

INFORMATIONAL MEETING PRESENTATION Electric Transmission Lines

OVERVIEW: ELECTRIC TRANSMISSION LINE FRANCHISE PROCESS

1. In order for a company to request an electric transmission line franchise from the Iowa Utilities Board (IUB), it must first file notice with the IUB to hold an informational meeting(s) to inform landowners and others that may be impacted by the proposed route of the project. A “franchise” is grant of authority issued by the IUB authorizing the construction, operation, and maintenance of any electric line, located outside the boundaries of a city, which is capable of operating at 69,000 volts or more.¹ A franchise is only issued after the IUB has reviewed and approved the company’s petition.
2. The company cannot begin easement (right-of-way) negotiations with landowners until after this informational meeting, and cannot petition the IUB for a franchise until at least 30 days after this meeting.
3. After a petition is filed, there are two procedural paths the IUB may take toward making a decision. If no objection to the project is on file and the petition does not request eminent domain, a notice is published for two consecutive weeks in a newspaper located in the county (or counties) of the proposed project. If no objection is filed within 20 days of the second publication of that notice, a franchise may be granted without a hearing. Information about the objection process is provided in this handout and will also be discussed in this presentation.
4. If an objection is on file or if eminent domain is requested by the company, a hearing must be held. Notice of the hearing will be published, and objectors and/or landowners of eminent domain parcels will receive notice of the hearing by certified mail.
5. The IUB cannot serve as a legal advisor to any party. If a party believes it has a need for an attorney, the party may contact an attorney of the party’s choice. The duty of the IUB is to determine whether a proposed electric line is necessary to

¹ Iowa Code § 478.1

serve a public use, represents a reasonable relationship to an overall plan of transmitting electricity in the public interest, and meets all other legal requirements.

6. After the public hearing concludes, the IUB will decide whether to grant a franchise and, if requested, the right of eminent domain.

COMMENTS AND OBJECTIONS

1. Any person whose rights or interests may be affected has the right to file a written objection to the proposed project with the IUB.
2. Only written objections filed with the IUB will be considered as part of the official case record. An objection may be filed up until 20 days after the date of the last publication of the petition notice.
3. Phone calls or verbal communication to the IUB will not be part of the official record and will not be considered as objections.
4. Objections may be filed either electronically or by mail. Detailed instructions on how to file an objection are included in this handout.
5. A docket number (case number) has been assigned to this project. Please reference this docket number in all correspondences regarding this project.
6. Attached is a Suggested Form for Filing Objections. By providing this form, the IUB is not promoting the filing of objections, and use of this form is not required to file an objection. The form is provided to show the type of information an objection should include.
7. An objection letter should contain the objector's full name, address, phone number, docket number, whether the objector is a landowner or tenant who will be affected by the project, the location of the affected property, and the nature of the concern(s). An email address should be included if the objector wishes to receive notifications about filings in this docket.
8. Any comments in support of the project may be filed using the same process as an objection.

EASEMENTS (RIGHT-OF-WAY)

1. To locate an electric line on private property, the company must obtain the necessary rights from the landowner(s). The legal document providing such rights is called an easement agreement. An easement may be a voluntary agreement signed by the landowner and company or obtained through the use of eminent domain, if approved by the IUB.

2. Generally speaking, an easement is an acquired privilege of the company for the use of the landowner's property. An easement is a right of use over the property of another, but does not transfer ownership.
3. The IUB does not supervise or control negotiations for the purchase or acquisition of voluntary right-of-way easements. Landowners should carefully read the easement agreement form provided by the company and be aware of the rights the company seeks. Landowners have the right to negotiate with the company over the terms of the easement. Landowners have the right to contact an attorney of their choice to assist in negotiation of the terms of the easement.
4. If a landowner decides to sign a voluntary easement, the landowner has, for a limited time, the right to cancel the agreement. Cancellation must be handled by certified mail with return receipt requested, and mailed to the company's principal place of business. The cancellation must be received by the company within seven days of the date the agreement was signed, excluding Saturday and Sunday. The company must inform the landowner in writing of the landowner's right to cancel, and provide the landowner with a form in duplicate for the notice of cancellation. The right of cancellation may be exercised only once.
5. Iowa Code section 478.17 gives the company the right of reasonable access to its lines for purposes of construction, reconstruction, repairs, and maintenance. The company must pay the landowner for all damages to the land and crops resulting from such entry and action. Damage settlements are different than, and separate from, payment for the easement, although an easement agreement may include provisions that deal with damages, and the landowner may negotiate damage settlement provisions in the easement agreement.

EMINENT DOMAIN (CONDEMNATION)

1. If the company cannot obtain the rights it seeks by a voluntary easement, it may petition the IUB for authority to take those rights by eminent domain, or condemnation.
2. "Eminent domain" is the taking of private property rights for public use. Under federal and state law, private property cannot be taken unless the land is needed to serve a public use and the landowner receives just compensation.
3. Under Iowa Code chapter 478, the IUB determines whether the company has shown a need to serve a public use. The matter of just compensation for property rights taken by eminent domain is not determined by the IUB, but rather it is determined by a "County Compensation Commission" appointed from the landowner's county under Iowa Code chapter 6B.

4. At this time, the company does not have the right of eminent domain. In other words, it does not have the right to obtain land through condemnation. The right of eminent domain may only be granted by the IUB after a public hearing on the eminent domain request.
5. The landowner(s) will receive written notice of the IUB's public hearing by registered mail from the company if the right of eminent domain is requested to acquire rights necessary to locate an electric transmission line on the landowner(s) property.
6. Attached is a Frequently Asked Questions about Eminent Domain packet, which contains more information about the eminent domain process.

PUBLIC HEARING AND PROCEDURES

1. A public hearing will be held if an objection is on file with the IUB or the company requests the right of eminent domain.
2. Landowners with concerns about the project or whether the company is seeking eminent domain on their property may file a statement or objection with the IUB explaining their concerns and the reason for their objection any time after this meeting, but not later than 20 days after the date of the last publication of the petition notice.
3. After the franchise petition is reviewed by the IUB's staff and if there is an objection or eminent domain request, a public hearing date will be set by the IUB. All parties involved will be provided with a notice of the hearing scheduling conference.
4. Before the public hearing, the IUB will issue an order setting deadlines for the parties' various filings. Before the deadline, landowners who objected to the project should file statements, testimony, and evidence or exhibits, and/or any other materials that support their claim.
5. Public hearings are quasi-judicial in nature. Hearings are comparable to courtroom proceedings, and follow similar rules of testimony, cross-examination, and presentation of evidence. The person presiding over the hearing will assist participants unfamiliar with such proceedings, but cannot assist any party with presentation of their case. The burden is on the company to prove the necessary elements of its petition.
6. The IUB or an administrative law judge will preside at the hearing.
7. The IUB strongly encourages landowners with concerns about the project that can't be resolved with the company to participate in the public hearing.
8. When the IUB has decided the case, either initially or on appeal from a proposed decision, any party to the proceeding may file a request for rehearing within 20

days. Once a final decision has been made, any party may appeal to District Court within 30 days.

9. All case documents, including the company's filings, the IUB's orders, notices, objections and appeals will be posted to the IUB's electronic filing system (EFS) at <https://efs.iowa.gov/efs/>.
10. Questions about the process and hearing procedures may be presented to the IUB's staff but they cannot provide legal advice. Help may be sought from the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice. The OCA represents the interests of Iowa consumers and the public in all matters brought before the IUB. The OCA can be reached at the following address:

Office of Consumer Advocate
1375 E. Court Ave.
Des Moines, Iowa 50319
Phone: 515.725.7200
Email: iowaOCA@oca.iowa.gov

STATEMENT OF PROPERTY OWNER'S RIGHTS

1. In the handout packet, there is a Statement of Property Owner's Rights prepared by the Iowa Attorney General. The statement primarily addresses acquisition of property ownership, but some provisions apply to condemnation of easements. Please turn to the attached copy of those rules to review.
2. There are 12 property rights set forth in Chapter 34 of the Attorney General's administrative rules. These rights pertain to owners of record who may have property acquired by condemnation. The rights specified in Chapter 34 are derived from Iowa Code chapters 6A, 6B, and 316. These rules are not applicable when a landowner voluntarily negotiates for an easement.
3. If an easement on a property would be condemned, the first right on the statement, Number 1, would apply. The Iowa Constitution guarantees the right to just compensation for the taking of property. Rights 5, 6, and 10 could also apply to property condemned for a utility easement. These rights address procedures in condemnation proceedings taken by the court-appointed compensation commission in determining the amount to be paid to the landowner. Other rights may only apply if property ownership is to be obtained by condemnation. An easement is a right of use over the property of another, but does not transfer ownership.
4. The rights set out in Chapter 34 are not a full and complete list or explanation of a landowner's rights under condemnation law. For a more thorough presentation of

an owner's rights, you should refer directly to the Iowa Code or contact an attorney of your choice.

APPENDIX A: A TYPICAL SEQUENCE OF EVENTS

NOTE: A typical sequence of events, as it may affect the landowner, is set forth below. Rigid significance should not be attached to this sequence. It is merely an example to aid in understanding the process.

1. Company planning determines need for the line between termini.
2. Prime route and possible alternative route are tentatively selected.
3. Route landowner and tenant names and addresses collected.
4. Informational meeting notices mailed and published.
5. Informational meeting held.
6. Company right-of-way personnel contact landowners to solicit voluntary easements.
7. The company files petition for a franchise with IUB. Eminent domain may be requested at this time or later.
8. Newspaper publishes notices of petition.
9. Public hearing by the IUB.
10. The IUB issues a decision denying or granting the franchise. If the petition requested eminent domain, a ruling granting or denying that right will also be issued.
11. If the petition and/or eminent domain are denied, the company may petition for rehearing or appeal the IUB's decision on denial to the courts. If the petition and/or eminent domain are granted, the landowner may petition for rehearing or appeal the IUB's decision to the courts.

To simplify the balance of this list, it is assumed that the IUB granted the franchise and the right of eminent domain, and the decision was not appealed.

12. The company may commence construction where it has obtained voluntary easements.
13. If eminent domain actions are to be taken, the company petitions the chief judge of the judicial district for the county involved to appoint a Compensation Commission. (Iowa Code Chapter 6B).

14. The Compensation Commission sets compensation amounts, the company pays landowners who will accept; posts payment with the sheriff for those who won't, and may commence construction over the balance of the route.
15. Either the landowners or the company may appeal the amount determined by the Compensation Commission to the courts.
16. Line construction and clean-up completed.
17. Company pays agreed to construction damages to eminent domain parcel owners and gives written notice (Iowa Code Section 6B.52) of renegotiation right.
18. If the landowner or tenant and company cannot agree on the amount of construction damages, and there is no provision in the easement or other agreement calling for such disputes to be settled by an arbitrator or other means, the landowner or tenant may petition the county board of supervisors to establish a Compensation Commission to determine the damages.
19. Either the landowner or the company may appeal the amount determined by the Compensation Commission to the courts.