



Minnesota Municipal Utilities Association

# Guidance for Utility Installations Across/Under Railroad Right-of-Way





# CONTENTS

Standard Crossing Fee .....	1
No Fees for Crossings in Public Right -of-Way .....	1
Who / What Can Use the Standard Crossing Fee? .....	1
How is this Law Applied? .....	2
Application Materials .....	2
Insurance Requirements .....	2
Inductive Interference Study .....	3
When Can Utilities Begin Construction at a Crossing? .....	3
Petitioning the Public Utilities Commission .....	3
Facility Relocation .....	3
APPENDIX A: Minnesota Statutes §237.045 .....	4
APPENDIX B: Letter Template for New RR Crossing Application .....	8
APPENDIX C: Letter Template for New RR Crossing Application w/i Public ROW .....	9
APPENDIX D: Letter Template for Discontinuing Payments on Existing Crossing w/I Public ROW..	10
APPENDIX E: Letter Template for Termination of Existing Crossing Agreement w/ Annual Fees ...	11

## Introduction

In the 2016 Legislative Session, MMUA collaborated with the Minnesota Rural Electric Association and Minnesota Telecom Alliance to pass a new law to provide a standard one-time fee for utility facilities crossing railroad rights-of-way and establish a timeline for railroads to approve or deny a crossing before project construction can begin.

*This guide presents an overview of Minnesota's 2016 railroad crossings law, along with letter templates to assist utilities when encountering various crossing scenarios with railroads. The information in this guide is not intended as, and does not constitute, legal advice. It is recommended that you carefully review any railroad correspondence, current crossing agreements, including termination provisions, and other relevant materials with the attorney that represents your utility before terminating existing agreements or making changes with regard to fee payments.*

Please see Appendix A for full text of Minnesota Statutes Section 237.045.

## Standard Crossing Fee

Minnesota Statutes Section 237.045 establishes a one-time standard \$1,250\* fee to a railroad for utility facilities crossing over, under, or across the railroad's right-of-way.

The standard crossing fee is paid in lieu of any other license, permit, application, or processing fee to reimburse the railroad for the crossing. The railroad may not impose any other fees or charges upon the utility. However, the utility must reimburse the railroad for necessary and reasonable flagging expenses.

\*The standard fee will be adjusted annually on May 1 based on the percentage change in the annual producer price index, as prepared by the Bureau of Labor Statistics of the U.S. Department of Labor. The adjusted standard fee will go into effect each year on June 1. See [Standard Fees](#) for updated fee amounts.

## No Fees for Crossings in Public Right-of-Way

Minnesota Statutes Section 237.045 states that no standard crossing fee is required to be paid to a railroad by a utility when a proposed crossing is within a public right-of-way. *(See Appendix C for a letter template for submitting applications when the proposed crossing is in a public right-of-way.)*

Although case law had previously established that railroads were not entitled to collect fees from utilities when crossings were within a public right-of-way, several railroads were doing so. *(See Appendix D for a letter template to provide notification to the railroad that your utility will no longer pay fees for an existing crossing in a public right-of-way.)*

## Who/What Can Use the Standard Crossing Fee?

To be eligible to utilize the standard fee for crossing railroad right-of-way under Minnesota Statute Section 237.045, utility facilities may transport: electricity, water, sewage, natural gas, oil, communications, fiber optics, cable television, or hazardous liquids.

Types of facilities include lines, wires, pipes, sewers, conduits, cables, valves, manholes, and attachments.

Eligible utilities include: municipal utilities, municipalities, municipal power agencies, joint action agencies, cooperative electric associations, public utilities, pipeline companies, rural water systems, or telephone, telegraph, telecommunications, cable, or fiber optic carriers. Contractors or agents of utilities are included.

The standard crossing fee does not apply to "large energy facilities" as defined in Minnesota Statutes Section 216B.2421, regardless of the facilities' length. This includes high-voltage transmission lines over 100 kilovolts, pipelines greater than six inches in diameter transporting coal, crude petroleum or petroleum fuels or oil or their derivatives, or pipelines transporting gas at over 200 pounds per square inch.

## [How is This Law Applied?](#)

Minnesota Statutes Section 237.045 applies to any crossings commenced after its July 1, 2016 effective date.

It also applies to any crossing previously in existence where the agreement has expired or been terminated. If the amount equaling or exceeding the standard crossing fee has been paid to the railroad during the existence of such a crossing, no further fee payments are required.

*(Note: If your utility has a crossing agreement in place for which you are paying annual fees, it is recommended that you review the termination conditions in the agreement with your utility's attorney before terminating any existing agreements or making any changes with regard to fee payments.)*

The new law does not prevent a utility and railroad from continuing under an existing agreement if they so choose or allowing a utility to use the eminent domain process to secure an easement for a railroad crossing.

Furthermore, a utility may still choose to use the Department of Commerce process to determine the appropriate charge for a railroad crossing (outlined in Minnesota Statutes Section 237.04), rather than the standard crossing fee.

## [Application Materials](#)

Prior to crossing railroad property with its facility, a utility must request permission through an application that includes an engineering design of the proposed crossing. The engineering design must conform to the National Electric Safety Code (NESC) or the Manual for Railway Engineering of the American Railway and Maintenance-of Way Association (AREMA). If a railroad requires utilities to use the railroad's own application form, a utility must use the form. (See [Minnesota Regional Railroads Association](#) for a list of railroads serving Minnesota.)

The application must include the standard crossing fee and a certificate of insurance. The utility must send the application materials by certified mail with return receipt requested. (See *Appendix B* for a letter template to submit with your crossing application materials.)

If the railroad determines the application is not complete, it must notify the utility within 15 calendar days of receipt that additional information is needed. For this reason and to establish the date when construction may begin, a utility should send printed application materials by certified mail with return receipt requested, even if a railroad website asks utilities to submit applications online.

## [Insurance Requirements](#)

The certificate of insurance coverage submitted by a municipal utility or municipality in its crossing application must include general liability insurance of \$1 million for each occurrence and an aggregate of \$2 million. Natural gas utilities are given higher requirements, but municipal gas utilities should utilize the lower requirements.

For the period of construction, repair, or replacement of the facility only, the railroad may require protective liability insurance with a combined single limit of \$2 million for each single occurrence and \$6 million aggregate. The coverage cannot include an exclusion to railroads or to activities within 50 feet of railroad property. The utility may choose its own insurance provider.

### [Inductive Interference Study](#)

If a proposed crossing is a transmission line of over 125 kilovolts and the NECS and AREMA standards determine that the facility may pose induction issues or interference with railroad property, a railroad may request that the utility conduct an inductive interference study. The utility must pay for the study and use an engineer approved by the railroad. The utility must also pay for any property modifications that are necessary to ensure safe railroad operations. If an inductive interference study has been performed for a proposed crossing, the utility must provide the railroad with 30 days' notice that the facility is ready to be energized. The railroad must perform any interference tests within 30 days of receiving notification from the utility.

### [When Can Utilities Begin Construction at a Crossing?](#)

Beginning 35 calendar days after the railroad has received a completed crossing application, crossing fee, and certificate of insurance (as indicated by the certified mail return receipt, the utility may commence construction of the crossing unless it has received written notice from the railroad that the proposed crossing presents a safety threat.

### [Petitioning the Public Utilities Commission](#)

If a railroad objects to a proposed crossing due to safety concerns, it must provide the utility with written notification and rationale. The notice must be sent to the utility via certified mail, with return receipt requested. If the parties are unable to resolve the objection, either may petition the Minnesota Public Utilities Commission (PUC) for mediation or arbitration of the crossing application. The petition must be filed within 60 days of the railroad's objection, but the parties must first make a good faith effort to resolve the issue.

If a railroad imposes additional requirements on a utility for a proposed crossing, it must also provide written notification and rationale via certified mail. Again after 60 days, either party may petition the PUC for resolution or modification of the additional requirements, after good faith efforts are made to resolve the issues. The PUC must provide opportunity for a hearing to determine whether special circumstances exist to warrant additional requirements.

In either scenario, the PUC must issue an order within 120 days of a petition's filing. The costs of the petition will be assessed equitably between the parties. Either party may appeal the PUC's decision.

### [Facility Relocation](#)

A railroad may require a utility to relocate a facility if essential to railroad operations. A utility may require documentation from the railroad on the necessity of the relocation. A crossing fee may not be imposed by the railroad for the utility relocation. A utility must perform the relocation at its own expense and within a reasonable period of time.

## APPENDIX A: MINNESOTA STATUTES §237.045

### Subdivision 1. Definitions.

(a) For the purposes of this section, the following terms have the meanings given them.

(b) "Crossing" means a utility facility constructed over, under, or across a railroad right-of-way. The term does not include longitudinal occupancy of railroad right-of-way.

(c) "Facility" or "utility facility" means any item of personal property placed over, across, or underground for use in connection with the storage or conveyance of:

- (1) water;
- (2) sewage;
- (3) electronic, telephone, or telegraphic communications;
- (4) fiber optics;
- (5) cable television;
- (6) electric energy;
- (7) oil;
- (8) natural gas; or
- (9) hazardous liquids.

Facility includes, but is not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments.

(d) "Parallel" or "paralleling" means a utility facility that runs adjacent to and alongside the lines of a railroad for no more than one mile, or another distance agreed to by the parties, after which the utility facility crosses the railroad lines, terminates, or exits the railroad right-of-way.

(e) "Railroad" means any association, corporation, or other entity engaged in operating a common carrier by rail, or its agents or assigns, including any entity responsible for the management of crossings or collection of crossing fees.

(f) "Utility" means cooperative electric association, electric utility, public utility, transmission company, gas utility, municipal utility, municipal power agency, municipality, joint action agency, pipeline company, rural water system, or telephone, telegraph, telecommunications, cable, or fiber optic carrier. Utility includes contractors or agents.

### Subd. 2. Application.

(a) This section applies to:

(1) any crossing in existence before July 1, 2016, if an agreement concerning the crossing has expired or has been terminated. In such instance, if the collective amount that equals or exceeds the standard crossing fee under subdivision 6 has been paid to the railroad during the existence of the crossing, no additional fee is required; and

(2) any crossing commenced on or after July 1, 2016.



(b) This section does not apply to a crossing or paralleling of a large energy facility, as defined in section [216B.2421, subdivision 2](#), regardless of length.

Subd. 3. Right-of-way crossing; application for permission.

(a) Any utility that intends to place a facility across or upon a railroad right-of-way shall request prior permission from the railroad.

(b) The request must be in the form of a completed crossing application, including an engineering design showing the location of the proposed crossing and the railroad's property, tracks, and wires that the utility will cross. The engineering design must conform with guidelines published in the most recent edition of the (1) National Electric Safety Code, or (2) Manual for Railway Engineering of the American Railway Engineering and Maintenance-of-Way Association. The utility must submit the crossing application on a form provided or approved by the railroad, if available.

(c) The application must be accompanied by the standard crossing fee specified in subdivision 6 and evidence of insurance as required in subdivision 7. The utility must send the application to the railroad by certified mail, with return receipt requested.

(d) Within 15 calendar days of receipt of an application that is not complete, the railroad must inform the applicant regarding any additional necessary information and submittals.

Subd. 4. Inductive interference study.

(a) A railroad may require an electric utility to conduct an inductive interference study if:

(1) the facility is for an electric energy transmission line of at least 125 kilovolts; and

(2) in accordance with guidelines in the National Electric Safety Code and the Manual for Railway Engineering of the American Railway Engineering and Maintenance-of-Way Association, the railroad reasonably determines that the proposed facility poses a material possibility of creating induction issues or interference with railroad property.

(b) The utility must arrange and pay for the study, perform and pay for any costs of modifications to the proposed facility, and pay for any costs of modifications to railroad property that are necessary to ensure safe and reliable railroad operations. The study must be performed by a qualified engineer approved by the railroad.

(c) A utility facility for which an inductive interference study has been performed under this subdivision may not be energized until at least 30 calendar days after the railroad receives notice from the utility that the facility is ready to be energized. Within 30 days of receiving notice that the facility is ready to be energized, the railroad shall conduct any appropriate tests to ensure that there will not be any interference with safe operation of the railroad following energization.

Subd. 5. Right-of-way crossing; construction.

Beginning 35 calendar days after the receipt by the railroad of a completed crossing application, crossing fee, and certificate of insurance, the utility may commence the construction of the crossing unless the railroad notifies the utility in writing that the proposed crossing or paralleling is a serious threat to the safe operations of the railroad or to the current use of the railroad right-of-way.

Subd. 6. Standard crossing fee.

(a) Unless otherwise agreed by the parties or determined under section [237.04](#), a utility that crosses a railroad right-of-way, other than a crossing within a public right-of-way, must pay the railroad a onetime standard crossing fee of \$1,250, adjusted as provided in paragraph (e), for each crossing. Except as otherwise provided in this subdivision, the standard crossing fee is paid in lieu of any license, permit, application, processing fee, or any other fee or charge to reimburse the railroad for direct expenses incurred by the railroad as a result of the crossing. No other fee or charge may be assessed to the utility by the railroad.

(b) In addition to the standard crossing fee, the utility shall also reimburse the railroad for any reasonable and necessary flagging expense associated with a crossing, based on the railroad traffic at the crossing.

(c) No crossing fee is required if the crossing is located within a public right-of-way.

(d) The placement of a single conduit and its content is a single facility. No additional fees are payable based on the individual fibers, wires, lines, or other items contained within the conduit.

(e) Annually each May 1, the standard crossing fee under paragraph (a) must be adjusted based on the percentage change in the annual average producer price index for the preceding year compared to the year prior to the preceding year. Each adjustment is effective for applications submitted on or after June 1. The producer price index is final demand, finished consumer energy goods, as prepared by the Bureau of Labor Statistics of the United States Department of Labor.

Subd. 7. Certificate of insurance; coverage.

(a) The certificate of insurance or coverage submitted by:

(1) a municipal utility or municipality must include commercial general liability insurance or an equivalent form with a limit of at least \$1,000,000 for each occurrence and an aggregate of at least \$2,000,000;

(2) a utility providing natural gas service must include commercial general liability insurance with a combined single limit of at least \$5,000,000 for each occurrence and an aggregate limit of at least \$10,000,000; or

(3) a utility not specified in clauses (1) and (2) must include commercial general liability insurance with a combined single limit of at least \$2,000,000 for each occurrence and an aggregate limit of at least \$6,000,000.

(b) The railroad may require protective liability insurance with a combined single limit of \$2,000,000 for each occurrence and \$6,000,000 aggregate. The coverage may be provided by a blanket railroad protective liability insurance policy if the coverage, including the coverage limits, applies separately to each individual crossing. The coverage is required only during the period of construction, repair, or replacement of the facility.

(c) The insurance coverage under paragraphs (a) and (b) must not contain an exclusion or limitation related to railroads or to activities within 50 feet of railroad property.

(d) The certificate of insurance must be from an insurer of the utility's choosing.

Subd. 8. Objection to crossing; petition to Public Utilities Commission.

(a) If a railroad objects to the proposed crossing or paralleling due to the proposal being a serious threat to the safe operations of the railroad or to the current use of the railroad right-of-way, the railroad must notify

the utility of the objection and the specific basis for the objection. The railroad shall send the notice of objection to the utility by certified mail, with return receipt requested.

(b) If the parties are unable to resolve the objection, either party may petition the Public Utilities Commission for assistance via mediation or arbitration of the disputed crossing application. The petition must be filed within 60 days of receipt of the objection. Before filing a petition, the parties shall make good faith efforts to resolve the objection.

(c) If a petition is filed, the Public Utilities Commission must issue an order within 120 days of filing of the petition. The order may be appealed under chapter 14 and section [216B.27](#). The Public Utilities Commission must assess the costs associated with a petition equitably among the parties.

#### Subd. 9. Additional requirements; objection and petition to Public Utilities Commission.

(a) If a railroad imposes additional requirements on a utility for crossing its lines, other than the proposed crossing being a serious threat to the safe operations of the railroad or to the current use of the railroad right-of-way, the utility may object to one or more of the requirements. If it objects, the utility shall provide notice of the objection and the specific basis for the objection to the railroad by certified mail, with return receipt requested.

(b) If the parties are unable to resolve the objection, either party may petition the Public Utilities Commission for resolution or modification of the additional requirements. The petition must be filed within 60 days of receipt of the objection. Before filing a petition, the parties shall make good faith efforts to resolve the objection.

(c) If a petition is filed, the Public Utilities Commission shall determine, after notice and opportunity for hearing, whether special circumstances exist that necessitate additional requirements for the placement of the crossing. The Public Utilities Commission must issue an order within 120 days of filing of the petition. The order may be appealed under chapter 14 and section [216B.27](#). The Public Utilities Commission shall assess the costs associated with a petition equitably among the parties.

#### Subd. 10. Operational relocation.

(a) A railroad may require a utility to relocate a facility when the railroad determines that relocation is essential to accommodate railroad operations, and the relocation is not arbitrary or unreasonable. Before agreeing to the relocation, a utility may require a railroad to provide a statement and supporting documentation identifying the operational necessity for requesting the relocation. A utility must perform the relocation within a reasonable period of time following the agreement.

(b) Relocation is at the expense of the small utility. A standard fee under subdivision 6 may not be imposed for relocation.

#### Subd. 11. Existing agreements.

Nothing in this section prevents a railroad and a utility from continuing under an existing agreement, or from otherwise negotiating the terms and conditions applicable to a crossing or the resolution of any disputes relating to the crossing. A utility may elect to undertake a crossing or paralleling under this section or section [237.04](#). Nothing in this section impairs the authority of a utility to secure crossing rights by easement through exercise of the power of eminent domain.

Appendix B - Letter Template:  
New Railroad Crossing Application Submission

[Date]

[Address]

Via Certified Mail with  
Return Receipt Requested

Re: Proposed utility crossing

Dear [Railroad Contact]:

[Utility] is currently proposing to construct [type of facility] across property utilized by [railroad] at mile post xxx in [County].

Pursuant to Minnesota Statutes Section 237.045 (attached), [utility] has enclosed a completed crossing application, certificate of insurance in the required amount and the appropriate fee for crossing the railroad's private right-of-way. This standard one-time crossing fee is paid "in lieu of any other license, permit, application, or processing fee" and represents the sum total required to be paid to the railroad by the utility for the crossing right. (See subd. 6.)

Please note that the law allows [utility] to commence construction 35 days after [railroad]'s receipt of the enclosed materials unless [railroad] provides written notification to the utility that the proposed crossing presents a serious threat to the safe operations of the railroad or to the current use of the railroad right-of-way. (See subd. 5.)

Sincerely,

Appendix C - Letter Template:  
New Railroad Crossing Application within Public Right-of-Way

[Date]

[Railroad Address]

Via Certified Mail with  
Return Receipt Requested

Re: New utility crossing in public right-of-way

Dear [Railroad Contact]:

[Utility] is currently proposing to construct [type of facility] across property utilized by [railroad] at mile post xxx in [County], which is located within a public right-of-way. Enclosed is [utility]'s completed crossing application and certificate of insurance for the proposed crossing.

Minnesota Statutes Section 237.045 (2016) encapsulates the rights and responsibilities of utilities and railroads when such crossings are to be implemented. I have enclosed a copy of that statute for your reference.

The statute requires [utility] to submit the enclosed application and certificate of insurance in the noted amount. The statute also codifies existing case law that prohibits railroads from charging fees to utilities when they lay facilities across or under railroad tracks within public rights-of-way. (See subd. 6 (c)).

Sincerely,

Appendix D - Letter Template:  
Discontinue Payments on Existing Crossing within Public RIGHT-OF-WAY

[Date]

[Railroad Address]

Re: Termination of fee payments for utility crossing(s) in public right-of-way

Dear [Railroad Contact]:

In 2016, Minnesota Statutes Section 237.045 (2016) was enacted to encapsulate the rights and responsibilities of utilities and railroads with regard to utility facilities that cross above or below railroad tracks. I have enclosed a copy of that statute for your reference.

Among its provisions, the statute codifies existing case law that prohibits railroads from charging fees to utilities for laying facilities across or under railroad tracks within public rights-of-way. (See subd. 6 (c)).

[Utility] is currently making payments for the crossing of [railroad] property at mile mark xxx at [highway/street] in [County], which is in a public right-of-way. This letter serves as notice that [utility] will no longer be making payments to [railroad] for this crossing

Sincerely,

Appendix E - Letter Template:  
Termination of Existing Crossing Agreement with Annual Fees

[Date]

[Address]

Re: Termination of agreement and annual fee payments for utility crossing(s)

Dear [Railroad Contact]:

In 2016, Minnesota Statutes Section 237.045 was enacted to encapsulate the rights and responsibilities of utilities and railroads with regard to utility facilities that cross above or below railroad tracks. I have enclosed a copy of that statute for your reference.

Among its provisions, the statute establishes a one-time standard crossing fee of \$1,250 “paid in lieu of any other license, permit, application, or processing fee, or any other fee or charge to reimburse the railroad for direct expenses incurred by the railroad as a result of the crossing. No other fee or charge may be assessed to the utility by the railroad.” (See subd. 6.)

The law applies to new crossings as well as existing crossings “if an agreement concerning the crossing has expired or has been terminated.” (See subd. 2.) “In such instances, if the collective amount that equals or exceeds the standard crossing fee under subdivision 6 has been paid to the railroad during the existence of the crossing, no additional fee is required. . .” (Id.)

This letter constitutes notice that [utility] hereby terminates its agreement with [railroad] regarding the utility crossing of the railroad’s right-of-way at [location], under the agreement’s provisions governing [utility]’s right to terminate. It is understood by [utility] that all matters of law formerly governed by that agreement henceforth are governed wholly by the laws of the State of Minnesota, including Minnesota Statutes Section 237.045.

Our records indicate that [utility] has made annual payments for crossing [railroad] right-of-way at mile mark xxx in [County] since [date]. In that time, [utility] has paid a total of \$xxx for this crossing. As that amount exceeds the onetime standard crossing fee of \$1,250, this letter serves as notice that [utility] has satisfied its statutory requirements and will no longer be submitting payments for this crossing.

Sincerely,



**Proudly serving Minnesota's municipal utilities since 1931**

3131 Fernbrook Lane North, Suite 200  
Plymouth, MN 55447-5337  
Toll free (statewide): 1-800-422-0119  
[www.mmua.org](http://www.mmua.org)