**, that the Petitioner shall cause a summary of this Order *Nisi* and a link to the Commission's website where the Order appears in full to be published once in a statewide newspaper of general circulation, or of circulation in those portions of the state where operations are conducted, such publication to be no later than January 8, 2013 and to be documented by affidavit filed with this office on or before January 22, 2013; 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 January 15, 2013 for the Commission's consideration; and it is

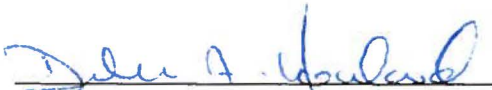
**FURTHER ORDERED**, that any party interested in responding to such comments or request for hearing shall do so no later than January 18, 2013; and it is

**FURTHER ORDERED**, that this Order *Nisi* shall be effective January 22, 2013, 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-first day of December, 2012.

 _____ Amy L. Ignatius Chairman	 _____ Michael D. Harrington (KNS) Commissioner	 _____ Robert R. Scott Commissioner
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Attested by:

  
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Debra A. Howland  
Executive Director