

6. Regulatory and Permit Requirements

Construction of the Project would require a High Voltage Transmission Line (HVTL) permit from the Minnesota Public Utilities Commission (Commission) (Minn. Stat. 216E.03, subd. 2). Additional potentially required permits and approvals are listed in Table 6-1 below. The table also includes applicable Executive Orders and departmental policies on land use management, which may guide regulating federal agencies in the permit or approval process.

Table 6-1: Potentially Required Permits and Approvals

Regulation/Policy	Citation	Description – As Relevant to Project
Federal Regulations and Permits		
American Indian Religious Freedom Act of 1978	42 U.S.C. 1996	The Act ensures the protection of sacred locations and access of Native Americans to those sacred locations and traditional resources that are integral to the practice of their religions.
Archaeological Resources Protection Act	16 U.S.C. 470	The Act requires a permit for the excavation or removal of archaeological resources from publicly held or Native American lands. Permitted excavations must further archaeological knowledge and the resources removed are to remain the property of the United States. Tribal consent must be issued if the resource is found on land owned by a Native American tribe.
Clean Air Act	42 U.S.C. 7401	The Act establishes NAAQS for certain pervasive pollutants. The Act establishes limitations on SO ₂ and NO _x emissions and sets permitting requirements. Authority for implementation of the permitting program is delegated to the MPCA.
Clean Water Act, as amended in 1972	32 U.S.C. 1251	The Act contains standards to address the causes of pollution and poor water quality, including municipal and industrial wastewater discharges, polluted runoff from urban and rural areas, and habitat destruction. Specific sections of the Act relevant to the Project include: Section 402 — National Pollutant Discharge Elimination System (NPDES) Permit. Requires sources to obtain permits to discharge effluents and stormwaters to surface waters. The NPDES permit would be issued by the state of Minnesota; and Section 404 — Permits for Dredged or Fill Material. Regulates the discharge of dredged or fill material in the jurisdictional wetlands and waters of the United States. Permits are issued by the USACE.
Determination of No Hazard to Air Navigation	40 CFR 77.19	The FAA must confirm that construction of the Project does not constitute a hazard to air navigation.
Emergency Planning and Community Right-to-Know Act of 1986	42 U.S.C. 11001 et seq.	The Act requires that the Applicant maintain an inventory of specific chemicals used or stored on-site

		and annually report quantities present or used over applicable threshold.
Endangered Species Act of 1973 and Amendments of 1982	16 U.S.C. 1531 et seq.	The Act requires any federal agency authorizing, funding, or carrying out any action to ensure that the action is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of critical habitat of such species. If the Project is determined to be an activity that might incidentally harm (or “take”) endangered or threatened species, the Applicants would be required to obtain an incidental take permit from the USFWS. In addition to obtaining the permit, the Applicants would be required to develop a Habitat Conservation Plan.
Farmland Protection Policy Act	7 U.S.C. 4201 et seq.	The Act requires federal agencies to identify and quantify adverse impacts of federal programs on farmlands to minimize the number of federal programs that contribute to the unnecessary and irreversible conversion of agricultural land to non-agricultural uses.
Fish and Wildlife Conservation Act of 1980	16 U.S.C. 2901 et seq.	The Act encourages federal agencies to conserve and promote conservation of non-game fish and wildlife species and their habitats.
Fish and Wildlife Coordination Act	16 U.S.C. 661 et seq.	The Act requires federal agencies to consult with the USFWS and the state agency responsible for fish and wildlife resources if the Project affects water resources.
Highly Erodible Land & Wetland Conservation	7 CFR Part 12	The regulation sets forth the terms and conditions under which a person who produces an agricultural commodity on highly erodible land or designates such land for conservation use, plants an agricultural commodity on a converted wetland, or converts a wetland shall be determined to be ineligible for certain benefits provided by the USDA and agencies and instrumentalities of USDA.
Migratory Bird Treaty Act	16 U.S.C. 703 et seq.	The Act protects birds that have common migration patterns between the United States and Canada.
National Environmental Policy Act of 1969	42 U.S.C. 4321-4347	The Act requires agencies of the federal government to study the possible environmental impacts of major federal actions significantly affecting the quality of the human environment.
National Forest Management Act	16 U.S.C. 1600-1614	The National Forest Management Act reorganized, expanded and otherwise amended the Forest and Rangeland Renewable Resources Planning Act of 1974. The National Forest Management Act requires the Secretary of Agriculture to assess forest lands, develop a management program based on multiple-use, sustained-yield principles, and implement a resource management plan for each unit of the National Forest System. It is the primary statute governing the administration of national forests.
National Historic Preservation Act	16 U.S.C. 470 et seq.	Under Section 106 of the Act, prior to the approval of the expenditure of any federal funds on the Project or prior to the issuance of any license, the federal agency must take into account the effect of the Project on any district, site, building, structure, or object that is included

		in or eligible for inclusion in the National Register. The federal agency shall afford the Advisory Council on Historic Preservation established under Title II of the Act a reasonable opportunity to comment with regard to such undertaking.
National Trails System Act	16 U.S.C. 1241-1251	The Act allows easements and ROWs upon, over, under, across, or along the national trails system to be granted by the Secretary of the Interior or Secretary of Agriculture, in accordance with the laws applicable to the national parks system and national forest system.
Native American Graves & Repatriation Act	25 U.S.C. 3001	The Act requires the Secretary of the Interior to guide the repatriation of federal archaeological collections and collections that are culturally affiliated with Native American tribes and held by museums that receive federal funding.
Noise Control Act	42 U.S.C. 4901-4918	The Act directs federal agencies to carry out programs in their jurisdictions “to the fullest extent within their authority” and in a manner that furthers a national policy of promoting an environment free from noise that jeopardizes health and welfare.
Notice to the Federal Aviation Administration	14 CFR Part 77	The regulation requires that the FAA be notified if structures are to be over 200 feet high to determine if the structures would be an obstruction to air navigation.
Occupational Safety and Health Act of 1970	29 U.S.C. 651 et seq.	The Act established regulations for the protection of worker health and safety. The Applicants would be subject to OSHA general industry standards and OSHA construction standards.
Pollution Prevention Act of 1990	42 U.S.C. 13101 et seq.	The Act establishes a national policy for waste management and pollution control.
Rivers and Harbor Act of 1899	33 CFR Part 322	The Act requires a Section 10 permit from the USACE if the Project requires structures or work in or affecting navigable waters.
Resource Conservation & Recovery Act	42 U.S.C. 6901	The Act regulates the treatment, storage, and disposal of hazardous wastes. The Applicants would be required to manage hazardous wastes generated during construction or operation of the Project in accordance with RCRA.
Safe Drinking Water Act	42 U.S.C. 300	The Act authorizes the USEPA to regulate public drinking water supplies by establishing drinking water standards, delegating authority for enforcement of drinking water standards to the states, and protecting aquifers from hazards such as injection of wastes and other materials into wells. The Act is enforced in the state by the Minnesota Department of Health, who manages applicable permits and registrations.
USDA’s Enhancement, Protection, & Management of the Cultural Environment	7 CFR Part 3100	This regulation establishes USDA policy regarding the enhancement, protection, and management of the cultural environment. The regulation establishes procedures for implementing Executive Order 11593, and regulations promulgated by the Advisory Council on Historic Preservation (ACHP) “Protection of Historical and Cultural Properties” in 36 CFR part 800 as required by §800.10 of those regulations. Direction is provided to the agencies of USDA for protection of the cultural environment.

Wild and Scenic Rivers Act	16 U.S.C 1271	The Act prohibits federal support of actions that would harm the free-flowing conditions, water quality, or resource values of waters designated as wild and scenic rivers.
Wilderness Act	16 U.S.C 1131	The Act prohibits the construction of commercial enterprise or permanent roads within any wilderness area designated by the Act, except as necessary to meet minimum requirements for the administration of the area. There can be no temporary roads or structures installed within designated areas.
Leech Lake Reservation Regulations and Permits		
Reservation Resolution		Permits the Project to cross the Leech Lake Reservation.
Executive Orders		
E.O. 11988, Floodplain Management	E.O. 11988	The executive order directs federal agencies to establish procedures to ensure that they consider potential effects of flood hazards and floodplain management for any action undertaken. Agencies are to avoid impacts to floodplains to the extent practical.
E.O. 11990, Protection of Wetlands	E.O. 11990	The executive order directs federal agencies to avoid short- and long-term impacts to wetlands if a practical alternative exists.
E.O. 12898, Environmental Justice	E.O. 12898	The executive order directs federal agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.
E.O. 13007, Indian Sacred Sites	E.O. 13007	The executive order directs federal agencies, to the extent permitted by law and consistent with agency missions, to avoid adverse effects to sacred sites and to provide access to those sites to Native Americans for religious practices.
E.O. 13112, Invasive Species	E.O. 13112	The executive order directs federal agencies to prevent the introduction or to monitor and control invasive non-native species and provide for restoration of native species.
E.O. 13175, Consultation and Coordination with Indian Tribal Governments	E.O. 13175	The executive order directs federal agencies to establish meaningful consultation and collaboration with tribal governments to strengthen United States government to government relationships with Indian tribes.
E.O. 13186, Responsibilities of Federal Agencies to Protect Migratory Birds	E.O. 13186	The executive order directs federal agencies to avoid or minimize the negative impacts of their actions on migratory birds, and to take active steps to protect birds and their habitats.
State Regulations and Permits		
Aboveground Storage Tank Registration	Minn. R. ch. 7001 and 7151	The rule requires that aboveground storage tanks larger than 110 gallons of oil or petroleum products must be registered with the state.
Access Permit	Minn. R. 8810.0050	The rule requires the Applicants to obtain an access permit from MnDOT when access is needed from established MnDOT ROWs.
Certificate of Need	Minn. R. ch. 7829, 7849,	The rule requires the Applicants to submit a description of the proposed energy facility and its probable location,

	7851, 7853, and 7855	an indication of forecast information upon which the alleged need is based, a discussion of possible alternatives and why they were rejected, and environmental information related to construction and operation of the proposed facility to the PUC.
Cultural Resources Review	36 CFR Part 800	The federal regulation requires state review under the National Historic Preservation Act.
Drainage Permit	Minn. R. 8810.3200-8810.3600	The rule requires a permit for the repair of utility or rebuilding of structures already in place (e.g., manholes, catch basins).
Easement Across State-Owned Land Managed by the Minnesota Department of Natural Resources	Minn. Stat. 84.63 and 84.631	The statute requires that MnDNR issue an easement to cross state-owned lands for the purposes of construction.
Electrical Inspection	Minn. R. ch. 3800	The rule requires the Project to conform to all applicable electrical codes, enforced by the state.
Environmental Laboratory Certification	Minn. R. 4740.2010-4740.2120	The rule states that if sampling is required under state or federal permits (e.g., NPDES), environmental laboratory certification would be required.
Hazardous Waste Generator License	Minn. R. 7045.0225	The rule requires that if the Project generates greater than 10 gallons of hazardous waste in a calendar year, the Applicants must obtain a license.
License to Cross Public Lands and Waters	Minn. R. ch. 6135	The rule requires a license if utility services are to cross public waters or lands administered by the MnDNR.
Minnesota Endangered Species Law and Permit	Minn. R. ch. 6134 and Minn. Stat. 84.0895	The statute requires MnDNR to adopt rules designating species meeting the statutory definitions of endangered, threatened, or species of special concern. The resulting list of Endangered, Threatened, and Special Concern Species is codified as Minn. R. ch. 6134. If the Project is determined to be an activity that including picking, digging, or destroying a threatened or endangered plant species, the Applicants would be required to obtain a permit from the MnDNR.
NPDES General Construction Stormwater Permit	40 CFR 122.26; Minn. R. 7001.1035	The federal regulation authorizes the state environmental agency to regulate NPDES general stormwater permits. Coverage under the state general permit is required for construction projects disturbing greater than 1 acre of land.
NPDES/SDS Permit	Minn. R. 7001.0020	The rule requires a permit if wastewater generated from the Project is to be discharged to waters of the U.S.
Public Waters Work Permit (Protected Waters Permit)	Minn. R. 6115.0160-6115.0280	The rule requires a permit for work activities that would change or diminish the course, current, or cross section of public waters within the state.
Utility Permit on Trunk Highway ROW	Minn. R. 8810.3100-8810.3600	The rule requires a permit to install or move existing utilities on existing highway ROWs.
Water Appropriation Permit	Minn. R. 6115.0600-6115.0810; 6115.0010	The rule requires a general notification to the MnDNR if groundwater is withdrawn for construction dewatering, landscaping, or hydrostatic testing. A Water Appropriations Permit would be required if groundwater is withdrawn at a rate greater than 10,000 gallons per day or one million gallons per year.
Departmental Policies		
Land and Resource Management Plan –		The Land and Resource Management Plan (Forest

Chippewa National Forest - 2004		Plan) establishes direction for natural resource management on the Chippewa National Forest.
USDA Departmental Regulation, Land Use Policy	DR 9500-3	The policy directs departments within the USDA to discourage unwarranted conversion to other uses of prime and unique farmlands, farmlands or statewide or local importance, and prime rangelands. The policy directs the agency to advocate for the retention of important farmlands, rangelands, forest land, and wetlands, and to reduce the risk of flood loss and soil erosion.
USDA Departmental Regulation, Fish & Wildlife Policy	DR 9500-4	The policy directs departments within the USDA that manage lands (e.g., Nation Forest System) to give consideration to fish and wildlife in developing programs for the lands.
USDA Departmental Regulation, Policy on Range	DR 9500-5	The policy directs departments within the USDA to undertake activities and implement programs to protect, enhance, and use range ecosystems.

Notes: EO = Executive Order

Sources: Otter Tower Power et al., 2009; U.S. Department of Energy, 2007

In addition to the permits and approvals described above, county and city construction and building permits would be required. Design and construction of enclosures associated with the new substation and substation modification would be subject to municipal and county requirements.

As lead federal agency, RUS is responsible for ensuring that the Project complies with Treaties of the United States with the Leech Lake Band of Ojibwe, including:

- Treaty with Chippewa July 29th, 1837;
- Treaty with Chippewa October 4th, 1842;
- Treaty with Chippewa, Pillager August 21st, 1847;
- Treaty with Chippewa September 30th, 1854;
- Treaty with Chippewa February 22nd, 1855;
- Treaty with Chippewa, Mississippi, Pillager, Lake Winnibigoshish May 7th, 1863; and
- Treaty with Chippewa, Mississippi, Pillager, Lake Winnibigoshish May 7th, 1864.