



# Right-of-Way and Easements for Electric Facility Construction

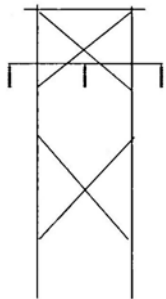
The Public Service Commission of Wisconsin (PSC) offers this overview to landowners who must negotiate easement contracts with utilities for new electric transmission lines or sales of land for substations. It explains the utility easement process to help the negotiations have a balanced foundation for reaching agreement. The procedures of eminent domain (condemnation) are addressed, but a more complete discussion is contained in the Wisconsin Department of Commerce publication, *The Rights of Landowners Under Wisconsin's Eminent Domain Law*.

Because easement agreements are private contracts, the PSC does not participate in the negotiations between utilities and landowners.

## Introduction

This Overview will explain what a transmission “right-of-way” is and how a utility normally goes about obtaining it. It will explain the relationship between initial contract negotiations and the eminent domain (condemnation) process. Finally, it will discuss some concerns about landowner rights and utility easement contracts.

If negotiations between a utility and a landowner for an easement fail and the condemnation process begins, the landowner should rely on the booklet provided by the Wisconsin Department of Commerce that is cited inside the front cover of this overview.



## Electric Transmission Line Right-of-Way

An electric transmission line right-of-way (ROW) is a strip of land that an electric utility uses to construct, maintain, or repair a large power line. The ROW allows the utility to keep the line clear of tall trees, buildings, and other structures that could interfere with line operation. If they are needed, the utility also obtains easements for access roads to get to the power line ROW.

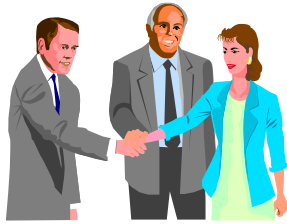
A transmission line ROW is wider than a ROW for a smaller “distribution” line that serves homes and businesses directly. Transmission lines may operate at several hundred thousand volts and can serve several hundred thousand customers. Distribution lines operate at several thousand volts and can serve a few thousand customers. (The service connection to a home operates at a few hundred volts.)

A transmission line is usually centered in the ROW. The structures (usually poles and crossarms) keep the wires away from the ground, other objects, and each other. Structure height, type, span length (distance between structures), and ROW width are interrelated. If landowners wish to have fewer transmission structures installed on their land, they might ask if a longer span length is possible. To increase the span length, the utility might need to increase the structure height. If the span length and height are greatly increased, a wider ROW is sometimes needed. Attachment of the distribution wires

(distribution underbuild) to the structures can limit the transmission span length to maintain safe clearances below the distribution line.

## **How the Utility Obtains a ROW**

A utility obtains a ROW for an electric transmission line through the purchase of an easement or fee title ownership (purchasing the land). The most common arrangement is an easement. A utility real estate agent contacts a landowner to purchase an easement for a specific parcel or strip of land that is to be used for the power line.



An easement contract between the utility and the landowner is a legal restriction on land use that allows the utility to build and protect the power line and allows the landowner to retain general ownership and control of the land. The landowner sells the easement to the utility for a negotiated amount of money, generally paid in one lump sum. The contract specifies restrictions on both the utility's and the landowner's use of the land and specifies the rights of the utility. It is binding upon the utility, the landowner, and any future owners of the land until the contract is dissolved.

Sometimes, a new line needs to be installed in place of an older line that is in poor condition. If the existing ROW is not appropriate for the new line, a new ROW can be obtained through a new easement. New transmission easement agreements specify the type, height limits, and number of new structures; the line voltage; and the ROW width. If the ROW and structures are appropriate but the old easement can be improved in other ways, the utility might offer to renegotiate the easement contract. For example, some older easement contracts have wording that is difficult to interpret or a legal description that refers to an entire 40-acre parcel for the ROW when only a 60-foot-wide strip is needed. The utility may ask to renegotiate a contract when rebuilding an old line in order to clarify its relationship with the affected landowner.

Another arrangement for obtaining new power line rights-of-way is for the utility to purchase fee simple ownership. In this arrangement, a landowner sells the strip of land to the utility outright. The utility owns the ROW in "fee simple." This is a common arrangement for new substations, but it is used only occasionally for power line rights-of-way. The landowner would give up all the rights and responsibilities for the strip of land.

Transmission substations vary in size because of the different numbers of lines and different size lines and transformers in each one. A simple distribution substation may take less than one acre. Other types of substations may take up to six acres or more. Some land outside the substation fence may be needed for a road. If landscaping or earth berms are used to screen the substation, more land may be necessary.

If more land is purchased than is needed for the substation, the utility may sell it, rent it out for farming or other local uses, or retain it for potential substation expansions.

## **How a Utility Obtain Easements**

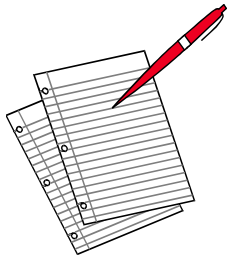
A utility acquires easements by negotiating with landowners on whose land the power line will be placed.

Easement negotiations might begin at different times, depending on the type of project and the type of certification the utility must receive from the PSC. Larger projects require a Certificate of Public Convenience and Necessity (CPCN). A CPCN is required when the transmission line is to be:

- Greater than or equal to 230 kV (kilovolts).
- Less than 230 kV but greater than or equal to 100 kV, over one mile in length, and needing new ROW.

A utility does not usually seek easement contracts for CPCN projects until it receives the CPCN. In CPCN cases, the project structures and routes are not certain until the PSC makes its decisions after a public hearing. For a lower voltage line, where a simpler Certificate of Authority (CA) and not a CPCN is needed, there may be only one proposed route and structure type. In CA cases, the utility may be certain enough about its project to begin easement negotiations before the CA has been issued.

Although the negotiation for an easement is a private transaction between the utility and the landowner, a formal process protects the rights of the landowner during the negotiation. This process is overseen by the Wisconsin Department of Commerce. A utility agent presents the easement contract to the landowner along with an estimate of the value of the property interest it wants to buy (and a booklet from the Department of Commerce describing the process of eminent domain, which is discussed in the next section of this Overview). The landowner has the right to have his or her own appraisal made by a qualified appraiser. The reasonable cost of this appraisal must be reimbursed by the utility 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.



The exact easement agreement between a utility and an individual differs from case to case. The landowner should not sign an easement agreement without first examining it, asking questions, and negotiating. Also, there is nothing barring one landowner along a proposed transmission route from discussing easement concerns with other landowners before signing.

The landowner may also examine the project application that the utility submitted to the PSC. For projects that require a CPCN, the PSC distributes copies of the application to the city, village, town, and county clerks in the project area and also provides a copy to the main public library in each county in the project area. Interested persons can also request copies directly from the utility.

### **Landowners' Rights and Waiving Those Rights**

Wisconsin law lists some rights of landowners whose properties are affected by a transmission line that is 100 kV or larger and over one mile in length. Table 1 lists these rights. The landowner may agree to waive, or give up, one or more of these rights but does not have to do so. In the easement contract, marked or crossed-out items in the list would be "waived" or no longer applicable if the landowner signs the contract.

**Table 1 Landowners' rights**

Landowners who have signed easement agreements with the utility have the specific rights listed in the Wisconsin Statutes. These rights are applicable for high voltage power lines (100 kV or larger, that are longer than one mile) built after 1976. If landowners have questions or problems related to these rights, they should contact the utility ROW specialist or the PSC at (608) 266-2001.

Under Wisconsin law [Wis. Stat. § 182.017(7)(c) to (h)], the 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









