

478.15 Eminent domain procedure entering on land reversion on nonuse.

Any person, company, or corporation having secured a franchise as provided in this chapter, shall thereupon be vested with the right of eminent domain to such extent as the utilities board may approve, prescribe and find to be necessary for public use, not exceeding one hundred feet in width for right of way and not exceeding one hundred sixty acres in any one location, in addition to right of way, for the location of electric substations to carry out the purposes of said franchise; provided however, that where two hundred K V lines or higher voltage lines are to be constructed, the person, company, or corporation may apply to the board for a wider right of way not to exceed two hundred feet, and the board may for good cause extend the width of such right of way for such lines to the person, company, or corporation applying for the same. The burden of proving the necessity for public use shall be on the person, company or corporation seeking the franchise. A homestead site, cemetery, orchard or schoolhouse location shall not be condemned for the purpose of erecting an electric substation. If agreement cannot be made with the private owner of lands as to damages caused by the construction of said transmission line, or electric substations, the same proceedings shall be taken as provided for taking private property for works of internal improvement.

Any person, company or corporation proposing to construct a transmission line or other facility which involves the taking of property under the right of eminent domain and desiring to enter upon the land, which it proposes to appropriate, for the purpose of examining or surveying the same, shall first file with the utilities board, a written statement under oath setting forth the proposed routing of the line or facility including a description of the lands to be crossed, the names and addresses of owners, together with request that a permit be issued by said board authorizing said person, company or corporation or its duly appointed representative to enter upon the land for the purpose of examining and surveying and to take and use thereon any vehicle and surveying equipment necessary in making the survey. Said board shall within ten days after said request issue a permit, accompanied by such bond in such amount as the board shall approve, to the person, company or corporation making said application, if in its opinion the application is made in good faith and not for the purpose of harassing the owner of the land. If the board is of the opinion that the application is not made in good faith or made for the purpose of harassment to the owner of said land it shall set the matter for hearing and it shall be heard not more than twenty days after filing said application. Notice of the time and place of hearing shall be given by said board, to the owner of said land by registered mail with a return receipt requested, not less than ten days preceding date of hearing.

Any person, company or corporation that has obtained a permit in the manner herein prescribed may enter upon said land or lands, as above provided, and shall be liable for actual damages sustained in connection with such entry. An action in damages shall be the exclusive remedy.

If an electric transmission line right of way, or any part thereof, is wholly abandoned for public utility purposes by the relocation of the transmission lines, is not used or operated for a period of five years, or if its construction has been commenced and work has ceased and has not in good faith been resumed for five years, the right of way shall revert to the person or persons who, at the time of the abandonment or reversion, are the owners of the tract from which such right of way was taken. Following such abandonment of right of way, the owner or holder of purported fee title to such real estate may serve notice upon the owner of such right of way easement, or the owner's successor in interest, and upon any party in possession of said real estate, a written notice which shall (1) accurately describe the real estate in question, (2) set out the facts concerning ownership of the fee, ownership of the right of way easement, and the period of abandonment, and (3) notify said parties that such reversion shall be complete and final, and that the easement or other right shall be forfeited, unless said parties shall, within one hundred twenty days after the completed service of notice, file an affidavit with the county recorder of the county in which the real estate is located disputing the facts contained in said notice.

Said notice shall be served in the same manner as an original notice under the Iowa rules of civil procedure, except that when notice is served by publication no affidavit therefor shall be required before publication. If no affidavit disputing the facts contained in the notice is filed within one hundred twenty days, the party

serving the notice may file for record in the office of the county recorder a copy of the notice with proofs of service attached thereto or endorsed thereon, and when so recorded, the record shall be constructive notice to all persons of the abandonment, reversion, and forfeiture of such right-of-way.

[S13, § 2120-q; C24, 27, 31, 35, 39, § **8322**; C46, 50, 54, 58, 62, § 489.14; C66, 71, 73, 75, § 489.15; C77, 79, 81, § 478.15]

Footnotes

Condemnation procedure, chapter 6B