

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DT 12-020**

**NEW HAMPSHIRE OPTICAL SYSTEMS, INC.**

**Petition for Authorization to Construct and Maintain Fiber Optic Communications Cables  
Over and Across Public Waters in Bartlett, Conway and Gorham (Segment 10)**

**Order *Nisi* Granting License**

**ORDER NO. 25,450**

**January 4, 2013**

**I. SUMMARY OF THE PETITION**

On January 17, 2012, New Hampshire Optical Systems, Inc. (NHOS)<sup>1</sup> filed a petition pursuant to RSA 371:17 requesting a license to construct and maintain fiber optic cables over and across public waters at the locations listed below.

The fiber optic cable NHOS proposes to install over the listed 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 to BTOP guidelines, NHOS asserts that it will build and maintain an open access, non-discriminatory network that offers: (1) broadband providers the ability to economically expand their service areas, (2) companies the opportunity to build private networks they own and

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<sup>1</sup> 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)*.

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 10 (Conway to Gorham) of NHOS's 700 mile broadband build-out, which consists of 17 segments in total. The locations of the crossings are as follows:

- Gorham: The Peabody River crossing parallels the westerly side of White Mountain Road (Route 16), between utility poles E30/48 – T17/48 and E30/47 – T17/47 (reference TID 157).
- Bartlett: The Ellis River crossing parallels the easterly side of White Mountain Highway (Route 16), between utility poles E8/466 – T3/41 and E8/465 – T3/42 (reference TID 162).
- Bartlett: The East Branch Saco River crossing parallels the easterly side of White Mountain Highway (Route 16), between utility poles E520/157 – T2/136 and E520/156 – T2/135 (reference TID 163).
- Conway: The first Saco River crossing runs between the dead end at the southeast-most section of Meeting House Hill Road and the dead end at the northwest-most section Heath Road, between utility poles E333/486 – T (not tagged) and E333/485 – T (not tagged) (reference TID 166).
- Conway: A second Saco River crossing parallels the northerly side of East Side Road, between utility poles E31/2 – T6/2 and E31/3 – T6/3 (reference TID 168).

NHOS's petition describes the configurations of the proposed cable crossings as well as the clearance and sag requirements at each location. 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, the water crossings do not require permits from the New Hampshire Department of Environmental Services (NHDES) or the New Hampshire Department of Transportation (NHDOT).

**C. Property Rights**

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

**II. SUMMARY OF STAFF REVIEW**

Based on its review of the petition, Commission Staff filed a memorandum, including completed checklists for each crossing, on December 19, 2012.<sup>2</sup> Staff found the proposed construction and sagging designs for each crossing to be in conformance with the applicable sections of the NESC. Staff recommended approval of the five water crossings in NHOS's petition, subject to certain conditions related to ensuring the safe operation and maintenance of the proposed crossings. *See* Staff Recommendation of David Goyette, dated December 19, 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 or any public lands owned by 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

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<sup>2</sup> Staff's memorandum includes a review of three proposed railroad crossings along the same segment of the NNHN project, as well as the five water crossings addressed herein. The railroad crossings will be addressed in a separate order.

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

Based on the information presented in NHOS's petition and Staff's memorandum recommending approval of the crossings, we find the proposed water 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 public rights in the affected public waters, as required for approval under RSA 371:20. We find the crossings are for 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 interested parties 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/2012/12-020.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 433.01 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 Bartlett, Conway, and Gorham, (ii) New Hampshire Attorney General and owners of the land bordering on said public waters at the locations of the water 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 January 14, 2013, and to be documented by affidavit filed with this office on or before February 1, 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 14, 2013 and to be documented by affidavit filed with this office on or before February 1, 2013; and it is

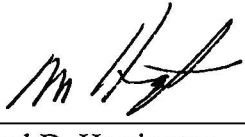
**FURTHER ORDERED**, that all persons interested in responding to this Order *Nisi* be notified that they may submit comments or file a written request for a hearing, stating the reason and basis for a hearing, no later than January 21, 2013 for the Commission's consideration; and it is

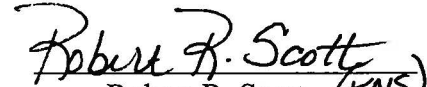
**FURTHER ORDERED**, that any party interested in responding to such comments or request for hearing shall do so no later than January 28, 2013; and it is

**FURTHER ORDERED**, that this Order *Nisi* shall be effective February 1, 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 fourth day of  
January 2013.

  
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Amy L. Ignatius  
Chairman

  
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Michael D. Harrington  
Commissioner

  
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Robert R. Scott (KNS)  
Commissioner

Attested by:

  
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Debra A. Howland  
Executive Director