

Adopt En 1500 to read as follows:

CHAPTER En 1500 LICENSES FOR CROSSINGS OF PUBLIC WATERS OR STATE LAND

PART En 1501 PURPOSE AND APPLICABILITY

En 1501.01 Purpose. The purpose of En 1500 pursuant to the mandate of RSA 371:22 is to protect the public against any substantial impact to the public rights in public waters or state-owned lands as a result of the exercise of any license issued under RSA 371:17. Nothing in this part is to be construed to supersede, overrule, or replace any other law, rule, or regulation, including that of any state or federal permitting authority, including but not limited to the authority of the New Hampshire Department of Environmental Services (NHDES) regarding Statutory Permit Notification (SPN) and Shoreland Permit by Notification (PBN), and of the U.S. Army Corps of Engineers (ACOE) regarding navigable waters.

En 1501.02 Applicability. En 1500 shall apply to:

- (a) Public utilities within the meaning of RSA 362:2;
- (b) Rural electric cooperatives for which a certificate of deregulation is on file pursuant to RSA 301:57;
- (c) Municipal corporations and county corporations regardless of whether operating within their corporate limits; and
- (d) Every other corporation or other entity, and every individual desiring to cross any public water or land for any purpose set forth in RSA 371:17.

PART En 1502 DEFINITIONS

En 1502.01 “Abutter” means a person who is the owner of land encumbered by any crossing of public waters, or the border of which adjoins any crossing of public waters.

En 1502.02 “Application” means an application for a license for the purposes set forth in RSA 371:17 as set forth herein, and includes further submissions made in response to requests by the department.

En 1502.03 “Application for communication line crossing license” means an application for a license for the purposes set forth in RSA 371:17 involving only a communication line crossing.

En 1502.04 “Attaching entity” means a natural person or an entity with a statutory or contract right to attach a facility of any type to a pole, including, but not limited to, telecommunications providers, cable television service providers, incumbent local exchange carriers, excepted local exchange carriers, wireless service providers, information service providers, electric utilities, and governmental entities.

En 1502.05 “Commission” means the public utilities commission.

En 1502.06 “Communication line” means a utility line and any associated conductors and supporting or containing structures, equipment, and apparatus that is used for the purpose of public or private data signal or other communications service.

En 1502.07 “Conduit” means a duct or tube used to protect and route an electric supply or communication line.

En 1502.08 “Construction” means the installation or modification of any pipeline, cable, or conduit, or a line of poles or towers or other structures, or any wires or fixtures thereon, but does not include temporary construction as specifically defined herein.

En 1502.09 “Crossing” means the area traversed over, under, or across any public water or any state-owned land by a pipeline, cable, conduit, or a line of poles, towers, or other structures and wires and fixtures, but does not include activities that otherwise would be subject to RSA 371:17 but for the fact that the location of such activities is subject to the jurisdiction of the New Hampshire department of Transportation (DOT) regarding accommodation of utilities within highway and railroad rights-of-way, as set forth in the DOT’s Utility Accommodation Manual, dated October, 2017.

En 152.10 “Crossing license” means a permission to cross public water or state-owned land for purposes set forth in RSA 371:17 by virtue of and in strict conformity with the terms and other conditions set forth in a decision by the department granting an application submitted hereunder or in a decision of the commission prior to July 1, 2021.

En 1502.11 “Department” means the department of energy as established by RSA 12-P:1.

En 1502.12 “Division” means the department of energy, division of enforcement as established by RSA 12-P:8.

En 1502.13 “Electric supply lines” means wires, conductors, and cables used to transmit electric energy.

En 1502.14 “Emergency” means a situation requiring immediate action in order to comply with the duties of good practice regarding safety or reliability of service.

En 1502.15 “Emergency construction or modification” means construction or modification of an existing crossing in conformity with the lawful duty of a utility, other license holder, or attaching entity to perform same on an emergency basis.

En 1502.16 "Frac-out plans" means a plan setting forth measures to prevent and respond to mud or other releases into ground or surface water during directional bore operations.

En 1502.17 “Limited maintenance” means necessary maintenance that does not involve construction or modification of any pipeline, cable, or conduit, or a line of poles, towers, or other structures, or any wires or fixtures thereon, and is completed without any alteration of the crossing profile in any way.

En 1502.18 “Maintenance” means actions necessary to preserve the good condition of a pipeline, cable, or conduit, or a line of poles or towers or other structures, or any wires or fixtures thereon, or to return same to good condition.

En 1502.19 “Modification” means any alteration of any pipeline, cable, or conduit, or a line of poles, towers, or other structures, or any wires or fixtures thereon that is not within the definitions of limited maintenance or temporary construction.

En 1502.20 “Optical Ground Wire” (OPGW) means wire that combines the functions of grounding and communications.

En 1502.21 “Overlash” means the tying or lashing of an attaching entity’s additional fiber optic cables, or similar incidental equipment to the attaching entity’s own existing communications wires, cable, or supporting strand already attached to poles.

En 1502.22 “Overlash communication line crossing” means a crossing not involving the construction or modification of any utility line other than the construction or modification of a communication line by means of overlash on an existing, licensed crossing.

En 1502.23 “Pipeline” means an apparatus for transmission of liquid or gas, including but not limited to natural gas or other petroleum products, water, or sewer.

En 1502.24 “Public waters” means all ponds of more than 10 acres, tidewater bodies, and such streams or portions thereof identified in the official list of public waters maintained pursuant to RSA 271:20 and Env-Wr 900.

En 1502.25 “Shield wire crossing” means a crossing involving the construction or modification of only OPGW or shield wire or both within an existing, licensed crossing, provided that the OPGW or shield wire or both are located above the conductors. This crossing definition shall include OPGW.

En 1502.26 “Static shield wire” means wire installed to protect electric transmission lines from lightning.

En 1502.27 “Support structure” means a pole, tower, or other structure to which a utility line is attached as part of a crossing.

En 1502.28 “Temporary construction” means construction that is required for road and bridge projects as lawfully directed by the state of New Hampshire, provided that when temporary construction is no longer required, any affected pipeline, cable, or conduit, or a line of poles or towers or other structures, or any wires or fixtures thereon are returned to its original configuration within a reasonable time within 30 days.

En 1502.29 “Utility” means a “public utility” as defined in RSA 362:2, including a rural electric cooperative for which a certificate of deregulation is on file with the commission pursuant to RSA 301:57.

En 1502.30 “Utility line” means the pipeline, cable, communication line, or conduit, or a line of poles, towers, or other structures and wires and fixtures thereon, regardless of whether it is owned or utilized by a utility, other entity, or individual.

PART En 1503 LICENSE APPLICATION

En 1503.01 When a License Application is Required. Anyone identified in En 1501.02 desiring to cross any public water or land for purposes set forth in RSA 371:17 shall submit an application in advance directed to the department of energy director of enforcement division. The application need not be in any particular form, but shall contain the supporting information specified herein for the relevant type of crossing. Further submissions shall be made upon request by department staff in order to permit the department to consider the safety and reliability of the proposed crossing based on

relevant department rules, federal rules, and the industry safety and reliability codes referenced herein.

En 1503.02 Exceptions to License Requirement.

(a) Notwithstanding En 1503.01, an application shall not be required with respect to limited maintenance or temporary construction provided that notification is given to the department within a reasonable time not to exceed 7 days after the inception of such activities and provided further notification also is given to the department within 7 days of completion.

(b) Notwithstanding En 1503.01, an application shall not be submitted in advance of emergency construction or modification provided that notice is given to the department within a reasonable time not to exceed 7 days after the inception of work and provided further that an application is filed within 90 days after completion.

En 1503.03 Contents of Application for Electric Supply or Communication Lines Crossing License. An application shall include:

(a) Specification of the location of any public waters or any lands owned by this state that are the subject of the application;

(b) Specification by means of coordinates and geographic description of the location of any existing and any proposed utility lines that are the subject of the application;

(c) Identification of the most recent license for any existing utility line that is the subject of the application;

(d) Identification including a detailed description of any existing utility line and any contemplated construction or modification of utility lines that are the subject of the application, including the precise locations of existing and intended support structures, all as specified within a stated reasonable tolerance, which shall not be exceeded, during construction;

(e) In the event construction or modification is contemplated as to any existing, unlicensed utility line, state after due diligence the history of such unlicensed line and the reasons why it was not licensed previously, as well as the bases for the division to issue a license as to such utility line in accordance with RSA 371:17;

(f) Specification of all relevant measurements, including but not limited to, relevant heights, depths, distances, spans, sags and sag capabilities, and clearances of relevant waters, land, and support structures necessary to permit the division to act upon the application;

(g) Wire specifications and loading condition information necessary to establish maximum sag for the crossing span that is the subject of the application, accompanied by visual depictions including, but not limited to, a profile view and cable schedule;

(h) Identification and depiction of the location of support structures and max sag conditions for all crossing spans;

(i) Identification and depiction of all conductors and wires as needed to show the minimum clearance at maximum sag conditions in reference to crossings of state-owned land or crossings of public waters, accompanied by flood elevation data based on FEMA flood map data for each

crossing span used in calculating clearance;

(j) A statement confirming compliance with applicable national electrical and other relevant safety codes;

(k) A statement confirming compliance with any applicable New Hampshire department of environmental services (NHDES) wetland, shoreland, and other applicable statutory permitting requirements and notifications;

(l) A statement confirming compliance with any applicable U.S. Army Corps of Engineers (ACOE) regulations, including all applicable licensing, permitting or notification requirements;

(m) Specification of all relevant support structures, facilities, and equipment, including but not limited to, poles, conductors, wires, and appurtenances thereto necessary to permit the division to act upon the application;

(n) Specification of all other relevant geographic information, including without limitation, flood elevations and other flood data, flood maps, rights-of-way, easements, and other property rights, necessary to permit the division to act upon the application;

(o) Tables, maps, and prints, including without limitation an overview map, and all other relevant information and data necessary to permit the division to act upon the application;

(p) In the event a contemplated electric supply or communication line crossing would involve trenching or boring, provide:

(1) All relevant conduit information;

(2) All relevant trenching information including, without limitation, depths, widths, and distances; and

(3) All other relevant information that would be required in an application for pipeline crossing license pursuant to En 1503.02 for the purposes of (p), the term “conduit” shall be interchangeable with the terms “pipelines” and “casings”, and the term “trenching” shall be interchangeable with the term “boring”;

(q) A statement of why the license for which an application is submitted is necessary in order to meet the reasonable requirements of service to the public;

(r) A statement of why the license for which an application is submitted may be exercised without substantially affecting the public rights in public waters or state-owned land; and

(s) A list identifying all abutters as reflected by record ownership at the registry of deeds, which shall be filed with the division separate from, but contemporaneously with the submission of, the application and shall be sufficient to enable the division to effectuate notice by certified mail of a license issuance and of a right to appeal.

En 1503.04 Contents of Application for Pipeline Crossing License. An application shall include:

(a) Specification of the location of any public waters or any lands owned by this state, or both

that are the subject of the application;

(b) Specification by means of coordinates and geographic description of the location of any existing and any proposed pipelines that are the subject of the application;

(c) Identification of the most recent license for any existing pipeline that is the subject of the application;

(d) Identification, including a detailed description, of any existing and any proposed pipelines and casings involved in the crossing, including types and diameters, intended pipe bend radii and stress capabilities along with allowable stress levels, as well as the maximum allowable and intended operating PSIG;

(e) Tables, maps, and prints, including without limitation an overview map and depictions of the profile of the pipeline, and an aerial view showing the entry and exit points of the directional bore and all other relevant information and data necessary to permit the division to act upon the application;

(f) Identification including a detailed description of any existing, unlicensed pipeline, whether or not construction or modification of such is contemplated, that is within the relevant public water or land of this state that is the subject of the application and that would require a license were it to be constructed at the time of the application, stating after due diligence the history of any such unlicensed pipeline and the reasons why it was not licensed previously, as well as the bases for the division to issue a license as to such pipeline in accordance with RSA 371:17;

(g) Specification of all relevant land and water measurements, including but not limited to, the precise locations of the boring entry and exit points specified within a reasonable tolerance, which shall not be exceeded, relevant angles and distances, depths of boring, and the minimum depths to be maintained below ground level or the bed of the public water sufficient to permit the division to act upon the application;

(h) Identification and description of the trenchless boring or trenching methods to be utilized sufficient to enable the division to determine that there shall be no surface water impacts;

(i) Specification of all depths, widths, and distances of any trenchless boring or trenching;

(j) A statement confirming that notice shall be given to the division at least 7 days before trenchless boring or trenching commences and again the day before boring or trenching actually commences;

(k) A statement confirming the use of qualified contractors pursuant to the Natural Gas Pipeline Safety Act, 49 U.S.C. § 60101, *et seq.* and all regulations promulgated thereunder, as well as compliance with N.H. Code Admin. Rules Puc 506.01, Pipeline Safety Standards;

(l) A statement confirming the use of aboveground pipeline markers to identify the pipeline location with appropriate warnings and company contact information on each side of the crossing;

(m) A statement confirming that any gas mains shall be locatable for future excavations, and the type of tracer wire or other suitable equivalent means of tracing to be utilized;

- (n) Frac-out plans, the submission of which may be delayed until no later than 30 days before commencement of construction, shall include:
- (1) A statement confirming the utilization of continuous monitoring for possible hydro fracture situations during the boring operation and specification of methods to be utilized;
 - (2) A statement confirming the utilization of immediate containment measures in the event of a hydro fracture, specification of the methods to be utilized for such containment, and confirmation that the division and NHDES shall be notified immediately in such a hydro fracture event;
 - (3) A statement confirming the clean-up procedures to be implemented in the event of a hydro fracture occurrence and that the necessary equipment and personnel shall be on site prior to and throughout the boring operation; and
 - (4) Description of measures taken in advance of any hydro fracture, including without limitation, staffing and equipment on site to prevent or respond to a frac-out event;
- (o) A statement confirming compliance with applicable national gas and other relevant safety codes;
- (p) A statement confirming compliance with any applicable New Hampshire department of environmental services NHDES wetland, shoreland, and other applicable statutory permitting requirements and notifications;
- (q) A statement confirming compliance with any applicable U.S. Army Corps of Engineers (ACOE) regulations, including all applicable licensing, permitting or notification requirements;
- (r) Identification of all precautions to be followed to ensure safety to the public during and after the contemplated construction or modification of utility lines;
- (s) A statement confirming ownership and responsibility for ongoing maintenance of the pipeline upon completion;
- (t) A description of any plan as to which the license for which an application is submitted is a part, and include a detailed statement of why the construction is necessary to fulfill a need for the public, the utility, its ratepayers, or otherwise is required by law, or otherwise is necessary to meet the reasonable requirements of service to the public;
- (u) A discussion of any viable short or long-term alternatives to the proposed construction;
- (v) A statement of why the license for which an application is submitted may be exercised without substantially affecting the public rights in public waters or state-owned lands;
- (w) A description of any existing pipeline and any contemplated construction or modification of pipelines that are the subject of the application, sufficient to enable the division to analyze whether the contemplated construction or modification would be necessary in order to meet the reasonable requirements of service to the public;

(x) A description of any existing pipeline and any contemplated construction or modification of pipelines that are the subject of the application, sufficient to enable the division to analyze whether any substantial impact to the public rights in public waters or state-owned lands would result from the contemplated construction or modification; and

(y) A list identifying all abutters, which shall be filed with the division separate from, but contemporaneously with the submission of, the application and shall be sufficient to enable the division to effectuate notice by certified mail of a license issuance and of a right to appeal.

En 1503.05 Contents of Application for Overlash Communication Line Crossing License. An application for an overlash communication line crossing license need not include all items specified in En 1503.03, but shall include the following:

(a) Identification of any previous order granting a license for any existing utility line that is the subject of the application;

(b) Specification of the location of any public waters or any state-owned lands that are the subject of the application;

(c) Specification of the location of any existing support structures and any proposed communication lines that are the subject of the application;

(d) Identification, including a detailed description, of any proposed communication lines and supporting appurtenances that are the subject of the application;

(e) A description of any existing communication lines and any contemplated attachment by means of overlash that is the subject of the application;

(f) Specification of all relevant measurements, including but not limited to, relevant heights, depths, distances, spans, sags and sag capabilities, and clearances of relevant waters, land, and support structures necessary to permit the division to act upon the application;

(g) Wire specifications and loading condition information necessary to establish maximum sag for the crossing span that is the subject of the application, accompanied by visual depictions including, but not limited to, a profile view and cable schedule;

(h) Identification and depiction of the location of support structures and max sag conditions for all crossing spans;

(i) Identification and depiction of all conductors and wires as needed to show the minimum clearance at maximum sag conditions in reference to crossings of state-owned land or crossings of public waters, accompanied by flood elevation data based on FEMA flood map data for each crossing span used in calculating clearance;

(j) A statement confirming compliance with all applicable national electrical, gas, or other relevant safety codes, as well as all environmental, safety, and other standards and reviews under federal and state law;

(k) Identification of all precautions to be followed to ensure safety to the public during and after the contemplated attachment or modification of communication lines;

(l) A statement confirming compliance with other applicable state and federal laws and regulations including, without limitation, Puc 1303, access to poles, and Puc 1304, dispute resolution;

(m) A detailed statement of why the license for which an application is submitted is necessary in order to meet the reasonable requirements of service to the public;

(n) A detailed statement of why the license for which an application is submitted may be exercised without substantially affecting the public rights in public waters or state-owned lands; and

(o) A list identifying all abutters, which shall be filed with the division separate from, but contemporaneously with the submission of, the application and shall be sufficient to enable the division to effectuate notice by certified mail of a license issuance and of a right to appeal.

En 1503.06 Contents of Application for OPGW or Static Shield Wire Crossing License. An application for OPGW or static shield wire crossing license need not include all items specified in En 1503.03, but shall include the following:

(a) Identification of any previous order granting a license for any existing utility line that is the subject of the application;

(b) Specification of the location of any public waters or any state-owned lands that are the subject of the application;

(c) Specification of the location of any existing support structures and any proposed communication lines that are the subject of the application;

(d) Identification, including a detailed description, of any proposed communication lines supporting appurtenances that are the subject of the application;

(e) A statement confirming compliance with all applicable national electrical and other relevant safety codes, as well as all environmental, safety, and other standards and reviews under federal law;

(f) Identification of all precautions to be followed to ensure safety to the public during and after the contemplated attachment or modification of communication lines;

(g) A detailed statement of why the license for which an application is submitted is necessary in order to meet the reasonable requirements of service to the public;

(h) A detailed statement of why the license for which an application is submitted may be exercised without substantially affecting the public rights in public waters or state-owned lands; and

(i) A list identifying all abutters, which shall be filed with the division separate from, but contemporaneously with the submission of, the application and shall be sufficient to enable the division to effectuate notice by certified mail of a license issuance and of a right to appeal.

PART En 1504 ACTION UPON APPLICATION FOR CROSSING

En 1504.01 Action Upon Filing of Application for Crossing License.

- (a) The department shall assign a number to each application and upon review shall communicate with the applicant regarding any perceived omissions or other defects, as well as regarding any questions and any perceived grounds for denial.
- (b) The department shall condition any license issued under this paragraph in any manner necessary to assure that the license is likely to be exercised safely so as to avoid substantially affecting the public rights in public waters or state-owned lands.
- (c) Using a non-adjudicative process, the department of energy shall reject incomplete or improperly filed applications unless an application is cured upon request by the department, and shall, also using a non-adjudicative process, issue or deny the license within 90 days of receiving a complete application and all information subsequently requested of an applicant.

En 1504.02 Action upon Request for Decision within 30 Days. Notwithstanding the foregoing, the department shall issue or deny a license within 30 days of receipt of a written request therefor from an applicant made 90 or more days after the filing of an application. The department's non-receipt of information requested of an applicant shall be a consideration in any decision made pursuant to such a request for a decision within 30 days.

PART En 1505 NOTICE OF DECISION AND OF RIGHT TO APPEAL

En 1505.01 Notice of License Issuance and Right to Appeal by Persons Directly Affected.

The division shall give notice of the issuance of a license:

- (a) Directly to the applicant;
- (b) By publication on its website,
- (c) Directed to the attorney general; and
- (d) By regular or certified mail to abutters or their representatives as identified by the applicant, notifying them of the rights of appeal in RSA 371:20.

En 1505.02 Notice of Denial of License. The division shall give notice of a license denial directly to the applicant, notifying it of the rights of appeal in RSA 371:20.

Appendix A

Rule	Specific State Statute the Rule Implements
En 1501.01 – En 1501.03	RSA 12-P:5, RSA 362:2, RSA 371:17, 22
En 1502.01 – En 1501.30	RSA 12-P:5, RSA 12-P:8, RSA 271:20, RSA 362:2, RSA 371:17
En 1503.01 – En 1503.06	RSA 12-P:5, RSA 371:17
En 1504.01 – En 1504.02	RSA 12-P:5
En 1505.01 – En 1505.02	RSA 12-P:5, RSA 371:20

Appendix B

DOCUMENTS INCORPORATED BY REFERENCE

FEDERAL STANDARDS AND FORMS

Rule	Title	Publisher: How to Obtain; and Cost
En 1502.09	Utility Accommodation Manual	The New Hampshire Department of Transportation (“DOT”), available from DOT