

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 13-158

SOVERNET FIBER CORP.

**Petition for Authority to Construct and Maintain Telecommunications Lines Over and
Across the Mascoma River in the City of Lebanon**

Order *Nisi* Granting License

ORDER NO. 25,604

December 17, 2013

I. SUMMARY OF PETITION

On May 28, 2013, Sovernet Fiber Corp. (Sovernet) filed a petition pursuant to RSA 371:17 requesting a license to construct and maintain fiber optic communications cables over and across the public waters of the Mascoma River in Lebanon, New Hampshire parallel to the north side of Bank Street Extension. The Mascoma River at this location is listed as a public water in the Department of Environmental Services' official list of public waters and therefore requires a license pursuant to RSA 371:17. RSA 371:17-a now provides an alternative notification process for obtaining licenses for such crossings. Sovernet's petition was filed before the effective date of RSA 371:17-a, and the petitioner has worked with Staff to seek Commission approval under RSA 371:17. On October 25, 2013 and November 18, 2013, Sovernet filed revised schematics regarding the proposed crossing in response to issues raised by Staff. On December 13, 2013, Staff filed a memorandum recommending that the proposed crossing license be granted.

A. History

The Commission has authorized Sovernet to provide local exchange services in New Hampshire (Authorization No. CL 06-001-11). The petition states that Sovernet is constructing and will own, maintain and operate a fiber optic, middle mile network that will connect approximately 340 community anchor institutions, in accordance with the requirements of a grant to the Vermont Telecommunications Authority by the National Telecommunications Information Administration and the Vermont Department of Libraries. Small portions of the grant-funded network will extend into New Hampshire.

B. Crossing Location and Construction

According to the petition, the fiber optic cable crossing will be placed between two existing utility poles that have existing cables between them located within an existing public right of way. Information regarding the specific river crossings and pole attachments is set forth as follows:

Mascoma River in Lebanon, New Hampshire parallel to the north side of Bank Street Extension between utility pole NG 32 / FP 1.5 on the western side of the river and utility pole NG 33 / FP 2 on the eastern side.

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 Sovernet in accordance with the National Electrical Safety Code (NESC). Sovernet 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

The petition indicates that permits from the New Hampshire Department of Environmental Services (NHDES) and the New Hampshire Department of Transportation (NHDOT) are not required for the proposed water crossing. Sovernet asserts that the proposed crossing has been designed and will be constructed, maintained and operated by Sovernet and its affiliates and contractors in accordance with the NESC.

D. Property Rights

According to the petition, each proposed crossing will be placed between two existing utility poles within an 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 in the public waters of the Mascoma River. The petition also states that minimum safe line clearances above the water surface and affected shorelines will be maintained at all times and that the use and enjoyment by the public of the Mascoma River will not be diminished in any material respect as a result of the overhead line and cable crossings.

II. SUMMARY OF STAFF REVIEW

In a memorandum filed on December 13, 2013, Staff of the Commission's Telecommunications Division found the proposed construction and sagging design to be in conformance with the applicable sections of the NESC and provided worksheets documenting its review of the relevant conditions for the crossing under the NESC.

Upon review of the petition, Staff further concluded that Sovernet has demonstrated a public need for the proposed crossing, that approval of the petition for a license is consistent with the public interest, and that the crossing requires a license under either RSA 371:17 or RSA 371:17-a. Finally, Staff recommended that Sovernet be required to construct, install, operate and maintain the crossing in conformance with the NESC. *See* Memorandum of Michael Ladam, filed December 13, 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, or over, under or across 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, 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 Mascoma River is included in the official list, which is maintained at

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

As noted, on December 13, 2013, Staff filed a memorandum and supporting worksheets recounting its review of Sovernet's petition pursuant to RSA 371:17. Staff's review included an examination of the technical details of the facilities in question, compliance with NESC requirements, and the applicability of other state agency permitting requirements. Based upon the information presented in Sovernet's petition and Staff's memorandum, we find that the

proposed crossing is necessary for Sovernet 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 that the crossing is 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 Sovernet's petition or to request a hearing. Finally, inasmuch as NHDES is responsible by statute for maintaining the official list of public waters, we determine that notice of the proposed crossings to the NHDES is warranted.

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/2013/13-158.html>.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, Sovernet is authorized, pursuant to RSA 371:17, *et seq.*, to construct, install, operate and maintain fiber optic cable and other lines over and across the public waters described in its petition and depicted in its filing; and it is

FURTHER ORDERED, that Sovernet shall construct, install, operate and maintain the approved crossing, including any future alterations, to 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 Sovernet 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 executing the agreement or 30 days from the date of this Order *Nisi*, whichever occurs first; and it is

FURTHER ORDERED, that Sovernet shall provide a copy of this Order *Nisi* to the: (i) City Clerk of Lebanon, New Hampshire; (ii) the 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 New Hampshire Department of Environmental Services; and (iv) pursuant to RSA 422-B:13, the New Hampshire Department of Transportation, by first class mail, no later than December 26, 2013, and to be documented by affidavit filed with this office on or before January 10, 2014; and it is

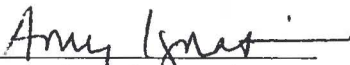
FURTHER ORDERED, that Sovernet shall cause a summary of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than December 26, 2013, and to be documented by affidavit filed with this office on or before January 10, 2014; 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 3, 2014 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 10, 2014; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective January 15, 2014, unless Sovernet fails to satisfy the publication and service 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 seventeenth day of December, 2013.



Amy L. Ignatius
Chairman



Robert R. Scott
Commissioner

Attested by:



Debra A. Howland
Executive Director