

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 16-544

UNITIL ENERGY SYSTEMS, INC.

**Petition for License to Rebuild and Maintain Electric Lines
Over and Across the Merrimack River in Concord**

Order *Nisi* Granting License

ORDER NO. 25,937

August 19, 2016

In this order *nisi*, the Commission grants the request of Unitil Energy Systems, Inc. (“Unitil”), for a license to rebuild and maintain electric lines over and across the Merrimack River in Concord, New Hampshire. 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 for comment in the ordering clauses below.

I. SUMMARY OF PETITION

On May 4, 2016, Unitil filed a petition pursuant to RSA 371:17 for a license to rebuild and maintain a line of poles and electric lines over and across the public waters of the Merrimack River at Sewalls Falls Road in Concord. According to the petition, the poles and lines must be rebuilt to meet the requirements for reasonable and safe service to the public. Unitil explained that it is necessary for the Company to reconstruct the poles and lines on the east and west sides of the Merrimack River in Concord due to the Sewalls Falls Road Bridge replacement that has been taking place in 2016. Unitil requested that it be allowed to increase the height of its lines over the water and improve construction of the structures. Unitil stated those changes will improve reliability for Concord residents and businesses.

Specifically, Unitil's petition stated that the location of the new structures will create a span of approximately four hundred fifty seven (457) feet. There will be three open air conductors making up a horizontally constructed circuit and one neutral conductor crossing the river. Unitil indicated that FairPoint Communications Inc. ("FairPoint") will have aerial cables crossing the Merrimack River on these poles, and that FairPoint should petition the Commission separately for a crossing license for its cables.

Unitil filed supporting attachments and exhibits with the petition, and provided Commission Staff ("Staff") with supplemental information during the course of Staff's review. 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://puc.nh.gov/Regulatory/Docketbk/2016/16-544.html>.

A. History

The Safety Division Staff located a license for the existing crossing granted to Concord Electric Company by the Commission. Order No.7,907 (October 18, 1962) in docket D-E4054 provides sufficient details indicating that Concord Electric Company filed a petition for thirteen licenses to construct and maintain water crossings at various locations in the Concord area. A public hearing was held on October 16, 1962, at which no opposition appeared. The Commission approved the petition, and all licenses were granted to Concord Electric Company on October 18, 1962. The order cites crossing description #3 as the crossing specific to this location at Sewalls Falls Road, just south of the bridge, from Pole #66 on land of Concord Electric Company, easterly across the Merrimack River to Pole #14 on land now or formerly

owned by Francis J. Faucher in Concord.¹ The span distance was said to be 441 feet and the height above the water was approximately 45 feet.

B. Crossing Location and Construction

Unitil will use standard cross arm construction. The water crossing between poles 66 and 67 will be replaced with 65-foot H1 poles, and phase conductors over the water will be dead-ended. All conductors will be replaced using 336 aluminum core steel-reinforced Merlin cable. The span will be approximately 457 feet across the Merrimack River. As designed, the company proposes clearances of 23 feet over the roadway and 52 feet over the water. The company also intends to install the poles outside the 100 year flood plain on either side of the river crossing. Those clearances exceed the 2012 National Electrical Safety Code (“NESC”) standards.

The petition indicated that Unitil will do all work associated with the crossing, and that the proposed crossing has been designed and will be constructed, maintained, and operated by the company. Unitil allocated adequate space below its neutral conductor at each structure to allow for the requirements of FairPoint’s anticipated aerial telecommunications cables.

C. Regulatory Requirements

Unitil did not provide copies of any permits or licenses required by other state or federal agencies with regard to this construction. The Commission expects that Unitil will secure all required state and local permits not under the Commission’s jurisdiction.

D. Property Rights

According to its petition, Unitil owns permanent easements on each side of the Merrimack River, and the poles and construction for this crossing will be within the boundaries of the easements. Unitil filed copies of the easements with Staff on July 1, 2016. Staff has also

¹Pole 14 is now numbered as 67.

concluded that the Merrimack River is a public water in New Hampshire because it is included in the list of public waters maintained by the Department of Environmental Services. *See* RSA 371:17 and RSA 271:20.

E. Public Rights

Unitil argued that it can exercise the rights granted by the license without substantially affecting the rights of the public in the public waters of the Merrimack River. The petition stated that minimum safe line clearances above the river surface and affected shorelines will be maintained at all times. According to Unitil, the use and enjoyment by the public of the river will not be diminished in any material respect as a result of the overhead line crossing. *See* RSA 371:20

II. SUMMARY OF STAFF REVIEW

Staff reviewed the Company's petition and supporting documentation; applicable statutes, rules, and NESC requirements; and ownership of the land, as well as public need, safety, and impact. Staff recommended approval of the Company's petition for a license to rebuild, operate and maintain poles and electric wires over and across the Merrimack River in the City of Concord, as proposed in the petition. *See* Staff Recommendation of Robert Wyatt, dated July 7, 2016.

III. COMMISSION ANALYSIS

Pursuant to RSA 371:17, utilities must obtain a license from the Commission to "construct a pipeline, cable, or conduit, or a line of poles or towers and wires and fixtures thereon, over, under or across any of the public waters of this state, or over, under or across any of the land owned by this state," when such facilities are "necessary ... to meet the reasonable

requirements of service to the public.” RSA 371:20 authorizes the Commission to grant a license if it “may be exercised without substantially affecting the public rights in said waters or lands.” RSA 371:17 defines public waters to include all ponds of more than 10 acres, tidewater bodies, and such streams or portions thereof that the Commission may prescribe. The New Hampshire Department of Environmental Services (“NHDES”) prepares, maintains, and publishes an official list of all public waters in the state. The body of water listed in the instant petition, the Merrimack River, is included in Part 2 of the official list, which is maintained at <http://des.nh.gov/organization/commissioner/pip/publications/wd/documents/olpw.pdf>.

Based on the information presented in Unital’s petition and Staff’s recommendation, we find that the proposed crossing is necessary for Unital 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. Unital has confirmed that the crossing is in compliance with the NESC standards. We therefore approve the petition subject to the conditions recommended by Staff and contained in the ordering clauses set out below related to ensuring safe construction, operation, and maintenance of the proposed crossing. We issue our decision on a *nisi* basis to provide any interested person the opportunity to submit comments on Unital’s petition or to request a hearing.

We note that Unital is responsible for obtaining any and all permits for the construction and installation of the proposed crossing from any federal, state, and local authorities having jurisdiction. Our approval is only for the poles and electric lines proposed by Unital in this docket. Should the company wish to make any changes, it must make an appropriate filing.

Because NHDES is responsible for maintaining the official list of public waters, we require that notice of the proposed alterations be sent to NHDES. We also require notice to be provided to the City of Concord, the New Hampshire Department of Transportation, and to the New Hampshire Attorney General and private property owner(s) of lands bordering such public waters at the crossing location as required by RSA 371:19.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, Unitil is authorized pursuant to RSA 371:17 to rebuild, install, operate, and maintain electric lines over and across the public waters described in its petition and depicted in its filings; and it is

FURTHER ORDERED, that the construction of the line shall be implemented as depicted in the petition documents and consistent with Staff recommendations; and it is

FURTHER ORDERED, that this approval is limited to the construction or alteration of electrical lines under consideration in this docket, and it is conditioned on the requirement that Unitil rebuilds, installs, operates, and maintains, and, if applicable, alters the lines consistent with the provisions of the NESC, and in accordance with N.H. Code Admin Rules Puc 306.01, as may be applicable and as amended from time to time, and all other applicable safety standards in existence at that time; and it is

FURTHER ORDERED, that Unitil shall submit any future proposed alteration(s) to the crossing license granted herein at least 60 days prior to any such alteration(s); and it is

FURTHER ORDERED, that Unitil shall provide a copy of this Order *Nisi* to the (i) City Clerk of Concord, New Hampshire; (ii) the New Hampshire Attorney General and all owners of the land bordering on said public waters at the location of the crossing, as required by RSA

371:19; (iii) the New Hampshire Department of Environmental Services, and (iv) the New Hampshire Department of Transportation no later than August 29, 2016, and to be documented by affidavit filed with this office on or before September 15, 2016; and it is

FURTHER ORDERED, that Unutil shall cause a summary of this Order *Nisi*, issued concurrently with this Order, 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 August 29, 2016, and to be documented by affidavit filed with this office on or before September 15, 2016; 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 6, 2016, 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 13, 2016; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective September 19, 2016, unless Unutil fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

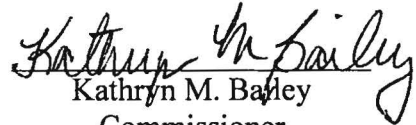
By order of the Public Utilities Commission of New Hampshire this nineteenth day of August, 2016.



Martin P. Honigberg
Chairman



Robert R. Scott
Commissioner



Kathryn M. Bailey
Commissioner

Attested by:



Debra A. Howland
Executive Director