

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 12-249

NEW HAMPSHIRE OPTICAL SYSTEMS, INC.

**Petition for Authority to Construct and Maintain Fiber Optic Communications Cable
Over and Across 6 Different Public Waters for Segment 14-Concord to Dover**

Order *Nisi* Granting License

ORDER NO. 25,567

August 29, 2013

I. SUMMARY OF THE PETITION

On August 10, 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 public waterways of the (1) Suncook River in Pembroke, (2) Suncook River in Epsom, (3) Oyster River in Lee, (4) Bellamy River in Madbury, (5) Cochecho River in Dover, and (6) Cochecho River in Rochester, New Hampshire. Following communications with Staff, NHOS filed supplemental information on May 15, 2013.² On August 6, 2013, Staff filed a memorandum with the Commission recommending that the license be granted.

A. History

The fiber optic cable NHOS proposes to install will be part of the Network New Hampshire Now (NNHN) Middle Mile Fiber network, which NHOS states will extend the

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)*.

² Specifically, NHOS submitted a revised technical diagram for the Oyster River crossing located in Lee, New Hampshire.

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.

B. Crossing Locations and Construction

According to the petition, the proposed crossings are all part of Segment 14 (Concord to Dover) of NHOS's 700-mile broadband build-out, which consists of 17 segments in total. The locations of the crossings are as follows:

- Suncook River in Pembroke:
Parallel to the east side of Rte. 106 (Sheep Davis Rd) north of Clough Mill Road, between utility pole E-NT,T-1514/33 on the north side of the river and pole E-NT,T-2413/14 on the south side of the river (TID 190);
- Suncook River in Epsom:
Parallel to the north side of Rte. 9 (Dover Rd) between utility pole E NT/39,T-114/383 ½ on the west side of the river and pole E-NT/40,T-114/385 on the east side of the river (TID 191);
- Oyster River in Lee:
Parallel to the south side of Rte. 155 (Lee Rd), between utility pole E-318/29,T-149/16 on the west side of the river and pole E-318/28,T-149/17 on the east side of the river (TID 192);

- Bellamy River in Madbury:
Parallel to the south side of Rte. 155 (Knox Marsh Rd), north of Pudding Hill Rd, between utility poles E-303/77,T-146/66 on the east side of the river and pole E-303/78,T-146/67 on the west side of the river (TID 197);
- Cocheco River in Dover:
Approximately parallel to the south side of Water St, west of River St, between utility pole E-4/9,T-49/12 on the east side of the river and pole E-4/10,T-49/11 on the west side of the river (TID 199); and
- Cocheco River in Rochester:
Parallel to the northwest side of Gonic St, north of Brock St, between utility pole E-6/8,T-151/50 on the southwest side of the river and pole E-6/6,T-151/48 on the northeast side of the river (TID 203).

The petition states that the construction is necessary in order to meet reasonable requirements of service to the public by providing telecommunications services to customers in New Hampshire.

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

C. Regulatory Requirements

According to the petition, permits from the New Hampshire Department of Environmental Services (NHDES) and the New Hampshire Department of Transportation (NHDOT) are not required for this project.

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.

E. Public Interest

According to the petition, the proposed communications wires will not substantially affect the rights of the public. The petition also states that minimum safe line clearances will be maintained at all times and that the use and enjoyment by the public will not be diminished in any material respect as a result of the overhead line and cable crossings.

II. SUMMARY OF STAFF REVIEW

After reviewing the petition and subsequent filings, Commission Staff filed a memorandum on August 6, 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 corrections to and resubmission of technical diagrams, and to certain conditions related to ensuring the safe construction, operation and maintenance of the proposed crossings. *See* Staff Recommendation of Leszek Stachow, dated August 6, 2013.

III. COMMISSION ANALYSIS

Under RSA 371:17, public utilities and other corporations 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 of the land 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, include 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 to be 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 and lands, 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 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 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 be sent to the Towns of Pembroke, Epsom, Lee and Madbury and the Cities of Dover and Rochester.

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/2012/12-249.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 cables and other lines over and across the public waters described in its petition and depicted in its filings; and it is

FURTHER ORDERED, that NHOS shall construct, operate and maintain the approved crossings, including any future alterations, to conform with 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 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 revise and resubmit technical diagrams to reflect the corrections outlined in Staff's recommendation memorandum dated August 6, 2013; 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 crossings, no later than receiving the permit or executing the agreement or 30 days from the date of this Order *Nisi*, whichever occurs first; and it is

FURTHER ORDERED, that NHOS shall provide a copy of this Order *Nisi* to the: (i) Town Clerks of Pembroke, Epsom, Lee and Madbury, and the City Clerks of Dover and Rochester, New Hampshire; (ii) New Hampshire Attorney General and the owners of the land bordering on said public waters at the location of the crossings, pursuant to RSA 371:19; (iii) the New Hampshire 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 September 9, 2013, and to be documented by affidavit filed with the Commission on or before September 24, 2013; and it is

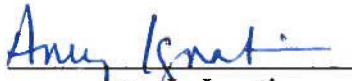
FURTHER ORDERED, that NHOS shall cause a summary of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to occur no later than September 9, 2013, and to be documented by affidavit filed with the Commission on or before September 24, 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 September 16, 2013 for the Commission's consideration; and it is

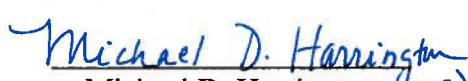
FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than September 23, 2013; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective September 27, 2013, unless NHOS fails to satisfy the notice and publication obligations 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-ninth day of August, 2013.



Amy L. Ignatius
Chairman

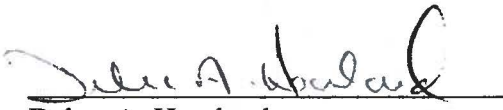


Michael D. Harrington (KWS)
Commissioner



Robert R. Scott
Commissioner

Attested by:



Debra A. Howland
Executive Director