

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 18-098

**NORTHERN NEW ENGLAND TELEPHONE OPERATIONS, LLC
d/b/a CONSOLIDATED COMMUNICATIONS - NNE**

**Petition for a License to Construct and Maintain a Telecommunication Cable Over and Across
the Merrimack River in Hooksett**

Order Dismissing Petition

ORDER NO. 26,172

September 10, 2018

In this order, the Commission dismisses Consolidated Communications' petition for a license to relocate a previously-licensed cable crossing over the Merrimack River in the Town of Hooksett. The Commission finds the requested license to be unnecessary under the applicable statutes, because the proposed crossing will be located in a conduit attached to a recently built pedestrian bridge constructed by Hooksett and the New Hampshire Department of Transportation and will be no lower than the bridge clearance.

I. PROCEDURAL HISTORY

On June 21, 2018, Northern New England Telephone Operations, LLC d/b/a Consolidated Communications-NNE (Consolidated Communications), filed a petition pursuant to RSA 371:17 for a license to construct and maintain a telecommunications cable across the Merrimack River in Hooksett. In support of its petition, Consolidated Communications submitted a plan and profile drawing and an aerial view of the proposed location.

Commission Staff (Staff) filed a memorandum on August 24, 2018, recommending dismissal of the petition as unnecessary. The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted on the Commission's website at <http://puc.nh.gov/Regulatory/Docketbk/2018/18-098.html>.

II. SUMMARY OF PETITION

Consolidated Communications proposes to relocate a previously-licensed cable crossing to a pedestrian bridge, known as the Lilac Bridge, which was recently constructed by the Town of Hooksett and the New Hampshire Department of Transportation (NHDOT). The cable will be moved to a four-inch conduit attached to the underside of the Lilac Bridge. Consolidated Communications stated that the crossing will be constructed and maintained pursuant to the National Electrical Safety Code (NESC) and will not adversely affect the public's rights and use and enjoyment of the public waterway.

III. SUMMARY OF STAFF REVIEW

Staff reviewed RSA 371:17 and its requirements. Staff noted Commission precedent stating that a crossing attached to a highway bridge that will not hang lower than the bridge clearance does not require a license under RSA 371:17. *See Northern Utilities, Inc.*, Order No. 26,021 at 5 (May 26, 2017) (citing *Public Utilities: Licensing of Crossings Over Public Waters and State-Owned Land*, 35 NH PUC 94, 94-95 (1953) (*Licensing of Crossings*)). Staff argued that the statutory definition of "highway" in RSA 229:1 includes public pedestrian bridges that are built or accepted by the State or its political subdivisions. RSA 229:1 states:

Highways are only such as are laid out in the mode prescribed therefor by statute, or roads which have been constructed for or are currently used for motor vehicle, bicycle, or pedestrian public travel over land which has been conveyed to a city or town or to the state ... and shall include the bridges thereon.

Staff found no judicial or regulatory precedent or other guidance to the contrary.

Staff concluded that a license is unnecessary for the proposed crossing. The crossing has the necessary supports, in the form of the conduit, attached to a public highway bridge that is not below the bridge clearance. Staff noted, however, that such crossings are not exempt from "compliance with established minimum safety standards." *Licensing of Crossings*, 35 NH

PUC at 95. Staff recommended that the Commission dismiss Consolidated Communications' petition.

IV. COMMISSION ANALYSIS

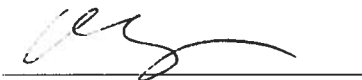
"Whenever it is necessary, in order to meet the reasonable requirements of service to the public, that any public utility should construct a pipeline, cable, or conduit, or a line of poles or towers and wires and fixtures thereon, over, under or across any of the public waters of this state, ... it shall petition the commission for a license to construct and maintain the same." RSA 371:17. No license is required, however, if the crossing "will be attached to a highway bridge and will not hang lower than the bridge clearance." *Northern Utilities, Inc.*, Order No. 26,021 at 5. Pursuant to RSA 229:1, the definition of "highway" includes state-owned pedestrian bridge crossings. Because the proposed crossing will be located in a conduit attached to a pedestrian bridge constructed by Hooksett and NHDOT and will be no lower than the bridge clearance, we find the license unnecessary. We therefore dismiss as unnecessary Consolidated Communications' crossing petition.

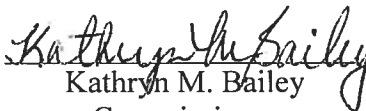
We emphasize, however, that Consolidated Communications is not relieved from its duty to follow the safety standards of the NESC, nor any other applicable safety standard.

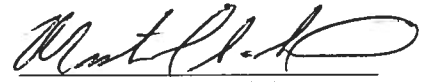
Based upon the foregoing, it is hereby

ORDERED, that Consolidated Communications' petition is DISMISSED.

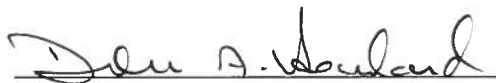
By order of the Public Utilities Commission of New Hampshire this tenth day of September, 2018.


 Martin P. Honigberg
 Chairman


 Kathryn M. Bailey
 Commissioner


 Michael S. Giaimo
 Commissioner

Attested by:


 Debra A. Howland
 Executive Director