

**§3136. Transmission and distribution utilities have eminent domain; approval**

**1. Land necessary for location of transmission lines carrying 5,000 volts.** Subject to approval by the commission under subsection 4 and the requirements of subsection 6, if applicable, a transmission and distribution utility may take and hold by right of eminent domain lands and easements necessary for the proper location of its transmission lines that are designed to carry voltages of 5,000 volts or more and of necessary appurtenances, located within the territory in which the utility is authorized to do public utility business, in the same manner and under the same conditions as set forth in chapter 65. Notwithstanding section 6501, subsection 1 and section 6507, subsection 4, owners are entitled to damages for all property taken by eminent domain in accordance with subsection 5. [PL 2023, c. 644, §3 (AMD).]

**2. Right of eminent domain not applicable.** The right of eminent domain granted in subsection 1 does not apply to:

A. Lands or easements located within 300 feet of an inhabited dwelling; [PL 1987, c. 141, Pt. A, §6 (NEW).]

B. Lands or easements on or adjacent to any developed or undeveloped water power; [PL 1987, c. 141, Pt. A, §6 (NEW).]

C. Lands or easements so closely paralleling existing wire lines of other utilities that the proposed transmission lines would substantially interfere with service rendered over the existing lines, except with the consent of the owners; [PL 2001, c. 608, §2 (AMD).]

D. Lands or easements owned or used by railroad corporations, except as authorized pursuant to section 2311; and [PL 2001, c. 608, §2 (AMD).]

E. Lands or easements owned by the State. [PL 2001, c. 608, §2 (NEW).]  
[PL 2001, c. 608, §2 (AMD).]

**3. Prior right to locate distribution lines and appurtenances in right-of-way limits of public way.** Subject to approval by the commission under subsection 4, transmission and distribution utilities may take and hold by right of eminent domain land or easements necessary for the proper location of their distribution lines and the necessary appurtenances, but only where the transmission and distribution utilities had a prior right to locate their distribution lines and necessary appurtenances in the right-of-way limits of a public way and the body having jurisdiction over the public way has caused the utility to remove its distribution lines and appurtenant structures outside the right-of-way limits of the public way. This right does not apply to lands or easements as specified in subsection 2, paragraphs B, C, D and E. [PL 2007, c. 148, §13 (AMD).]

**4. Commission approval required; certificate of public convenience and necessity; offer requirements for high-impact electric transmission line; environmental factors.** A location to be taken by eminent domain for such transmission or distribution lines must be approved by the commission before a transmission and distribution utility can exercise the right of eminent domain granted in subsection 1 or subsection 3. The commission may not approve a location to be taken by eminent domain for the construction, rebuilding or relocation of a transmission line that requires a certificate of public convenience and necessity under section 3132, unless the commission has issued a certificate of public convenience and necessity for that transmission line and, for a high-impact electric transmission line, the transmission and distribution utility has met the offer requirements described in paragraph A. Environmental factors to be considered for proper location of a transmission line are not subject to review by the commission under this section when the location of the transmission line has received site location of development approval under Title 38, section 484.

A. If the transmission and distribution utility is seeking commission approval for the taking of a location by eminent domain for the construction, rebuilding or relocation of a high-impact electric transmission line on a lot or parcel of real property that is 200 contiguous acres or less and the transmission and distribution utility seeks to take less than the entire property, the transmission and distribution utility must demonstrate to the commission that, in its negotiations with the owner of the property for a voluntary acquisition of the location, it made both an offer for the taking of title to the entire property in fee simple absolute and an offer for the taking of only that portion of the property sought by the utility and that the owner did not accept either offer. [PL 2023, c. 644, §4 (NEW).]

[PL 2023, c. 644, §4 (AMD).]

**5. Owner entitled to damages.** The owner of a property taken by eminent domain by a transmission and distribution utility for the construction, rebuilding or relocation of a transmission line is entitled to damages for all property taken, which must be determined using the methods set forth in Title 23, sections 154 to 154-F.

[PL 2023, c. 644, §5 (NEW).]

**6. Taking by transmission and distribution utility of location on property that is 200 acres or less for high-impact electric transmission line; owner option.** If the commission, in accordance with subsection 4, approves a taking by eminent domain by a transmission and distribution utility for the construction, rebuilding or relocation of a high-impact electric transmission line when the location subject to the taking is a lot or parcel of real property that is 200 contiguous acres or less and the transmission and distribution utility seeks and the commission has approved a taking of less than the entire property, the following requirements apply:

A. The damages estimated by the county commissioners in accordance with section 6503, subsection 2 must include 2 estimates, one for the taking of title to the entire property in fee simple absolute and one for the taking of only that portion of the property approved for a taking by the commission; and [PL 2023, c. 644, §6 (NEW).]

B. The owner of the property has the option to require the transmission and distribution utility to take the entire property in fee simple absolute and, if the owner elects to require the transmission and distribution utility to take the entire property, the commission shall approve the taking of the entire property. [PL 2023, c. 644, §6 (NEW).]

[PL 2023, c. 644, §6 (NEW).]

**7. Property taken for high-impact electric transmission line; notice and educational materials.** The commission shall adopt routine technical rules regarding the provision of notice to an owner of real property whose property may be taken by eminent domain for the construction, rebuilding or relocation of a high-impact electric transmission line by an entity selected to construct a high-impact electric transmission line pursuant to section 3210-I, subsection 2, or a transmission and distribution utility as well as to an owner of real property whose property abuts the proposed high-impact electric transmission line. The notice must include educational materials that include, but are not limited to, materials describing the high-impact electric transmission line development process and must be sent by certified mail. The rules must establish requirements for the notice and educational materials including:

A. The appearance and contents of the notice and materials; [PL 2023, c. 644, §7 (NEW).]

B. The appearance of the envelope that includes the notice and materials; [PL 2023, c. 644, §7 (NEW).]

C. The information to be included relating to the high-impact electric transmission line development process; [PL 2023, c. 644, §7 (NEW).]

D. The information that describes the scope of the proposed high-impact electric transmission line; [PL 2023, c. 644, §7 (NEW).]

E. The rights and opportunities of an owner of real property to participate in the development process; [PL 2023, c. 644, §7 (NEW).]

F. Resources that may be available to assist an owner of real property, which may include resources for legal assistance; and [PL 2023, c. 644, §7 (NEW).]

G. The time frame for when the notice and educational materials must be sent to an owner of real property. [PL 2023, c. 644, §7 (NEW).]

The commission shall review and approve the notice and educational materials the transmission and distribution utility or entity is required to send before the notice and educational materials are provided to an owner of real property. The commission may request that a state agency or other commission review any educational materials that address activities relating to the high-impact electric transmission line development process that are undertaken by that other state agency or other commission.

[PL 2023, c. 644, §7 (NEW).]

**8. High-impact electric transmission line; fees and expenses incurred by property owner.** A transmission and distribution utility that takes a location by eminent domain for the construction, rebuilding or relocation of a high-impact electric transmission line is responsible for a property owner's fees and expenses associated with seeking an award of damages in accordance with this subsection.

A. If the award for damages, as determined by the county commissioners in accordance with section 6503, subsection 2 or the Superior Court in accordance with section 6507, is more than 40% and at least \$25,000 greater than the last written offer of compensation prior to the property owner's or transmission and distribution utility's filing of a request for the determination of damages or an appeal of such determination to the Superior Court, the county commissioners or the court shall award the owner reasonable attorney's fees, litigation expenses, appraisal fees, other experts' fees and other related costs in addition to other compensation authorized by this section. [PL 2023, c. 644, §8 (NEW).]

B. If the award for damages is at least 20%, but not more than 40%, and at least \$10,000 greater than the last written offer of compensation, the county commissioners or the court may award reasonable fees and expenses described in paragraph A. [PL 2023, c. 644, §8 (NEW).]

C. No attorney's fees may be awarded under this subsection if the award of damages is \$25,000 or less. [PL 2023, c. 644, §8 (NEW).]

D. If the award of damages is less than 20% greater than the last written offer of compensation, the owner of the property is responsible for the owner's own costs. [PL 2023, c. 644, §8 (NEW).]

For the purposes of this subsection, "last written offer of compensation" means the last offer of compensation made by the transmission and distribution utility and, in the case of a taking of only a portion of a lot or parcel of real property, the last offer made for the portion of the property sought by the transmission and distribution utility. "Last written offer of compensation" does not include the offer for the taking of title to the entire property in fee simple absolute as required by subsection 4.

[PL 2023, c. 644, §8 (NEW).]

**9. Definition.** For the purposes of this section, "high-impact electric transmission line" means a transmission line of any length that is:

A. Constructed to transmit direct current electricity; or [PL 2023, c. 644, §9 (NEW).]

B. Capable of operating at 345 kilovolts or more; and

(1) Is not a generator interconnection transmission facility as defined in section 3132, subsection 1-B; and

(2) Is not constructed primarily to provide electric reliability, as determined by the commission. [PL 2023, c. 644, §9 (NEW).]  
[PL 2023, c. 644, §9 (NEW).]

#### SECTION HISTORY

PL 1987, c. 141, §A6 (NEW). PL 1999, c. 398, §A51 (AMD). PL 1999, c. 398, §§A104,105 (AFF). PL 2001, c. 608, §§2,3 (AMD). PL 2007, c. 148, §§12-14 (AMD). PL 2023, c. 644, §§3-9 (AMD).

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