



Public Service Commission of WISCONSIN

Right-of-Ways and Easements for Electric Transmission Facilities in Wisconsin: Overview

Introduction

The Public Service Commission of Wisconsin (PSC or Commission) prepared this guide to provide information to the public on topics related to land access agreements between a landowner and a transmission owner for the construction of electric transmission facilities. Topics covered in this guide include transmission right-of-way (ROW), easements, and landowner rights. The PSC is an independent state agency that oversees more than 1,100 Wisconsin public utilities that provide natural gas, electricity, heat, steam, water, and telecommunication services. The PSC is composed of three full-time Commissioners who make decisions on cases brought to the PSC related to utility operations, rates and construction projects.

Disclaimer: The information provided within this guide does not, and is not intended to, constitute legal advice. Additionally, this document should not be interpreted as the Commission pre-judging any project that is or will come before it; all information provided is for general informational purposes only.

Electric Transmission Line Right-of-Way (ROW)

An electric transmission line ROW is a strip of land that an electric transmission owner uses to construct, maintain, or repair a large power line. A transmission owner is a utility company that moves electricity from generation sites to distribution lines ("transmission owner" and "utility" are used interchangeably in this guide. Use of a ROW is governed by a private business contract - called an easement - between a transmission owner and landowner. If a transmission owner needs additional access roads to get to a ROW, they must also obtain easements for those access roads.

When built, a transmission line is usually centered in a ROW for several reasons including safety, accessibility, and flexibility for upgrades or changes to equipment. The structures of a transmission line (poles and cross arms) keep the wires away from the ground, other objects, and each other. The width of ROW necessary for a transmission line is determined by the voltage of the transmission line, the type of structures used, and the need for safe operating clearances. If a landowner wants to change features of a transmission line structure or location within a ROW, they need to ask a transmission owner if the changes are possible and negotiate the changes with them.

Obtaining a ROW

Easements

The most common arrangement for a transmission owner to obtain ROW land rights is an easement. An easement between a transmission owner and a landowner is a legal contract that allows the transmission owner to build, maintain, and protect a power line on the landowner's land. With an easement, a landowner retains general ownership of the land and is expected to pay taxes on the parcel, however, they sell the usage rights to a transmission owner for a negotiated amount of money. An easement binds a transmission owner, landowner, and any future owners of the land until the contract is dissolved, or a transmission owner removes the transmission line, abandons the ROW, and releases the easement rights.

A new easement may need to be obtained when a new line needs to replace an older line that is in poor condition. If an existing ROW is not appropriate for the new line, a new ROW that fits the desired line structure must be obtained through a new easement. Any new transmission easements must specify the: (1) type, height limits, and number of new structures; (2) line voltage; and (3) ROW width.¹

If an existing ROW and structures do not need to be replaced, but the transmission owner wants to alter the original easement (such as clarifying terms in the agreement), a transmission owner or landowner may offer to renegotiate the easement contract with one another. Topics for easement renegotiation may include refinements to the ROW location, different compensation value, or clarity on land use within the ROW. The new easement would apply once changes are agreed on and documented by both landowner and utility.

Landowners seeking specific guidance regarding the easement process and their rights and obligations are encouraged to, and may find benefit from, consulting an attorney. Because easement agreements are private contracts, the PSC does not participate in the negotiations between transmission owners and landowners. The processes for negotiation and condemnation are covered by the laws in Chapter 32 of the Wisconsin Statutes.

Fee Simple Purchases

Another arrangement for obtaining a power line ROW is for a transmission owner to purchase the land – instead of establishing an easement. In this arrangement, a landowner sells their strip of land to a transmission owner outright; in turn, the utility owns the ROW in fee simple. In other words, a landowner contractually gives up all ownership of the ROW land along with all the rights and responsibilities that ownership entails to a transmission owner.

This is a common arrangement for new substations but is rarely used when siting transmission lines. Substations are a facility that contains the equipment necessary to convert the voltage of electricity, such as transformers which help step voltages up or down, depending on use. There are two classes of substation; those that form part of the transmission network (which operates at 275 kilovolt (kV) and above) and those that form part of the distribution network (which operates at 132 kV and below). Utilities prefer to own the land for substations as it gives the utility the right to restrict the land use for site security.

¹ See Wis. Stat. § 182.017(7)(a) and Wis. Admin. Code § PSC 113.0509(2).

A simple distribution substation may require less than one acre, while a larger transmission substation may require six acres or more. Some land outside the substation fence may also be needed for access roads or for landscaping and visual screening. If more land is purchased than needed for a substation, a utility may sell the excess land, rent it out for farming or other local uses or retain it for potential substation expansions. Landowners may be able to negotiate land use rights on excess lands with the utility during the land purchase process.

Obtaining Easements

Before Easement Negotiations

Transmission owners need to obtain approval from the Commission prior to construction and operation of large construction projects. The nature of the proposed project determines which approval process, or certification, is needed.

- A transmission owner must receive a **Certificate of Public Convenience and Necessity (CPCN)** from the Commission for a transmission project that is either: (1) 345 kV or greater; or (2) less than 345 kV but greater than 100 kV, over one mile in length, and needing new ROW.
- A transmission owner must receive a **Certificate of Authority (CA)** for any transmission line that does not meet the CPCN criteria but has an overall cost that exceeds an established cost threshold.² Projects that do not come before the Commission because they do not meet CA or CPCN requirements still may require easement negotiations.

Transmission line owners seeking a CPCN from the Commission are required to propose a proposed and alternative transmission line route. At the time of an application, a utility may have started initial discussions with landowners about the potential transmission line, but generally have not yet begun negotiating an easement. According to Wis. Stat. § 32.03(5), a transmission owner may not acquire an easement for transmission projects requiring a CPCN until they receive the CPCN from the Commission. However, that law does allow a transmission owner to negotiate an easement with a landowner before a CPCN is issued if the transmission owner advises the landowner that it does not have authority to acquire the property by condemnation until the CPCN is issued.

For lower voltage lines where a CA is required, there may be only one proposed route and structure type. For these projects, a transmission owner may begin easement negotiations before the CA has been granted by the Commission. However, easements may need to be adjusted and finalized depending upon any order conditions required through the Commission's approval of a CA application.

During Easement Negotiations

In a typical easement negotiation, a transmission owner's agent presents a landowner with a draft easement and an estimate of the value of the land contained within the desired easement. A landowner has the right to have their own appraisal made by a qualified

² Cost thresholds are described in Wis. Stat. § 196.49(5g).

appraiser.³ The reasonable cost of this appraisal must be reimbursed by the transmission owner if: (1) it is submitted to the utility within 60 days after receipt of the utility's appraisal; and (2) it meets the standards of the law in Wis. Stat. § 32.09.

While negotiating, a landowner may be asked to waive, or give up, one or more of their landowner rights. See the section below for details on landowner rights. Waiving any landowner rights, as well as any other part of the contract not required by law, is negotiable and not an obligation.

A landowner should not sign an easement unless they fully understand its terms. The landowner should first read the easement, ask questions if necessary, and negotiate with the utility regarding any unclear or unsatisfactory terms. A landowner shall have a minimum period of five days to review the proposed easement, unless this period is voluntarily waived by the landowner.⁴ Also, there is nothing barring one landowner along a proposed transmission route from discussing easement concerns with other landowners before signing.

For a newly proposed project, a landowner may also examine the project application and supporting documents that the transmission owner submitted to the PSC for review. For projects that require a CPCN, the PSC provides copies of the project application to the clerk of each municipality and town in the project area and to the main public library of each county in the project area. Landowners and other interested persons can also request copies of the project application directly from the transmission owner or review it and other supporting documents on the PSC's Electronic Regulatory Filing (ERF) system web site (<https://apps.psc.wi.gov/ERF/ERF/ERFhome.aspx>). More information about using the PSC's ERF system can be found on the PSC web site (<http://psc.wi.gov>) or by contacting the PSC Division of Energy Regulation at (608) 266-5481.

Landowners' Rights and Waiving Those Rights

Landowners who sign an easement with a utility have specific rights as provided under Wisconsin Statutes. These rights are applicable for high voltage power lines that are 100 kV or larger, longer than one mile, and built after 1976. Table 1 lists these rights. An easement should not be signed unless the landowner absolutely agrees to all its written content, including content on any waived rights.

Easements are legally binding and written in precise language. A landowner's rights are generally included in an easement as an "Exhibit" attachment. A term of the easement might state that those rights that are listed, marked, or crossed out in the exhibit would be "waived," *i.e.*, not included in the easement. Table 2 gives examples of easement language one might see for waiving landowner rights. (The "Grantor" is the landowner, and the "Grantee" is the utility, in this case a transmission owner). If landowners have questions or concerns regarding utility practices, they may contact the PSC Consumer Affairs team at 1-800-225-7729.

³ Wis. Stat § 32.06(2)(b)

⁴ See Wis. Admin. Code § 113.0509

Table 1 Landowners' Rights

Under Wisconsin law (Wis. Stat. § 182.017(7)(c) to (h)), landowners' rights are expressed as utility requirements:

- (c) In constructing and maintaining high-voltage transmission lines on the property covered by the easement the utility shall:
 - 1 If excavation is necessary, ensure that the top soil is stripped, piled and replaced upon completion of the operation.
 - 2. Restore to its original condition any slope, terrace, or waterway which is disturbed by the construction or maintenance.
 - 3. Insofar as is practicable and when the landowner requests, schedule any construction work in an area used for agricultural production at times when the ground is frozen in order to prevent or reduce soil compaction.
 - 4. Clear all debris and remove all stones and rocks resulting from construction activity upon completion of construction.
 - 5. Satisfactorily repair to its original condition any fence damaged as a result of construction or maintenance operations. If cutting a fence is necessary, a temporary gate shall be installed. Any such gate shall be left in place at the landowner's request.
 - 6. Repair any drainage tile line within the easement damaged by such construction or maintenance.
 - 7. Pay for any crop damage caused by such construction or maintenance.
 - 8. Supply and install any necessary grounding of a landowner's fences, machinery or buildings.
- (d) The utility shall control weeds and brush around the transmission line facilities. No herbicidal chemicals may be used for weed and brush control without the express written consent of the landowner. If weed and brush control is undertaken by the landowner under an agreement with the utility, the landowner shall receive from the utility a reasonable amount for such services.
- (e) The landowner shall be afforded a reasonable time prior to commencement of construction to harvest any trees located within the easement boundaries, and if the landowner fails to do so, the landowner shall nevertheless retain title to all trees cut by the utility.
- (f) The landowner shall not be responsible for any injury to persons or property caused by the design, construction or upkeep of the high-voltage transmission lines or towers.
- (g) The utility shall employ all reasonable measures to ensure that the landowner's television and radio reception is not adversely affected by the high-voltage transmission lines.
- (h) The utility may not use any lands beyond the boundaries of the easement for any purpose, including ingress to and egress from the right-of-way, without the written consent of the landowner.

Table 2 Examples of Easement Contract Language that Waive Certain Landowner Rights

In the Contract: “The parties hereto do hereby agree to the terms and conditions set forth in Exhibit(s) _____, attached hereto and incorporated therein.”
At the top of the Exhibit: “As part of the foregoing High Voltage Electric Line Easement, Grantor(s) do hereby specifically waive certain of the following rights as designated at the bottom hereof...”
At the Bottom of the Exhibit: “The Grantor(s) do hereby waive the rights provided in the following paragraphs of this Exhibit A . . .” [with spaces following for listed rights to be waived]

ROW Abandonment

If a transmission owner removes a power line, they might offer a landowner the opportunity to nullify an easement. Transmission owners usually charge landowners a fee to release the easement rights. Typically, the fee addresses any administrative costs to nullify or remove the easement from property deeds. Upon termination of any easement rights, the transmission owner terminates any rights or responsibility to access or maintain a ROW easement, giving full land use rights back to the landowner.

ROW Restrictions

Transmission Owner Use

After acquiring an easement from a landowner, a transmission owner has the right to do only what is provided for in the easement. If the transmission owner buys the ROW in fee simple, it is limited only by the regulations, such as local zoning restrictions, that would apply to any landowner.

Property Owner Use

Within transmission line ROW, there are several acceptable landowner property uses that do not interfere with the safe operation of the transmission line. Typical acceptable landowner property uses can include dairy farming, crop farming, grazing, some gardening, hunting, biking, hiking, snowmobiling, and parking, among other things.

Transmission line easements may specify whether or what type of buildings or woody plants are allowed within the ROW. The State Electrical Code sets the minimum distance between transmission lines and buildings (such as storage sheds) and prohibits: (1) new transmission lines from being built over residential dwellings and (2) new houses from being built under transmission lines. These distances vary depending on the voltage of the line and structure features. For woody vegetation species already present, an easement can specify if these species are permitted, and any conditions required by the transmission owner for location, maintenance, or maximum heights allowed.

If a power line is installed underground, the ROW is allowed to be narrower than for an overhead line of the same voltage. However, there are still a number of restrictions based on safety code regarding buildings, shrubs, and woody vegetation, as described in subsequent sections.

Public Use

Landowners retain the right to limit public access on their lands. Therefore, fences are always allowed across a ROW. Fences constructed in ROWs of transmission lines that are 100 kV or larger, longer than one mile, and built after 1976 are specifically protected in Wis. Stat. § 182.017(7)(c), which states that a transmission owner must repair - to its original condition - any fence that was damaged as a result of the construction or maintenance operations of the transmission line and associated ROW. If a fence has no gate and a transmission owner needs access to a ROW, they can cut the fence and install a temporary gate. Any such gate may be left in place at the landowner's request. A transmission owner that damage fences located in ROWs not mentioned in that statute are required to meet the conditions specified in the existing easement.

ROW Maintenance - Overview

After a transmission line is installed, a transmission owner maintains the ROW according to its company-specified practices for the type, size, and voltage of the line. Transmission owners often use contractors for on-the-ground management of a ROW, meaning that the utility may not have its own staff in the area, and instead hire more local experts and technicians. Contractors may be responsible for maintenance work planning, operations, and/or inspections as well as communications and notifications of upcoming work with landowners.

Under Wis. Admin. Code § PSC 113.0510, a utility must make a reasonable attempt at contacting landowners a minimum of 24 hours before beginning maintenance activities in a ROW (emergency repairs are exempted from this notification requirement). A ROW is inspected for safety concerns from vegetation or equipment damage from the air (e.g. helicopter, drone) at least once a year and by ground patrol about every three to four years. The transmission owner may have staff that conduct both types of inspections or may hire specialty contractors. Landowners with concerns or questions about ROW management on their land should contact the transmission owner installing or operating the line for information or to address issues before contacting PSC Consumer Affairs staff.

ROW Maintenance - Vegetation Management

Generally, for above-ground transmission lines, the ROW vegetation is comprised of low-growing flowering plants and grasses to make it easier to perform line maintenance and repairs. Typically, all woody vegetation in this zone is removed, but some compatible, lower growing woody species of shrubs or dwarf trees may be allowed by transmission owners if the landowner requests and it is agreed to by the transmission owner. Even if a transmission owner allows some short-growing woody species, all plantings are at risk for removal if not specified in the easement or if there is a change to the operation or maintenance requirement

of the electrical facilities. Some transmission owners have a list of recognized compatible or incompatible species they allow in a ROW that may be available by landowner request.

Regulatory Framework

Vegetation management in a ROW is part of transmission system reliability and minimum standards are overseen by the North American Electric Reliability Corporation (NERC) for all transmission lines over 200 kV. Each transmission owner must have a plan to keep vegetation at required clearance distances to conform to the NERC standards, which can impact the landowner use of a ROW for growing vegetation. NERC standards regarding vegetation tolerances changed significantly after the 2003 widespread blackout event caused partially by vegetation contact with transmission lines.⁵

ROW Maintenance – Hazard Trees

Under Wis. Admin. Code § 113.0512, a transmission owner may conduct additional tree trimming or removal of hazard trees outside of a ROW. “Hazard” trees are trees that pose a threat, or unacceptable risk, of falling and damaging a line before the next ROW maintenance cycle. If identified, hazard trees must be topped, pruned, or felled so they are no longer hazardous. An easement should specify and enable this utility obligation of removing hazard trees. During easement negotiations, landowners may be given an opportunity to request part of the trunks of hazard trees be left standing for wildlife, called a wildlife habitat, or other disposal options regarding the cut wood. Safety requirements may not allow a wildlife habitat to be left; as a result, allowance is decided on a case-by-case basis.

ROW Maintenance – Herbicides

A transmission owner or their contractor may use herbicides to remove invasive species, incompatible trees, and other woody vegetation from ROWs, unless prohibited by a landowner in an easement. Responsible use of herbicides can be an effective way of controlling plant species incompatible with safe transmission maintenance and is part of the industry-recognized Integrated Vegetation Management (IVM) of ROWs. If herbicides are used, a landowner should be informed by the transmission owner or associated contractor completing the vegetation management work as to what herbicide will be used, and if there are any restrictions to grazing or accessing the ROW after application. If no herbicides are allowed, as prohibited in an easement, a transmission owner must rely on cutting and other mechanical means of control to remove woody vegetation.

Agricultural Land as a Special Case

The Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) has the responsibility to prepare an Agricultural Impact Statement (AIS) for a project that may make use of the power of eminent domain and proposes to acquire an interest of more than five acres from at least one farm operation. A “farm operation” is defined in state statute as an activity conducted primarily for the production of commodities for sale or home use in such quantity that the commodities contribute materially to the support of the farm operator. Even if the condemnation is less than five acres, DATCP may decide to prepare an AIS if they believe

⁵ U.S. Department of Energy, August 2003 Blackout, accessed at: <https://www.energy.gov/oe/august-2003-blackout>

the acquisition will have a significant effect on farm operations. A transmission owner is not allowed to negotiate with a property owner or begin condemnation for at least 30 days following the publication of the final AIS.

The objective of DATCP preparing an AIS for transmission and substation projects is to ensure that farmers are well-informed of their rights and the potential impacts to agricultural assets prior to acquisition negotiations, and to provide feedback to the utility, landowners, and the PSC on how the project can avoid, minimize, or mitigate impacts to agricultural resources and farm operators. To prepare an AIS, DATCP sends questionnaires to agricultural landowners who may have five or more acres of easement acquired, and uses information received from landowner responses in preparing the final document. DATCP will distribute a physical copy of the published AIS to any individual who requests one through the questionnaire sent by DATCP or by contacting the AIS program directly at (608) 224-4650 or DATCPAgImpactStatements@wisconsin.gov. Landowners and other interested persons can also review the published AIS on DATCP's Agricultural Impact Statement web site.⁶

According to Wis. Stat. § 32.09(6r), if a transmission line is at least 100 kV and more than one mile long, a transmission owner's offer for land "zoned or used for agricultural purposes" must be either: a lump sum payment or an annual payment which represents "just compensation under sub. (6) for taking of the easement for one year." An agricultural landowner chooses which type of payment to accept. If annual payments are chosen, payments will be received only as long as the land remains in agricultural use.

Transmission Owner's Right of Eminent Domain (Condemnation)

Despite earnest negotiations, a landowner and a transmission owner may not reach an agreement on the terms and conditions of an easement. In this circumstance, a transmission owner has the right to take the easement through court action to settle its contract parameters.⁷ A transmission owner may "condemn" the ROW land, if needed, using its statutory right of eminent domain.

For larger high voltage transmission lines, as previously stated, a transmission owner may not condemn property before the utility receives a CPCN from the PSC. This ensures that property is not condemned before the project has been reviewed and approved or modified by the Commission. A high-voltage transmission line that receives a CPCN shows the necessity of the project and enables the use of eminent domain. In a condemnation action, the local condemnation commission determines the fair price to be paid, based on testimony provided to it by a transmission owner and a landowner's witnesses.

Landowners have rights in the condemnation process under the Wisconsin Eminent Domain Law (Wis. Stat. § 32). These rights are described in a state-produced brochure, "The Rights of Landowners under Wisconsin Eminent Domain Law."⁸ A transmission owner must provide this

⁶ [Agimpact.wi.gov](http://agimpact.wi.gov)

⁷ See Wis. Stat. § 32.06

⁸ https://doa.wi.gov/Legal/The%20Rights%20of%20Landowners%20Under%20WI%20Eminent%20Domain%20Law%2C%20Procedures%20Under%2032.05_read.pdf

brochure to affected landowners along the transmission route. If a transmission owner begins the condemnation process, it is important for a landowner to review the information outlined in this publication to understand their rights in the process of condemnation under Eminent Domain Law.

Transmission owners generally do not prefer condemnation. Condemnation procedures are expensive and time consuming, for both the landowner and the transmission owner. If a landowner feels threatened by condemnation during easement negotiations with a transmission owner, it may still be beneficial to continue to negotiate. Some landowners find that hiring a lawyer familiar with the eminent domain process is helpful in ensuring the landowner's rights are not violated if negotiations are not progressing.

The Condemnation Process

A transmission owner generally only begins the condemnation process after an easement negotiation with a landowner fails to result in agreement. The condemnation process begins with a transmission owner offering a landowner an official "jurisdictional offer," by personal delivery service or certified mail. A jurisdictional offer is an official written notice by the transmission owner to the landowner that: (1) describes the proposed public use of the land; (2) describes what property is to be taken and the date when it will be taken; and (3) states the amount of compensation the landowner is to be paid. A landowner, by law, has 20 days from the receipt of the jurisdictional offer to accept it or reject it.

If the landowner accepts the jurisdictional offer, property title will be transferred to the acquiring utility and the landowner is paid the amount specified in the jurisdictional offer within 60 days. This 60-day period can be extended by mutual written consent of the property owner and the acquiring utility. If the landowner rejects the jurisdictional offer or does not respond to the offer within 20 days, the transmission owner may petition the court to have the county condemnation commission determine the appropriate level of compensation for the ROW. The condemnation process continues until the easement or property is obtained and the landowner is compensated. Either party can appeal the condemnation commission's compensation amount to the circuit court, where issues like property title and just compensation can be addressed. The PSC is not involved with these negotiations and amounts that may be paid for an easement.



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