

## FREQUENTLY ASKED QUESTIONS ABOUT EMINENT DOMAIN

The government has the power to take private property for public use (so long as it pays for it). This power is called “eminent domain.” The government can allow other entities to exercise this power. The Iowa Legislature has assigned to the Iowa Utilities Board the authority to grant certain persons the power of eminent domain for things like electric transmission lines and underground pipelines. Here are some answers to frequently asked questions about that process.<sup>1</sup>

### **What is the “power of eminent domain” and where does it come from?**

Generally, eminent domain is the government’s power to take private property for public benefit. It comes from the US Constitution, federal laws, state constitutions, and state laws.

The IUB’s authority to grant the power of eminent domain comes from Iowa Code chapters 476A, 478, 479, and 479B. Chapter 476A is for electric power generating plants, chapter 478 for electric transmission lines, chapter 479 for intrastate natural gas pipelines, and chapter 479B for hazardous liquids pipelines.

Telephone and telegraph companies are granted the power of eminent domain by statute, Iowa Code section 477.4.

### **What does the term “condemnation” mean?**

The formal process of taking private property for public benefit is called condemnation.

### **Can the power of eminent domain be exercised for just any purpose?**

No. Generally, eminent domain can only be used to take private property:

- (a) For **public ownership** (like a park or a highway);
- (b) For **private ownership that serves public use** (like a railroad or energy or communications facilities that are regulated as common carriers); and
- (c) In some situations, for private ownership that serves a public purpose (like urban renewal projects or to provide a way to get to property that is otherwise inaccessible).

The courts have determined that a taking must be “rationally related to a conceivable public purpose” to be upheld. Eminent domain cannot be used to take property from one person purely in order to favor another person.

Further, property can be taken by eminent domain only to the extent it is necessary to serve the identified public purpose.

### **Is eminent domain restricted to public utilities or can anyone be granted that power?**

The IUB’s statutes allow the IUB to grant the power of eminent domain to any “person” who successfully applies for a generating plant certificate, electric line franchise, or pipeline permit. The person does not have to be a public utility as defined by law, but the project must serve a public purpose.

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<sup>1</sup> These FAQs are general and do not address some of the specific, detailed differences in the various statutes that give the IUB the authority to grant eminent domain. You should review the specific statutes applicable to your situation before relying on these FAQs.

### **How does the IUB's process work?**

There are minor differences in the processes used for certificates, franchises, and permits, but generally speaking, when an applicant requests the power of eminent domain for a pipeline or transmission line, the process starts with public informational meetings in each county that will be affected by the project. Notice of the meeting is mailed to every landowner and tenant who might be affected and is also published in newspapers in the area.

After the informational meetings are held, the application is filed and reviewed by IUB staff. When the application is substantially complete, if it still includes a request for eminent domain, the matter is set for hearing by the IUB (or its administrative law judge) to receive evidence and argument on the need for the project, the proposed route, and the specific rights the applicant seeks to condemn. Ultimately, the IUB decides whether the applicant will be allowed to exercise eminent domain and, if so, exactly what rights can be condemned.

It is important to note that the IUB only decides whether an applicant can use the power of eminent domain; the IUB does not determine the value of the property that is being condemned. That is done by a county compensation commission, as described below.

### **If the IUB issues a certificate, permit, or franchise, does it automatically include the power of eminent domain?**

No. While the statutes typically provide that a certificate, permit, or franchise includes the power of eminent domain, it is only included to the extent the IUB finds is necessary for a public use and only for those properties where it is required.

### **Can all rights and title to my property be condemned?**

In most cases no. Electric transmission lines and pipelines are typically allowed to condemn only an easement, meaning the title to the property stays with the owner and that owner can continue to use the property in any way that does not interfere with the easement. The law allows an applicant to seek eminent domain authority to condemn all rights and title to a piece of land for an installation like an electric substation or a pipeline pumping station, but that request has rarely been made.

### **What is an easement?**

An easement is an interest in land that grants specific rights to a party other than the owner. In the case of a typical utility easement, this generally includes the right to build a facility like an electric transmission line or a pipeline, as well as the right to enter the property for maintenance and repairs. However, an easement agreement can include a number of different terms; be sure to carefully read and review any easement agreement offered by the utility company.

### **Can my property be taken without paying for it?**

No. The Fifth Amendment of the United States Constitution and Article I, Section 19, of the Iowa Constitution expressly prohibit any taking of private property for public use without just compensation.

### **Can a utility condemn my property without trying to negotiate a voluntary deal first?**

The law requires, and the IUB expects, all applicants to make a good faith effort to negotiate voluntary easements. Condemnation should be a last resort. In practice, utilities prefer negotiated easements anyway; the costs and delays associated with condemnation can be significant and a negotiated easement often results in a better long-term relationship between the utility and the landowner.

**If an entity is given the power of eminent domain, can it use it on any property?**

No. It can only be used for the specific parcels that the applicant has identified. The applicant must provide a legal description of each specific property for which it seeks the power of eminent domain along with a description of the specific easement rights it is seeking. The IUB then decides whether each easement is necessary to serve a public purpose and no more extensive than necessary.

**How is the value of the condemned property interest determined?**

That process is governed by Iowa Code chapter 6B. Generally speaking, each county has a compensation commission made up of persons having knowledge of property values in that county (property owners, real estate brokers, bankers, and appraisers, for example) who determine the fair market value of the property interest (typically an easement) that is being acquired. That determination, or “appraisement of damages,” can be appealed to the district court, where it is tried as an ordinary case.

**If I have any questions about eminent domain, can I hire an attorney?**

The IUB staff can provide assistance with IUB’s process and hearing procedures, but they cannot provide legal assistance or advice. The rights set out in this packet and the Statement of Landowner’s Rights are not a full and complete list or explanation of a landowner’s rights under condemnation law. For a more thorough understanding of landowner’s rights, you should refer to the Iowa Code. If you have any questions about your rights, you may contact an attorney of your choice to explain those rights to you or assist you in negotiating a potential easement agreement.