

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DT 12-113**

**NEW HAMPSHIRE OPTICAL SYSTEMS, INC.**

**Petition for Authority to Construct and Maintain Fiber Optic  
Communications Cable Over and Across Three Different Waters and  
Seven Different Railroads for Segment 7-Lancaster to Berlin**

**Order *Nisi* Granting Licenses**

**ORDER NO. 25,620**

**January 9, 2014**

**I. SUMMARY OF THE PETITION**

On April 27, 2012, New Hampshire Optical Systems, Inc. (NHOS)<sup>1</sup> filed petitions pursuant to RSA 371:17 requesting licenses to construct and maintain fiber optic cables over and across public waters of two rivers, a brook, and seven railroad crossings beginning in Lancaster and ending in Berlin, New Hampshire. Upon review by Staff, it was discovered that four of the railroad crossings were not over and across state-owned land and therefore, do not require licensing. The remaining three railroad crossings are properties acquired by the State of New Hampshire and are required to be licensed by the Commission. The cables will cross over the public waterways of the: (1) Israel River in Lancaster; (2) Israel River in Jefferson; and (3) Moose Brook in Gorham. The cables will also cross over state-owned properties at railroad crossings at: (4) Middle Street in Lancaster; (5) Mechanic Street in Lancaster; and (6) Presidential Highway in Jefferson. RSA 371:17-a now provides an alternative notification

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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)*.

process for obtaining licenses for such crossings; however, NHOS's petitions were 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.

Following communications with Commission Staff, NHOS filed revisions to its petition attachments on July 11, 2013 and on December 9 and 12, 2013. Staff also informed the pole owners, Public Service Company of New Hampshire and FairPoint Communications, by letter dated January 2, 2013, that existing cables at several of the crossings may not be in compliance with the vertical clearance requirements of the National Electrical Safety Code (NESC) under heavy load conditions and/or the distance between the attachments for the fire alarm cable and the secondary electric cable may not meet the minimum distance requirement. Staff requested that the companies investigate and, if necessary, bring the poles into compliance. On December 13, 2013, Staff filed a memorandum with the Commission recommending that the licenses be granted.

#### *A. History*

The fiber optic cable NHOS proposes to install over the listed water bodies and state-owned lands 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 service 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 petitions, the proposed crossings are all part of Segment 7 (Lancaster to Berlin) of NHOS's 700-mile broadband build-out, which consists of 17 segments in total. Each of the fiber optic cable crossings will be placed between two existing utility poles that have existing cables between them located within an existing public right of way. The specific locations of the crossings are as follows:

- TID 136, Lancaster: The railroad crossing parallels the southerly side of Middle Street in the vicinity of Stone Street, between utility poles E24/11 — T40/8 and E24/12 — T40/9.
- TID 137, Lancaster: The railroad crossing parallels the southerly side of Mechanic Street west of Middle Street, between utility poles E232/1 — T not tagged and E23/16 — T406/4.
- TID 138, Lancaster: The Israel River crossing parallels the southerly side of Mechanic Street, between utility poles E23/12 — T90/12 and E232/2 — T90/14.
- TID 139, Jefferson: The railroad crossing parallels the westerly side of Presidential Highway (Route 2) in the vicinity of Turnpike Road, between utility poles E not tagged — T144/73 and E not tagged — T144/74.
- TID 140, Jefferson: The Israel River crossing parallels the westerly side of Presidential Highway (Route 2), between utility poles E2/81 — T901/54 and E2/80 — T901/53.
- TID 143, Gorham: The Moose Brook crossing parallels the easterly side of Main Street between utility poles E600/62 — T164/205 and E600/61 — T164/206.

The petitions state 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 petitions, the proposed crossings have been designed and will be constructed, installed, maintained and operated by NHOS, its affiliates and contractors, in accordance with the NESC. NHOS provided attachments to its petitions depicting the technical and design information and proposed construction of each crossing. The petitions 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 petitions, permits from the New Hampshire Department of Environmental Services (NHDES) and the New Hampshire Department of Transportation (NHDOT) are not required for this project. NHOS asserts that the proposed crossings have been designed and will be constructed, maintained and operated by NHOS and its affiliates and contractors in accordance with the NESC.

***D. Property Rights***

According to the petitions, each proposed crossing will be placed between two existing utility poles in the existing public right-of-way.

***E. Public Interest***

According to the petitions, the proposed communication wires will not substantially affect the rights of the public in the public waters or state lands subject to the crossings. The petitions also state 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

Staff filed a memorandum on December 13, 2013, stating that the proposed construction and sagging designs are in conformance with the applicable sections of the NESC, and Staff provided worksheets documenting its review of the relevant conditions for the crossings under the NESC. Upon review of the petitions, Staff further concluded that NHOS has demonstrated a public need for the proposed crossings, that approval of the petitions for licenses is consistent with the public interest, and that the six crossings require a license under either RSA 371:17 or RSA 371:17-a. Staff recommended approval of NHOS's petitions, subject to certain conditions related to ensuring the safe operation and maintenance of the proposed crossings in conformance with the NESC. *See* Staff Recommendation of David Goyette, dated 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, 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 petitions 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).

As noted, on December 13, 2013, Staff filed a memorandum and supporting worksheets recounting its review of NHOS's petitions 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 NHOS's petitions and Staff's memorandum, we find that the proposed crossings are necessary for NHOS to meet the reasonable requirements of reliable service to the public, as required by RSA 371:17, and that the requested licenses may be exercised without substantially affecting the public rights in the affected public waters or state lands, as required for approval under RSA 371:20. We also authorize NHOS to construct the crossings over the railroad land 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 crossings.

We find the six requested crossings described above are in the public good and therefore approve the petitions with respect to these crossings 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 petitions or to request a hearing. We note that NHOS is responsible for obtaining any and all other permits for the construction, installation, operation or maintenance of the six 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 six proposed crossings be sent to NHDES and NHDOT.

The petitions 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/2012/12-113.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, install, operate and maintain fiber optic cable and other lines over and across the public waters and state-owned railroad lands at the six crossing locations referenced in the body of this order, as described in NHOS's petitions and depicted in its filings; and it is

**FURTHER ORDERED**, that NHOS shall construct, install, 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 433.01 and Puc 1303.07, and all other applicable safety standards in existence at that time; 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 approved 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 Lancaster, Jefferson and Gorham, New Hampshire; (ii) the New Hampshire Attorney General and the owners of the lands bordering on said public waters at the locations of

the 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, by first class mail, no later than January 20, 2014, and to be documented by affidavit filed with this office on or before February 4, 2014; and it is

**FURTHER ORDERED**, that NHOS shall cause a notice and 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 January 20, 2014, and to be documented by affidavit filed with this office on or before February 4, 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 27, 2014 for the Commission's consideration; and it is

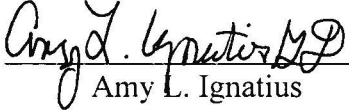
**FURTHER ORDERED**, that any party interested in responding to such comments or request for hearing shall do so no later than February 3, 2014; and it is


**FURTHER ORDERED**, that this Order *Nisi* shall be effective February 7, 2014, unless NHOS 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 ninth day of January,

2014.

  
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Amy L. Ignatius  
Chairman

  
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Robert R. Scott  
Commissioner

Attested by:

  
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Debra A. Howland  
Executive Director