

## Chapter PSC 132

### COMPENSATION AND CONDITIONS FOR PUBLIC UTILITY FACILITIES WITHIN RAILROAD RIGHT-OF-WAY

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**PSC 132.01 Purpose.** (1) The purpose of this chapter is to set forth the compensation to be paid and conditions to be met by a public utility for the construction of new facilities or the maintenance of existing facilities within a railroad right-of-way in cases where the utility and railroad cannot agree.

(2) These rules shall be applicable to all future facilities and, except as provided in s. PSC 132.03 (1), shall be applicable to all existing facilities if agreements concerning existing facilities do not exist, expire, or are terminated.

(3) These rules shall be applicable to public utility facilities constructed within railroad right-of-way, whether on public or private property.

**History:** Cr. Register, January, 1996, No. 481, eff. 2-1-96.

#### **PSC 132.02 Definitions.** In this chapter:

(1) "Commission" means the public service commission.

(2) "Facilities" means cables, conduits, wires, pipes and structures used by a public utility to transmit utility service.

(3) "Public utility" has the meaning given in s. 196.01 (5), Stats., and includes a "telecommunications provider," as defined in s. 196.01 (8p), Stats., a "cable operator," as defined in s. 66.0419 (2) (b), and a "sewerage system operator" as defined in s. 196.04 (4) (a) 2., Stats.

(4) "Railroad" has the meaning given in s. 195.02, Stats.

(5) "Within" means across, intersecting, on, over, perpendicular to, or under.

**Note:** The definition of the term "within" does not include facilities "along" or "parallel to" railroad right-of-way.

**History:** Cr. Register, January, 1996, No. 481, eff. 2-1-96; am. (3), Register, July, 1999, No. 523, eff. 8-1-99; am. (3), Register, February, 2001, No. 542, eff. 3-1-01.

**PSC 132.03 Compensation.** (1) (a) Unless otherwise agreed to by the parties and subject to sub. (2), a public utility which locates its facilities within the right-of-way of a railroad shall compensate the railroad \$500 for each crossing. The payment shall be a one-time payment, in lieu of any license fees, to reimburse the railroad for expenses incurred by the railroad as a result of the construction of the facilities and, in the case of a private crossing, to compensate the railroad for the locating of the facilities within the right-of-way.

(b) Unless otherwise agreed to by the parties, the one-time payment under par. (a) does not apply to public utility facilities located within a railroad right-of-way on the effective date of this paragraph February 1, 1996.

(2) (a) In this subsection:

1. "Direct expenses" does not include a contribution to profit but may include any of the following:

- The cost of inspecting the crossing site before, during or after construction.
- Administrative costs, such as the costs of entering the new crossing on the railroad's books, maps and property records.
- The cost of flagging during construction.
- Any other costs incurred due to actual construction.

2. "Special circumstances" means unique characteristics of a parcel of property which enhance its value above that of a typical parcel of railroad right-of-way. "Special circumstances" may include the parcel's relationship to other property, the existence of unique topography or natural resources or other unusual characteristics.

(b) A railroad may petition the commission for compensation greater than the amount under sub. (1) if the railroad and the public utility cannot agree on compensation and the railroad incurs extraordinary direct expenses as a result of the construction of the facilities or believes that special circumstances exist. If a petition is filed, the commission shall determine whether extraordinary direct expenses are incurred or whether special circumstances exist and the amount of compensation to be paid to the railroad.

(3) If grade crossing markings or signs are damaged during construction, the party responsible for the damage shall pay the replacement costs, unless otherwise agreed to by the parties.

**History:** Cr. Register, January, 1996, No. 481, eff. 2-1-96.

**PSC 132.04 Casing.** A railroad may not require a gas public utility to encase any steel pipeline facilities installed within the railroad's right-of-way. A gas public utility shall determine whether and how its facilities should be cased and shall comply with all applicable state and federal pipeline safety rules and regulations.

**History:** Cr. Register, January, 1996, No. 481, eff. 2-1-96.

**PSC 132.05 Insurance.** Unless otherwise agreed to by the parties:

(1) A railroad and a public utility shall each determine for itself the amount and scope of insurance it shall carry to cover risks associated with the property of the railroad or the facilities of the utility within a railroad right-of-way.

(2) A railroad and a public utility shall indemnify the other for damages resulting from its own negligence related to the presence of utility facilities within the railroad right-of-way.

**History:** Cr. Register, January, 1996, No. 481, eff. 2-1-96.

**PSC 132.06 Notification of construction; emergencies; repair and maintenance.** (1) Unless otherwise agreed to by the parties, a railroad or public utility shall, at its own expense, notify the other of emergencies, planned repair and construction or similar operations within a railroad right-of-way if the operation may affect the other. Except for emergencies, initial notification of intent to construct shall be made not less than 21 days before construction and notification of actual construction shall be made not less than 3 working days before construction begins.

(2) Unless otherwise agreed to by the parties, a railroad or public utility shall establish, at its own expense, a mechanism for receiving notification of emergencies 24 hours per day, 7 days per week. For every public utility facility located within a railroad right-of-way, each shall inform the other of an emergency telephone number, the name of a person responsible for processing

the notification and any other information necessary for dealing with an emergency situation.

(3) Unless otherwise agreed to by the parties, a railroad or public utility shall each repair and maintain its own property or facilities located within a railroad right-of-way and may not perform regular or emergency maintenance or repair of the other's property or facilities.

(4) Unless otherwise agreed to by the parties, a public utility shall relocate its facilities within a railroad right-of-way if the relocation is reasonably necessary for railroad operations. The relocation expenses shall be paid by the utility unless the facilities to be relocated serve only the railroad.

(5) In meeting notification and response responsibilities under this section, a railroad or public utility shall comply with ss. 66.047 and 182.0175, Stats., applicable federal law, and orders and rules of the commission.

**History:** Cr. Register, January, 1996, No. 481, eff. 2-1-96.

**PSC 132.07 Emergencies, reimbursement.** Unless otherwise agreed to by the parties:

(1) A railroad or public utility shall reimburse the other for expenses reasonably incurred which result from emergencies caused by the property or facilities of each that is located within the railroad right-of-way.

(2) A railroad or public utility shall reimburse the other for reasonable miscellaneous expenses incurred by one party at the other's request.

**History:** Cr. Register, January, 1996, No. 481, eff. 2-1-96.

**PSC 132.08 Physical description of facilities.**

(1) Upon placement of new facilities, a public utility shall, at its own expense, provide a railroad with a physical description of

those new facilities located within the railroad's right of way. The description shall include the installed location and depth of any underground facilities.

(2) A public utility or railroad shall provide the other with a physical description of any alterations or additions to its property or facilities located within the railroad right-of-way in the area of the utility's facilities.

**History:** Cr. Register, January, 1996, No. 481, eff. 2-1-96.

**PSC 132.09 Removal of facilities.** Public utility facilities may remain in a railroad right-of-way unless the commission approves abandonment of the facilities and orders the abandoned facilities to be removed.

**History:** Cr. Register, January, 1996, No. 481, eff. 2-1-96.

**PSC 132.10 Disputes. (1)** Unless otherwise agreed to by the parties:

(a) A railroad may not refuse to permit a public utility to construct facilities within a right-of-way solely because of a dispute between the parties concerning compensation for or conditions to the right of placing the facilities within the railroad right-of-way.

(b) Subject to sub. (2), a public utility may proceed with construction while the dispute is resolved under s. PSC 132.03 (2), s. 196.04 (4), Stats., or another method mutually selected by the parties.

(2) If a public utility constructs facilities within a railroad right-of-way while a dispute is pending and, after notice and hearing, the commission determines that the facilities are located in an unreasonable location or constructed in an unsafe manner, the commission may order the public utility to remove or modify the facilities at the utility's expense.

**History:** Cr. Register, January, 1996, No. 481, eff. 2-1-96.