

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DT 13-052

**NORTHERN NEW ENGLAND TELEPHONE OPERATIONS
D/B/A FAIRPOINT COMMUNICATIONS - NNE**

**Petition for Authorization to Construct and Maintain Aerial Cables
Over and Across Public Waters in Somersworth**

Supplemental Order *Nisi* Granting License

O R D E R N O. 25,520

June 10, 2013

I. SUMMARY OF THE PETITION

On February 15, 2013, Northern New England Telephone Operations, LLC d/b/a FairPoint Communications - NNE (FairPoint) filed a petition pursuant to RSA 371:17 (petition) requesting a license to temporarily construct and maintain aerial cables over and across Salmon Falls River, a public waterway, between Somersworth, New Hampshire and Berwick, Maine. In response to communications from Staff, FairPoint filed revised exhibits on March 4, April 9, and April 16, 2013. On April 29, 2013, Staff filed a memorandum with the Commission recommending that the license be granted. On May 10, 2013, the Commission issued Order *Nisi* No. 25,507 approving FairPoint's request which, among other things, ordered FairPoint to provide a copy of the Order *Nisi* to the Town Clerk of Somersworth, the New Hampshire Attorney General and the owners of the land bordering on said public waters at the location of the crossing, and the New Hampshire Department of Transportation by first class mail, and to

publish a summary of the Order *Nisi* in a statewide newspaper of general circulation, all no later than May 20, 2013.

On June 5, 2013, FairPoint filed an expedited motion to extend the notice and publication dates and schedule (motion). In its motion FairPoint claimed that due to a clerical error, it had failed to meet any of the notice and publication requirements and requested that the Commission extend the notice and publication deadlines. In addition, FairPoint requested that the Commission waive Puc 203.07(e) and grant the motion on an expedited basis before the 10-day period for other parties to respond had expired. FairPoint reasoned that no parties intervened in the original proceeding and there is sufficient time for interested parties to file comments.

A. History

According to Fairpoint's petition, the Maine Department of Transportation, in conjunction with the New Hampshire Department of Transportation, is rebuilding the bridge across Salmon Falls River upon which FairPoint's cables are currently attached. FairPoint states that it must temporarily relocate its cables from the bridge to an existing pole line during the reconstruction in order to continue delivering service to its customers in New Hampshire and parts of Maine. After construction is completed FairPoint says it will move its cables from the pole line to a conduit system attached to the new bridge.

B. Crossing Locations and Construction

According to the petition, FairPoint proposes to erect and maintain telephone plant on a temporary basis, placed between existing utility poles in existing public rights-of-way.

The location of the crossing is as follows:

- Salmon Falls River in Somersworth, between utility pole 42/1, on the western side of the river, in Somersworth, New Hampshire, and utility pole 42/2, on the eastern side of the river, in Berwick, Maine.

FairPoint provided attachments to its petition depicting the technical and design information and proposed construction of the crossing. The petition and attachments describe the configuration, as well as the clearance and sag requirements, for the proposed cable crossing. According to FairPoint, sag and tension calculations were done pursuant to applicable National Electrical Safety Code (NESC) and statutory requirements.

C. Regulatory Requirements

FairPoint informed Commission Staff that permits from the New Hampshire Department of Environmental Services (NHDES) and the New Hampshire Department of Transportation (NHDOT) are not required for this crossing.

D. Property Rights

According to the Petition, the proposed crossing will be placed within existing public rights-of-way, on existing utility poles.

E. Public Interest

FairPoint states that the use and enjoyment by the public of the waterway will not be diminished in any material respect as a result of the overhead line crossing, and that the granting of the license will not adversely affect the public rights on Salmon Falls River.

II. SUMMARY OF STAFF REVIEW

After reviewing the petition, Commission Staff filed a memorandum on April 29, 2013, stating that the proposed construction and sagging designs are in conformance with the applicable sections of the NESC. Staff recommended approval of FairPoint's petition, subject to

certain conditions related to ensuring the safe operation and maintenance of the proposed crossing. *See* Staff Recommendation of David Goyette, dated April 29, 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, 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. Each body of water listed in the instant petition is included in the official list, which is maintained at http://des.nh.gov/organization/divisions/water/dam/public_waters/index.htm.

Based on the information presented in FairPoint's petition and Staff's memorandum recommending approval of the crossing, we find the proposed crossings necessary for FairPoint 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 the crossing is in the public good and therefore approve the petition 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 FairPoint's petition or to request a hearing. We note that FairPoint is responsible for obtaining any and all other permits for the installation of the

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 proposed crossings be sent to NHDES and NHDOT. We also require notice of each crossing to the town of Somersworth.

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/2013/13-052.html>.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, FairPoint is authorized, pursuant to RSA 371:17 *et seq.*, to construct, maintain and operate aerial cables over and across the public waters described in its petition and depicted in its filings; and it is

FURTHER ORDERED, that FairPoint's expedited motion to extend the notice and publication dates and schedule is hereby granted; and it is

FURTHER ORDERED, that since no party intervened regarding FairPoint's petition, FairPoint's request for a waiver of Puc 203.07(e) is granted; and it is

FURTHER ORDERED, that all construction and future alterations of these approved crossings shall conform to the requirements of the National Electrical Safety Code, in accordance with N.H. Code Admin. Rules Puc 306.01 and Puc 1303.07 and all other applicable safety standards in existence at that time; and it is

FURTHER ORDERED, that FairPoint maintain proper clearances between its cables and those adjacent to it at all times across the entire span pursuant to NESC 235H; and it is

FURTHER ORDERED, that FairPoint notify the Commission by letter when the temporary attachment is removed; and it is

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

FURTHER ORDERED, that FairPoint 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 30 days after receiving the permit; and it is

FURTHER ORDERED, that FairPoint shall provide a copy of this order to: (i) the Town Clerk of Somersworth, 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 Department of Environmental Services; and (iv) pursuant to RSA 422-B:13, the New Hampshire Department of Transportation and the Office of Secretary, U.S. Department of Commerce by first class mail, no later than June 17, 2013, and to be documented by affidavit filed with this office on or before June 24, 2013; and it is

FURTHER ORDERED, that FairPoint 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 June 17, 2013 and to be documented by affidavit filed with this office on or before June 24, 2013; and it is

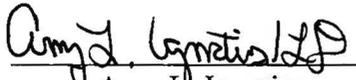
FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states

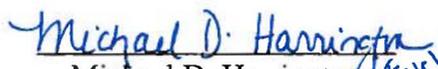
the reason and basis for a hearing no later than June 20, 2013 for the Commission's consideration; and it is

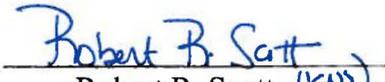
FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than June 24, 2013; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective June 26, 2013, unless FairPoint fails to satisfy the publication obligation set forth above or the Commission provides otherwise by order.

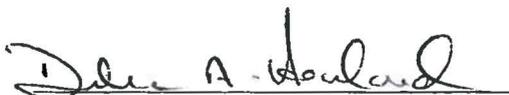
By order of the Public Utilities Commission of New Hampshire this tenth day of day of June, 2013.


Amy L. Ignatius
Chairman


Michael D. Harrington (KNS)
Commissioner


Robert R. Scott (KNS)
Commissioner

Attested by:


Debra A. Howland
Executive Director