

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 13-037

NEW HAMPSHIRE OPTICAL SYSTEMS, INC.

**Petition for Authorization to Construct and Maintain Fiber Optic Communications Cable
Over and Across Public Waters between Nashua and Portsmouth (Segment 18)**

Order *Nisi* Granting License

ORDER NO. 25,472

March 12, 2013

I. SUMMARY OF THE PETITION

On February 7, 2013, 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 six bodies of water at the locations listed below.

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 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.

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)*.

A. Crossing Locations and Construction

According to the petition, all of the proposed crossings will be placed between existing utility poles in existing public rights-of-way. NHOS attached diagrams to its petitions providing the exact distances between poles and the height of each pole for each crossing.

The crossings are located as follows:

- Windham: Beaver Brook crossing parallels the easterly side of Haverhill Road (Route 111), between utility poles E3A/57 – T3136/6 and E236/56 – T3136/5 (reference TID 236).
- Plaistow: Little River crossing parallels the southerly side of Main Street (Route 121), between utility poles E103/21 – T3/30 and E103/22 – T3/31 (reference TID 243).
- Plaistow: Little River crossing parallels the westerly side of Plaistow Road (Route 125), between utility poles E117/76 – T not tagged and E117/75 – T not tagged (reference TID 244).
- Nashua: Nashua River crossing east of Main Street, approximately 100 feet north of adjacent pole on Pearson Avenue between utility poles E926/18 – T not tagged and E201/9-1 – T not tagged (reference TID 310).
- Salem: Spicket River crossing parallels the northerly side of Bluff Street Extension, between utility poles E261/13 – T5701/12 and E261/14 – T5701/13 (reference TID 318).
- Salem: Widow Harris Brook crossing parallels the northerly side of Bluff Street Extension, between utility poles E279/7 – T5701/7 and E279/8 – T5701/8 (reference TID 319).

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 the New Hampshire Department of Environmental Services (NHDES) or the New Hampshire Department of Transportation (NHDOT) are not required for this project.

C. Property Rights

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

II. SUMMARY OF STAFF REVIEW

Upon review of the petition the Commission Staff filed a memorandum on February 28, 2013, stating that the proposed construction and sagging designs are 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 Recommendation of David Goyette, dated February 28, 2013.

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 memorandum recommending approval of the crossings, we find the proposed crossings necessary for NHOS to meet the reasonable requirements of reliable service to the public, 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. 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 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 railroads, roads, and bridges, we require that notice of the proposed crossings be sent to NHDES and NHDOT. We also require notice of each crossing to the cities of Nashua and Salem and to the towns of Windham and Plaistow.

The petition and subsequent docket filings, other than 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/2013/13-037.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 of 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 in this docket with this Commission; and it is

FURTHER ORDERED, that NHOS shall provide a copy of this order to the: (i) Town Clerks of Windham, Plaistow, Nashua, and Salem, New Hampshire; (ii) New Hampshire Attorney General and the owners of the land bordering on said public waters at the location of the crossing, 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 March 22, 2013, and to be documented by affidavit filed with this Commission on or before April 8, 2013; and it is


FURTHER ORDERED, that NHOS shall cause a copy of this Order *Nisi* 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 March 22, 2013 and to be documented by affidavit filed with this office on or before April 8, 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 March 29, 2013 for the Commission's consideration; and it is

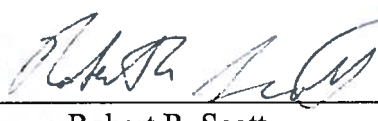
FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than April 5, 2013; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective April 11, 2013, unless NHOS fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

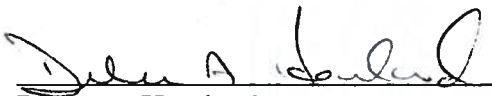
By order of the Public Utilities Commission of New Hampshire this twelfth day of March, 2013.


Amy D. Ignatius
Chairman


Michael D. Harrington
Commissioner


Robert R. Scott
Commissioner

Attested by:


Debra A. Howland
Executive Director