

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 15-066**

**NH-BIG ISLAND CO.**

**Petition for a License to Construct and Maintain Cables and Pipelines  
Beneath State Lands and Waters**

**Order *Nisi* Granting License**

**ORDER NO. 25,776**

**April 8, 2015**

In this Order *Nisi*, the Commission approves NH-Big Island's request for a license to construct and maintain an electric cable, an internet and television cable, a water pipeline, and a sewer pipeline beneath a state-owned railroad and beneath Lake Winnepesaukee to serve Big Island in the City of Laconia. This order is being issued on a *nisi* basis to ensure that all interested parties receive notice of the Commission's order and have the opportunity to comment or request a hearing prior to the date set forth in the ordering clauses below.

**I. SUMMARY OF PETITION**

NH-Big Island Co. is a non-profit corporation that owns Big Island in Paugus Bay on Lake Winnepesaukee. NH-Big Island filed a petition pursuant to RSA 371:17 for a license to construct and maintain an electric cable, an internet and television cable, a water pipeline, and a sewer pipeline beneath state lands and waters in the City of Laconia in order to provide service to Big Island, which currently has a single residence. 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>.

***A. History***

According to the petition, there are no cables, water, or sewer lines currently providing service to Big Island. Although the Commission authorized a submerged electrical line more than 50 years ago in *Karl A. Steady*, 43 NH PUC 34 (1961), NH-Big Lake represents that the line is badly damaged and cannot be repaired. The Commission also authorized a cable for telephone service in *New England Tel. and Telegraph Co.*, 70 NH PUC 704 (1985). NH-Big Island states that it does not know whether that cable still exists.

***B. Crossing Locations and Construction***

NH-Big Island proposes the following installations to bring necessary electric, television, internet, water, and sewer services to the island. First, an electric line will start at an Eversource pole about 60 feet from the shore of Lake Winnepesaukee near the end of Paugus Park Road in Laconia. The line will travel underground from the pole to the shore, then for approximately 1,344 feet beneath the lake bed to an underground transformer on Big Island. Second, an internet and television cable will begin at the same Eversource pole as the electric line, will follow the same underground route as the electric line, and will end at the same termination point on Big Island as the electric line.

Third, a water line will begin at a different point on shore at an existing 2 inch public water line located approximately 250 feet west of the Lake Winnepesaukee shoreline at a point within the South Down Beach Condominiums. The water line will extend underground approximately 190 feet in an easterly direction crossing under a railroad owned by the New Hampshire Department of Transportation (NH DOT). The pipeline will travel for about 60 more feet to the shore line of the lake, underneath the lake bed for approximately 1,344 feet with the other services to Big Island, and

then underground the last 70 feet to the plumbing associated with the residence on the island. Finally, a sewer line will run from an existing municipal sewer manhole that is north of Paugus Park Road close to where the other services begin. The sewer line will travel underground 70 feet to the shore, then for 1,344 feet under the lake bed to Big Island, then approximately 65 feet under Big Island to a series of septic tanks and pumping chamber.

According to the petition, each of these four lines and pipes will be in separate sleeves, along with an empty fifth sleeve for future use, and the sleeves will be bundled together as they travel under the lake bed from the meeting points at each shore. The bundle will be buried approximately 12 feet below the lake bed by horizontal bore drilling technology. NH-Big Island will own the lines and will be responsible for their maintenance.

### ***C. Regulatory Requirements***

NH-Big Island represents that it has obtained all necessary permits for the crossings. These include two wetland and two shore land permits from the New Hampshire Department of Environmental Services (NHDES). The NHDES permits authorize the temporary impacts on shore and on the lake bed to facilitate construction. Copies of the NHDES permits were filed with the petition.

### ***D. Property Rights***

NH-Big Island filed with the petition an easement from a property owner on shore to allow the wires and pipes to travel underground from their connection with each provider to the lake shore. NH-Big Island also filed a Crossing Agreement it entered into with NHDOT to have the water line travel beneath the state-owned railroad. According to the petition, no other acquisition of property rights is required.

### ***E. Public Interest***

NH-Big Island's position is that the crossing is necessary to serve NH-Big Island and that NH-Big Island can exercise the rights granted by the license sought in this petition without affecting or diminishing the rights of the public to use and enjoy Lake Winnepesaukee. According to NH-Big Island, absent the utilities that are the subject of this petition, Big Island has no electricity, internet, or television service, it obtains water from a dug well, and it uses an on-site septic system. NH-Big Island argues the license is "necessary" to allow these services to reach Big Island.

Because the services will be entirely underground and approximately 12 feet under the lake bed, NH-Big Island argues that the licenses will not diminish the rights of the public to use Lake Winnepesaukee or of the State to use the railroad.

## **II. SUMMARY OF STAFF REVIEW**

Commission Staff (Staff) confirmed that NH-Big Island obtained the necessary approvals from NHDES, that NH-Big Island has the necessary easements and NHDOT permission, and that the proposed cables and pipelines meet applicable construction and safety standards.

Staff recommended that the Commission approve NH-Big Island's petition on the following four conditions: (1) that the proposed electric and cable lines comply with applicable sections of the National Electric Safety Code C2-2012, Part 3, §§ 30-37; (2) that construction of the proposed water and sewer pipelines comply with applicable State statutes, administrative rules and requirements, local plumbing code requirements, and the construction and pipeline rules and requirements of the municipal water works and public works departments; (3) that any future alterations to the proposed electric or cable facilities comply with applicable sections of the National Electric Safety Code in effect at the time of the alteration, and that requests for such

alterations be submitted to the Commission for its consideration at least 60 days prior to the start of construction; and (4) that all construction comply with the conditions imposed by the NHDES Wetlands and Non-Site Specific Permits attached to the petition.

### III. COMISSION ANALYSIS

RSA 371:17 requires a license from the Commission to construct and maintain a cable or pipeline beneath any “public waters” or beneath “any of the land owned by this state.” The petitioner must demonstrate the crossing is “necessary ... to meet the reasonable requirements of service to the public.” *Id.* RSA 371:17 applies because NH-Big Lake proposed a crossing of a railroad and of a portion of Lake Winnepesaukee. The railroad is “land owned by this state” and Lake Winnepesaukee is on NHDES’s list of public waters. *See* [des.nh.gov/organization/commissioner/pip/publications/wd/documents/olpw.pdf](http://des.nh.gov/organization/commissioner/pip/publications/wd/documents/olpw.pdf). If NH-Big Island can demonstrate that the crossing is “necessary” under RSA 371:17, then RSA 371:20 authorizes the Commission to grant a license if it “may be exercised without substantially affecting the public rights in said waters.”

We find that the proposed crossings of the railroad and Lake Winnepesaukee are necessary to serve Big Island with electricity, television and internet cable, water, and sewer service as required by RSA 371:17, and that the requested license may be exercised without substantially affecting the public rights in the public waters and lands in question. Big Island would be without meaningful or modern services absent the license, and burying the bundle of services beneath the lake bed will likely prevent any interference with the public’s right to use and enjoy the lake. We thus find that the crossings are in the public good and therefore approve the petition subject to the four conditions recommended by Staff. Our decision is issued on a *nisi* basis to provide any

interested party the opportunity to submit comments on NH-Big Island's petition or to request a hearing.

NH-Big Island is responsible for obtaining any and all other permits for the construction and installation of the proposed crossings from federal, state, and local authorities having jurisdiction. As recommended by Staff, our approval is only for the specific electric cable, internet and television cable, water pipeline, and sewer pipeline proposed in this docket. Finally, we require NH-Big Island to provide notice of the proposed alterations to NHDOT, NHDES and the City of Laconia.

**Based upon the foregoing, it is hereby**

**ORDERED *NSI***, that subject to the effective date below, NH-Big Island is authorized pursuant to RSA 371:17 *et seq.* to construct, install, operate, and maintain an electric cable, internet and television cable, water pipeline, and sewer pipeline beneath the public waters and public lands described in its petition and depicted in its filings; and it is

**FURTHER ORDERED**, that the construction of the cables and pipelines shall be implemented as depicted in the petition documents; and it is

**FURTHER ORDERED**, that this approval is limited to the cable and pipeline crossings under consideration in this docket, and it is conditioned on the requirement that NH-Big Island construct, install, operate, maintain, and, if applicable, alter the crossings in compliance with the applicable provisions of the National Electrical Safety Code, N.H. Code Admin. Rules Puc 306.01, applicable State statutes, administrative rules and requirements, local plumbing code requirements, the construction and pipeline rules and requirements of the municipal water works and public works departments, and all other applicable safety standards in existence at that time, all as amended from time to time; and it is

**FURTHER ORDERED**, that NH-Big Island shall submit any future proposed alteration(s) to the crossing licenses granted herein at least 60 days prior to any such alteration(s); and it is

**FURTHER ORDERED**, that all construction comply with the conditions imposed by the NHDES Wetlands and Non-Site Specific Permits attached to the petition; and it is

**FURTHER ORDERED**, that to the extent not already filed, NH-Big Island shall file copies of all permits or agreements, if any, required by NHDES, any other federal, state, or local authorities, and any of the affected municipalities for the crossing, no later than receiving the permit or entering into the agreement, or 30 days from the effective date of this Order *Nisi*, whichever occurs first; and it is

**FURTHER ORDERED**, NH-Big Island shall provide a copy of this Order *Nisi* to (i) the City Clerk of Laconia, New Hampshire; (ii) the New Hampshire Attorney General, (iii) the owners of the land bordering on said public waters at the location of the crossing, pursuant to RSA 371:19; (iv) the New Hampshire Department of Transportation, and (v) the New Hampshire Department of Environmental Services, by first class mail, no later than April 13, 2015, and to be documented by affidavit filed with this office on or before April 17, 2015; and it is

**FURTHER ORDERED**, that NH-Big Island shall cause the 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 April 13, 2015 and to be documented by affidavit filed with this office on or before April 17, 2015; 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

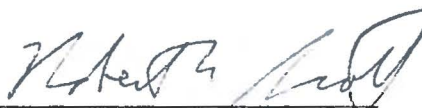
reason and basis for a hearing no later than April 15, 2015, for the Commission's consideration; and it is

**FURTHER ORDERED**, that any person interested in responding to such comments or request for hearing shall do so no later than April 17, 2015; and it is


**FURTHER ORDERED**, that this Order *Nisi* shall be effective April 20, 2015, unless NH-Big Island fails to satisfy the publication obligations set forth above or the Commission provides otherwise in a supplemental order issued prior to the Order *Nisi*'s effective date.

By order of the Public Utilities Commission of New Hampshire this eighth day of April, 2015.

  
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Martin P. Honigberg  
Chairman

  
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Robert R. Scott  
Commissioner

Attested by:

  
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Debra A. Howland  
Executive Director