

**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 Cable Over and Across Two Railroads in Conway (Segment 10)**

Order *Nisi* Granting License

ORDER NO. 25,497

April 24, 2013

I. SUMMARY OF PETITION

On January 17, 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 two railroads in the town of Conway, New Hampshire. One of the crossings parallels the easterly side of White Mountain Highway (Route 16) in the vicinity of Hurricane Mountain Road (referenced as TID 164) and is a railroad property acquired by the State of New Hampshire and subject to RSA 371:17. The second railroad crossing parallels the easterly side of White Mountain Highway (Route 16) in the vicinity of Crawford Hollow Road and Pine Street (referenced as TID 165), is owned by Conway Scenic Railroad and, therefore, NHOS does not need to petition the Commission for a license for this crossing. On April 2, 2013, Staff filed a memorandum with the Commission recommending that the license for the crossing at TID 164 be granted.

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)*.

The fiber optic cable NHOS proposes to install over the railroad crossing within the Commission's jurisdiction 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. The proposed crossing is part of Segment 10 (Conway to Gorham) of NHOS's 700 mile broadband build-out which consists of 17 segments.

A. History

In conjunction with the January 17, 2012 railroad crossing petition, NHOS filed a petition requesting a license to construct and maintain fiber optic cables over and across five bodies of public waters. On December 19, 2012, Staff submitted a memorandum recommending approval of the public water crossings. The Commission issued Order *Nisi* No. 25,450 dated January 4, 2013, granting NHOS a license to construct and maintain electric transmission lines over and across the five public waters.

B. Crossing Locations and Construction

According to the petition, NHOS proposes to construct a new fiber optic cable to expand its fiber network, which is used for the purpose of providing telecommunications services to

customers in New Hampshire. The petition states that these improvements are necessary in order for NHOS to meet reasonable requirements of service to the public.

According to the petition, the proposed crossing has been designed and will be constructed, maintained and operated by New Hampshire Optical Systems, its affiliates and contractors, in accordance with National Electrical Safety Code (NESC) standards. NHOS provided attachments to its petition depicting the technical and design information and proposed construction of the crossing. The petition and attachments describe the configurations of the proposed crossing, as well as the clearance and sag requirements, and show that sag and tension calculations were done pursuant to applicable NESC requirements.

C. Regulatory Requirements

The New Hampshire Department of Transportation (NHDOT) affirmed that an agreement is in place for the state-owned railroad crossing. According to the petition, permits from the New Hampshire Department of Environmental Services (NHDES) are not required.

D. Property Rights

According to the petition, each proposed crossing will be placed between two existing utility poles in the existing public right-of-way. Subsequent to filing the petition, joint pole owners FairPoint Communications and New Hampshire Electric Cooperative attested to Staff that there is sufficient clearance for NHOS's cable at the state-owned railroad crossing.

E. Public Interest

According to the petition, the proposed communication wires will not substantially affect the rights of the public in the public right-of-way.

II. SUMMARY OF STAFF REVIEW

After reviewing the petition, and subsequent communications with NHEC and FairPoint, Staff filed a memorandum on April 2, 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 crossing. *See* Staff Recommendation of David Goyette dated April 2, 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 of the land owned by this state, whenever such facilities are necessary to meet the reasonable requirements of service to the public.

Based on the information presented in NHOS's petition and Staff's memorandum recommending approval of the crossing, we find the proposed crossing 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 area, as required for approval under RSA 371:20. We authorize NHOS to construct the crossing over the railroad tracks in a manner which will not impact any existing or anticipated uses of the railroad tracks, and that the use of the railroad tracks by the railroad or the public will not be diminished as a result of the overhead line crossing. We find the crossing is 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 set out 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 or agreements for the installation of the proposed crossing from any federal, state, and local authorities having jurisdiction. Finally, given NHDOT's oversight of railroads, roads, and bridges, we require that a copy of this order *nisi* be sent to NHDOT. We also require notice of the crossing to be sent to the Town of Conway.

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 state-owned railroad described in its petition and depicted in its filings; and it is

FURTHER ORDERED, that NHOS shall construct, operate and maintain the approved crossing, including any future alterations, to conform with 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 NHOS shall maintain proper clearances between its cables and those adjacent to it at all times across the entire span pursuant to NESC 235C2b and 235H; and it is

FURTHER ORDERED, that NHOS shall file copies of all permits or agreements, 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 the crossing, no later than receiving the permit or 30 days from the date of the order nisi, whichever occurs first; and it is

FURTHER ORDERED, that NHOS shall provide a copy of this order to the: (i) Town Clerk of Conway, New Hampshire; (ii) New Hampshire Attorney General and the owners of the land bordering on said property at the location of the crossing, pursuant to RSA 371:19; and (iii) the NHDOT, by first class mail, no later than May 3, 2013, and to be documented by affidavit filed with this office on or before May 21, 2013; and it is

FURTHER ORDERED, that NHOS shall cause a summary 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 May 3, 2013 and to be documented by affidavit filed with this office on or before May 21, 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 May 10, 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 May 17, 2013; and it is

FURTHER ORDERED, that this Order *Nisi* shall be in effect unless otherwise ordered by the Commission, on May 24, 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 twenty-fourth day of April, 2013.



Amy L. Ignatius
Chairman




Michael D. Harrington
Commissioner



Robert R. Scott
Commissioner

Attested by:



Debra A. Howland
Executive Director