

LICENSES FOR UTILITY CROSSINGS OF PUBLIC LANDS AND WATERS ACCORDING TO MINNESOTA RULES CHAPTER 6135

[Rules Effective July 1, 2004]

Minnesota Department of Natural Resources
Division of Lands and Minerals

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INTRODUCTION:

Minnesota Statutes, Section 84.415, authorizes the Commissioner of Natural Resources to establish rules for the sale of licenses which permit utilities to pass over, under, or across public lands and waters under the control of the Commissioner. (The Department of Natural Resources cannot issue easements to utility companies.) As a result, Minnesota Rules, Chapter 6135 was adopted. The text of that rule follows.

Minnesota Rules, Chapter 6135.

6135.0100 **POLICY.**

Pursuant to Minnesota Statutes, section 84.415, as amended by Laws of Minnesota 1973, Chapter 479, Section 1, the Commissioner of Natural Resources hereby establishes rules concerning utility crossings over public lands and waters under the control of the commissioner, setting forth fees, standards, and criteria for minimizing the environmental impact of such crossings.

6135.0200 **DEFINITIONS.**

Subpart 1. **Electric transmission.** "Electric transmission" means lines, cables, or conduits used to transport large blocks of power between two points, generally, 69 kilovolt-amperes or more. As distinguished from "distribution" which means lines, cables, or conduits used to distribute power to the utility company's customers, generally, less than 69 kilovolt-amperes.

Subpart 2. **Public waters.** "Public waters" means all waters of the state which serve a beneficial public purpose, as defined in Minnesota Statutes, section 105.38 [Repealed, now Section 103G.005, subdivision 15]

Subpart 3. **Utilities.** "Utilities" means lines, cables, and conduits for telephone, telegraph, or electric power, and pipelines for gases, liquids, or solids in suspension, and any other such item covered by the licensing requirements of Minnesota Statutes, section 84.415.

6135.0300 **SEVERABILITY.**

The provisions of these rules are severable, and the invalidity of any lettered or numbered paragraph, subparagraph, or subdivision thereof, shall not invalidate any other part.

6135.0400 **FEE SCHEDULES.**

Subpart 1. Purpose. The following fees defray administrative costs and provide a reasonable return for private use of public land or water.

Subpart 2. Application fee.

PUBLIC LANDS: The applicant shall include \$500 with each application for a license to construct utility crossings over or under public lands. An application may contain more than one crossing.

PUBLIC WATERS: The applicant shall include \$500 with each application for a license to construct utility crossings over or under public waters. An application may contain more than one crossing. In the case of underwater crossings, the application fee charged shall satisfy the application fee requirements of parts 6115.0010 to 6115.0100 but such crossings shall be subject to all inspection and monitoring fees required by law or regulation.

The checks shall be made payable to the state treasurer [Commissioner of Finance]. The Commissioner will acknowledge the receipt of the application, indicating whether or not the correct application fee was included. The Commissioner will take no other action on the application until he has received the correct fee. The Commissioner will not return application fees, even if the application is withdrawn or denied.

Subpart 3. **Utility crossing fees.** One-time payment fees securing a 50-year license, made payable to the State Treasurer [Commissioner of Finance], shall be established for two classes of utility crossings as follows:

A. Fees for crossing of public waters:

- (1) for utility crossings under public waters involving a disturbance of less than ten feet in width at the water's edge, Rate Table I in part 6135.0520 shall apply;
- (2) for utility crossings under public waters involving a disturbance of ten feet or more in width at the water's edge, Rate Table II in part 6135.0620 shall apply.
- (3) for utility crossings over public waters, Rate Table III in part 6135.0720 shall apply.

B. Fees for crossing of public lands:

- (1) for utility crossings over, under, or across public lands, Rate Table IV in part 6135.0820 shall apply.
- (2) The minimum utility crossing fee for any utility crossings of public lands shall be \$28.

Subpart 4. **Option for 25-year license.** An applicant may request a 25-year license instead of a 50-year license. In such a case, a one-time payment fee securing a 25-year license shall be established based on 60 percent of the fee for a 50-year license as computed under subpart 3 and Rate Tables I to IV in parts 6135.0520 to 6135.0820.

Subpart 5. **Renewal of license.** At the end of the license period if both parties wish to renew, the renewal fee and time period will be determined by such methods as are developed by the Commissioner.

Subpart 6. **Scope of application fees.** Application fees required under these parts shall be charged for all applications received after the effective date of these parts.

The license fees required under these rules shall apply to all licenses which have not been fully executed at the effective date of these parts.

6135.0520 RATE TABLE I, NARROW UNDERWATER CROSSINGS						
The following table applies to underwater crossings involving a disturbance of less than ten feet in width at the water's edge.						
Total Length in Feet, All Crossings Per Application						
Type of Utility	0-100	101-200	201-300	301-400	401-500	500+
BASE RATE						
Pipeline	\$237	\$293	\$349	\$406	\$462	\$462 plus \$56 per 100 feet or fraction thereof additional
Electric Transmission	\$180	\$225	\$259	\$304	\$349	\$349 plus \$45 per 100 feet or fraction thereof additional
Electric Distribution, Telephone, Telegraph, and Fiber Optic	\$124	\$147	\$180	\$203	\$237	\$237 plus \$17 per 100 feet or fraction thereof additional
The length of an underwater crossing is measured by the number of feet of line between banks or shores. The license fee is determined by adding the length of all such underwater crossings on the same application and, using this total distance, selecting the appropriate column to determine the base rate. The license fee is the base rate plus \$28 for each crossing in excess of one listed in the application.						

Example #1. *Electric distribution line application. Five water crossings.*

<u>Length (feet)</u>		
Crossing #1		40
Crossing #2		10
Crossing #3		75
Crossing #4		22
<u>Crossing #5</u>		<u>35</u>
Total	182	
Base Rate	\$147	(from 101-200 feet column)
<u>Plus</u>	<u>\$112</u>	(four crossings in excess of one)
License Fee	\$259	

Example #2. *Pipeline application. One crossing.*

Crossing #1	650 feet	
Base rate	\$574	(from the 500+ column)
<u>Plus</u>	<u>\$ 0</u>	(no crossings in excess of one)
License Fee	\$574	

6135.0620 RATE TABLE II, WIDE UNDERWATER CROSSINGS

The following table applies to underwater crossings involving a disturbance of
ten feet or more in width at the water's edge.

Total Length in Feet Per Each Crossing						
Type of Utility	0-100	101-200	201-300	301-400	401-500	500+
BASE RATE						
Pipeline	\$293	\$361	\$440	\$507	\$575	\$575 plus \$73 per 100 feet or fraction thereof additional
Electric Transmission	\$225	\$270	\$327	\$383	\$440	\$440 plus \$56 per 100 feet or fraction thereof additional
Electric Distribution, Telephone, Telegraph, and Fiber Optic	\$147	\$192	\$225	\$259	\$293	\$293 plus \$39 per 100 feet or fraction thereof additional
The length of an underwater crossing is measured by the number of feet of line between banks or shores. The license fee is determined by calculating separately the length of each crossing on the same application, finding the rate for each crossing by referring to the appropriate column, and then adding together the resulting rate determinations.						

Example. *Pipeline application. Three underwater crossings.*

	Length(feet)	Rate
Crossing #1	461	\$575
Crossing #2	24	\$293
<u>Crossing #3</u>	231	<u>\$440</u>
License Fee		\$1,308

6135.0720 RATE TABLE III, OVERWATER CROSSINGS						
The following table applies to overwater crossings						
Total Length in Feet, All Crossings Per Application						
Type of Utility	0-100	101-200	201-300	301-400	401-500	500+
BASE RATE						
Pipeline	\$361	\$473	\$575	\$687	\$789	\$789 plus \$113 per 100 feet or fraction thereof additional
Electric Transmission	\$293	\$383	\$462	\$552	\$631	\$631 plus \$90 per 100 feet or fraction thereof additional
Electric Distribution, Telephone, Telegraph, and Fiber Optic	\$225	\$282	\$349	\$417	\$473	\$473 plus \$68 per 100 feet or fraction thereof additional
The length of an overwater crossing is measured by the number of feet of line between banks or shores. The license fee is determined by adding the length of all such overwater crossings on the same application and, using this total distance, selecting the appropriate column to determine the base rate. The license fee is the base rate plus \$28 for each crossing in excess of one listed in the application.						

Example. *Telephone line application. Three overwater crossings.*

Length (feet)					
Crossing #1	27	Base rate	\$225	(from 0-100 feet column)	
Crossing #2	31	Plus	<u>\$56</u>	(two crossings in excess of one)	
Crossing #3	<u>10</u>	License fee	\$281		
Total	68				

Example #1. *Electric transmission line request: 100 foot right-of-way, across two descriptions of public land, 1,320 feet in length for each description.*

Total length in feet of public land crossing	2,640
Total length in rods (16.5 feet/rod)	160

License fee at \$5.75 per rod (Rate Table IV) \$920

6135.0820 RATE TABLE IV, **PUBLIC LAND CROSSINGS**

The following table applies to public land crossings

Width in Feet of Right-of-Way						
Type of Utility	0-66	67-99	100-132	133-165	166-198	199+
BASE RATE						
Pipeline	\$4.40	\$6.54	\$8.68	\$10.82	\$12.96	\$15.10
Electric Transmission	\$2.93	\$4.40	\$5.75	\$7.21	\$8.68	\$10.03
Electric Distribution, Telephone, Telegraph, and Fiber Optic	\$1.47	\$2.25	\$2.93	\$3.61	\$4.40	\$5.07

If an additional crossing is to be placed in an existing right-of-way by the original licensee or any other licensee, the fee will be 50 percent of the amount which would be charged if this crossing were the original crossing in the right-of-way.

If the appraised value of the land over which a utility will cross is over \$100 per acre, a fee in addition to that contained in Rate Table IV will be charged. The additional fee shall not exceed 15 percent of the appraised value in excess of \$100 per acre of the actual acreage being taken by the right-of-way.

Example #1 *Electric transmission line request: 100 foot right-of-way, across two descriptions of public land, 1320 feet in length for each description.*

Total length in feet of public land crossing	2,640
Total length in rods (16.5 feet/rod)	160
License fee at \$5.75 per rod (Rate Table IV)	\$920

Example #2. *Pipeline request: 75 foot right-of-way, 400 feet across public land.*

Total length in rods (16.5 feet/rod)	24.24
License fee at \$6.54 per rod (Rate Table IV)	\$158.53

6135.1000 **PROTECTING THE ENVIRONMENT.**

Subpart 1. **Policy.** It is essential to regulate utility crossings of public lands and waters in order to provide maximum protection and preservation of the natural environment and to minimize any adverse effects which may result from utility crossings. These standards and criteria provide a basic framework of environmental considerations concerning such a proposed crossing. The standards deal with route design, structure design, construction methods, safety considerations, and right-of-way maintenance.

Subpart 2. **Application content.** For each environmental standard listed in these parts, the applicant shall indicate whether the applicant is satisfying the standard, where applicable, or if not, why not. In dealing with route design standards, the application must, where applicable, also supply data on relevant site conditions. Except when the Commissioner determines that it is not feasible and prudent, or not in the best interests of the environment, the applicant shall comply with the following standards in designing, constructing, and maintaining utility crossings.

6135.1100 **STANDARDS FOR ROUTE DESIGN.**

Subpart 1. **Topography.** With regard to topography:

- A. avoid steep slopes;
- B. avoid scenic intrusions into stream valleys and open exposures of water;
- C. avoid scenic intrusions by avoiding ridge crests and high points; and
- D. avoid creating tunnel vistas by, for example, building deflections into the route or using

acceptable screening techniques.

Subpart 2. **Vegetation.** With regard to vegetation:

- A. avoid wetlands; and
- B. run along fringe of forests rather than through them, but if it is necessary to route through forests, then utilize open areas in order to minimize destruction of commercial forest resources.

Subpart 3. **Soil.** With regard to soil characteristics:

- A. avoid soils whose high susceptibility to erosion would create sedimentation and pollution problems during and after construction;
- B. avoid areas of plastic soils which would be subject to extensive slippage; and
- C. avoid areas with high water tables, especially if construction requires excavation.

Subpart 4. **Crossing public waters.** With regard to crossing of public waters:

- A. avoid streams, but if that is not feasible and prudent, cross at the narrowest places wherever feasible and prudent, or at existing crossings of roads, bridges, or utilities; and
- B. avoid lakes, but where there is no feasible and prudent alternative route, minimize the extent of encroachment by crossing under the water.

Crossings on or under the beds of streams designated by the Commissioner as trout waters shall be avoided unless there is no feasible alternative. When unavoidable, maximum efforts shall be taken to minimize damage to trout habitat.

Subpart 5. **Special use areas.** With regard to special use areas, which are those areas designated under Minnesota Statutes, Section 84.033 as scientific and natural areas; those areas designated pursuant to Minnesota Statutes, Section 103F.325 as units of the Minnesota Wild and Scenic River System; and those areas subject to special regulation for recreational, scenic, natural, scientific, or environmental purposes:

- A. avoid them, but if there is no feasible alternative route, then utilities shall be placed underground; and
- B. locate such crossings with existing public facilities such as roads and utilities.

6135.1200 **STANDARDS FOR STRUCTURE DESIGN.**

Subpart 1. **Location of utility.** With regard to locating the utility overhead or under the ground or water:

- A. Primary consideration shall be given to underground and underwater placement in order to minimize visual impact. If the proposal is for overhead placement, the applicant shall explain the economic, technological, or land characteristic factors, which make underground placement infeasible. Economic considerations alone shall not be the major determinant.
- B. If overhead placement is necessary, the crossing shall be hidden from view as much as practicable.

Subpart 2. **Appearance.** With regard to the appearance of the structures, they shall be made as compatible as practicable with the natural area with regard to: height and width, materials used, and color.

Subpart 3. **Right-of-way.** The right-of-way width shall be kept to a minimum.

6135.1300 **CONSTRUCTION METHODS.**

When crossing roads or rivers, leave a screen of vegetation between the structures and the road or river.

When crossing under public waters, take steps to prevent excessive erosion of lake or stream banks and construct temporary sediment traps to reduce sedimentation.

Construct across wetlands in the winter in order to minimize damage to vegetation and in order to prevent erosion and sedimentation.

Construct at times when local fish and wildlife are not spawning or nesting.

6135.1400 **SAFETY CONSIDERATIONS.**

Applicants for crossings of electrical transmission lines and pipelines shall adhere to federal and state safety regulations, both with regard to prevention (such as safety valves and circuit breakers) and with regard to emergency procedures in the event of failure (fire suppression, oil spill cleanup).

In order to ensure adequate safety for commercial or recreational navigational uses of waterways, overhead crossings shall be constructed at adequate heights to provide maximum safety compatible with existing or potential navigational uses.

6135.1500 **RIGHT-OF-WAY MAINTENANCE.**

Natural vegetation of value to fish or wildlife, which does not pose a hazard to or restrict reasonable use of the utility, shall be allowed to grow in the right-of-way.

Where vegetation has been removed, new vegetation consisting of native grasses, herbs, shrubs, and trees, recommended by the Commissioner shall be planted and maintained on the right-of-way.

Chemical control of vegetation shall be in accordance with rules, regulations, and other requirements of all state and federal agencies with authority over the use.

6135.1600 **RELATIONSHIP TO OTHER LAWS.**

There are other Minnesota and federal laws and rules and regulations concerned with utility crossings and the environment. In case of conflict with other environmental regulations, the parts included herein will be subordinated to any law, rule, or regulation which is stricter in its protection of the environment. Other related environmental laws and rules and regulations include but are not limited to those associated with:

- A. federal and state wild, scenic, and recreational rivers;
- B. the Minnesota Environmental Protection Act; and
- C. natural and scientific areas.

6135.1700 **LICENSE CONDITIONS.**

In granting a license, the commissioner may include therein any terms, conditions, or reservations which may be necessary to minimize the adverse effect on the environment or to carry out the policies of these parts.

6135.1800 **CANCELLATION OF LICENSE**

Upon violation of any of the terms, conditions, or reservations contained in a license, the Commissioner may cancel any license granted under these parts.

Authority: Minnesota Statutes, section 84.415; Laws of 1990, Ch. 594, Art. 1, Sec.79;
Laws of 2003, Ch. 128, Art. 1, Sec. 158.