

## ELECTRIC TRANSMISSION LINES

### **478.1 Franchise.**

1. A person shall not construct, erect, maintain, or operate a transmission line, wire, or cable that is capable of operating at an electric voltage of sixty-nine kilovolts or more along, over, or across any public highway or grounds outside of cities for the transmission, distribution, or sale of electric current without first procuring from the utilities board within the utilities division of the department of commerce a franchise granting authority as provided in this chapter.
2. A franchise shall not be required for electric lines constructed entirely within the boundaries of property owned by a person primarily engaged in the transmission or distribution of electric power or entirely within the boundaries of property owned by the end user of the electric power.
3. If the transmission line, wire, or cable is capable of operating only at an electric voltage of less than sixty-nine kilovolts, no franchise is required. However, the utilities board shall retain jurisdiction over all such lines, wires, or cables.
4. A person who seeks to construct, erect, maintain, or operate a transmission line, wire, or cable that will operate at an electric voltage of less than sixty-nine kilovolts outside of cities and that cannot secure the necessary voluntary easements to do so may petition the board pursuant to section 478.3, subsection 1, for a franchise granting authority for such construction, erection, maintenance, or operation, and for the use of the right of eminent domain.

[S13, § 1527-c, 2120-n; C24, 27, 31, 35, 39, § **8309**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 489.1; C77, 79, 81, § 478.1]

84 Acts, ch 1101, § 2; 94 Acts, ch 1136, §1; 97 Acts, ch 113, §1; 2002 Acts, ch 1048, §1, 5

### **Footnotes**

Authorization in cities, § 364.2

### **478.2 Petition for franchise informational meetings held.**

1. Any person authorized to transact business in the state including cities may file a verified petition asking for a franchise to erect, maintain, and operate a line or lines for the transmission, distribution, use, and sale of electric current outside cities and for such purpose to erect, use, and maintain poles, wires, guy wires, towers, cables, conduits, and other fixtures and appliances necessary for conducting electric current for light, heat, or power over, along, and across any public lands, highways, streams, or the lands of any person, company, or corporation, and to acquire necessary interests in real estate for such purposes.
2. As conditions precedent to the filing of a petition with the utilities board requesting a franchise for a new transmission line, and not less than thirty days prior to the filing of such petition, the person shall hold informational meetings in each county in which real property or rights will be affected.
  - a. A member of the board, the counsel of the board, or a hearing examiner designated by the board shall serve as the presiding officer at each meeting, shall present an agenda for such meeting which shall include a summary of the legal rights of the affected landowners, and shall distribute and review the statement of individual rights required under section 6B.2A, subsection 1. A formal record of the meeting shall not be required.
  - b. The meeting shall be held at a location reasonably accessible to all persons that may be affected by the

granting of the franchise.

3. The person seeking the franchise for a new transmission line shall give notice of the informational meeting to each person, company, or corporation determined to be the landowner affected by the proposed project and any person, company, or corporation in possession of or residing on the property.

a. For the purposes of this section, unless the context otherwise requires:

(1) "*Landowner*" means a person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property.

(2) "*Transmission line*" means any line capable of operating at sixty-nine kilovolts or more and extending a distance of not less than one mile across privately owned real estate.

b. The notice shall contain the following:

(1) The name of the applicant.

(2) The applicant's principal place of business.

(3) A general description and purpose of the proposed project.

(4) The general nature of the right-of-way desired.

(5) The possibility that the right-of-way may be acquired by condemnation if approved by the utilities board.

(6) A map showing the route of the proposed project.

(7) A description of the process used by the utilities board in making a decision on whether to approve a franchise or grant the right to take property by eminent domain.

(8) A statement that the landowner has the right to be present at such meetings and to file objections with the utilities board.

(9) The place and time of the meeting.

c. The notice shall be served not less than thirty days prior to the time set for the meeting by certified mail with return receipt requested and shall be published once in a newspaper of general circulation in the county at least one week and not more than three weeks before the time of the meeting and such publication shall be considered notice to landowners whose residence is not known.

4. A person seeking rights under this chapter shall not negotiate or purchase any easements or other interests in land in any county known to be affected by the proposed project prior to the informational meeting.

[S13, § 2120-n; C24, 27, 31, 35, 39, § **8310**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 489.2; C77, 79, 81, § 478.2]

94 Acts, ch 1136, §2; 2000 Acts, ch 1179, §22, 30; 2002 Acts, ch 1048, §2, 5

### **478.3 Petition requirements.**

1. All petitions shall set forth:

- a. The name of the individual, company, or corporation asking for the franchise.
  - b. The principal office or place of business.
  - c. The starting points, routes, and termini of the proposed lines, accompanied with a map or plat showing such details.
  - d. A general description of the public or private lands, highways, and streams over, across, or along which any proposed line will pass.
  - e. General specifications as to materials and manner of construction.
  - f. The maximum voltage to be carried over each line.
  - g. Whether or not the exercise of the right of eminent domain will be used and, if so, a specific reference to the lands described in paragraph "d" which are sought to be subject thereto.
  - h. An allegation that the proposed construction is necessary to serve a public use.
2. Petitions for transmission lines capable of operating at sixty-nine kilovolts or more and extending a distance of not less than one mile across privately owned real estate shall also set forth an allegation that the proposed construction represents a reasonable relationship to an overall plan of transmitting electricity in the public interest and substantiation of such allegations, including but not limited to, a showing of the following:
- a. The relationship of the proposed project to present and future economic development of the area.
  - b. The relationship of the proposed project to comprehensive electric utility planning.
  - c. The relationship of the proposed project to the needs of the public presently served and future projections based on population trends.
  - d. The relationship of the proposed project to the existing electric utility system and parallel existing utility routes.
  - e. The relationship of the proposed project to any other power system planned for the future.
  - f. The possible use of alternative routes and methods of supply.
  - g. The relationship of the proposed project to the present and future land use and zoning ordinances.
  - h. The inconvenience or undue injury which may result to property owners as a result of the proposed project.

The utilities board may waive the proof required for such allegations which are not applicable to a particular proposed project.

The petition shall contain an affidavit stating that informational meetings were held in each county which the proposed project will affect and the time and place of each meeting.

3. For the purpose of this section, the term "*public*" shall not be interpreted to be limited to consumers located in this state.

[S13, § 2120-n; C24, 27, 31, 35, 39, § **8311**; C46, 50, 54, 58, 62, 66, 71, 73, 75, § 489.3; C77, 79, 81, § 478.3]

#### **478.4 Franchise hearing.**

The utilities board shall consider the petition and any objections filed to it in the manner provided. It shall examine the proposed route or cause any engineer selected by it to do so. If a hearing is held on the petition it may hear testimony as may aid it in determining the propriety of granting the franchise. It may grant the franchise in whole or in part upon the terms, conditions, and restrictions, and with the modifications as to location and route as may seem to it just and proper. Before granting the franchise, the utilities board shall make a finding that the proposed line or lines are necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. A franchise shall not become effective until the petitioners shall pay, or file an agreement to pay, all costs and expenses of the franchise proceeding, whether or not objections are filed, including costs of inspections or examinations of the route, hearing, salaries, publishing of notice, and any other expenses reasonably attributable to it. The funds received for the costs and the expenses of the franchise proceeding shall be remitted to the treasurer of state for deposit in the general fund of the state as provided in section 476.10.

[S13, § 2120-n; C24, 27, 31, 35, 39, § **8312, 8313**; C46, 50, 54, 58, 62, § 489.4, 489.5; C66, 71, 73, 75, § 489.4; C77, 79, 81, § 478.4]

87 Acts, ch 234, § 431; 94 Acts, ch 1107, §82

#### **478.5 Notice objections filed.**

Upon the filing of such petition, the utilities board shall cause a notice, addressed to the citizens of each county through which the proposed line or lines will extend, to be published in a newspaper located in each such county for two consecutive weeks. Said notice shall contain a general statement of the contents and purpose of the petition, a general description of the lands and highways to be traversed by the proposed line or lines, and shall state that any objections thereto must be filed in writing with the board not later than twenty days after the date of last publication of the notice. Any person, company, city or corporation whose rights may be affected, shall have the right to file written objections to the proposed improvement or to the granting of such franchise; such objections shall be filed with the board not later than twenty days after the date of last publication and shall state the grounds therefor. The board may allow objections to be filed later in which event the applicant must be given reasonable time to meet such late objections.

[S13, § 2120-n; C24, 27, 31, 35, 39, § **8312, 8313**; C46, 50, 54, 58, 62, § 489.4, 489.5; C66, 71, 73, 75, § 489.5; C77, 79, 81, § 478.5]

#### **478.6 Taking under eminent domain.**

Upon the filing of objections or when a petition involves the taking of property under the right of eminent domain, the utilities board shall set the matter for hearing and fix a time and place for the hearing. The hearing shall be not less than thirty days from the date of last publication and, where a new proposed transmission line exceeds one mile in length, shall be held in the county seat of the county located at the midpoint of the proposed electric transmission line. Written notice of the time and place of the hearing shall be served by the board, by ordinary mail, on the applicant, and those having filed objections. If no objections are filed and the petition does not involve the taking of property under the right of eminent domain, the board may grant a franchise without a hearing; however, the board may conduct a hearing if the board deems it necessary.

Where a petition seeks the use of the right of eminent domain over specific parcels of real property, the board shall prescribe the notice to be served upon the owners of record and parties in possession of the property over which the use of the right of eminent domain is sought. The notice shall include the statement of

individual rights required pursuant to section 6B.2A, subsection 1.

When the board grants a franchise to any person, company, or corporation for the construction, erection, maintenance, and operation of transmission lines, wires, and cables for the transmission of electricity, such person, company, or corporation shall be vested with the power of condemnation to such extent as the board may approve and find necessary for public use.

[C66, 71, 73, 75, § 489.6; C77, 79, 81, § 478.6; 81 Acts, ch 159, § 1]

2000 Acts, ch 1179, §23, 30

#### **478.7 Form of franchise.**

The general counsel for the utilities board shall prepare a blank form of franchise, which shall provide space for a general description of the improvement authorized, the name and address of the person or corporation to whom granted, the general terms and conditions upon which the franchise is granted, and other things as necessary. This blank form shall be filled out and signed by the chairperson of the utilities board which grants the franchise, and the official seal shall be attached. The franchise is subject to regulations and restrictions as the general assembly prescribes, and to rules, not inconsistent with statutes, as the utilities board may establish.

[S13, § 2120-n; C24, 27, 31, 35, 39, § **8314**; C46, 50, 54, 58, 62, § 489.6; C66, 71, 73, 75, § 489.7; C77, 79, 81, § 478.7]

83 Acts, ch 127, § 41

#### **Footnotes**

Legislative control in general, § 491.39

#### **478.8 Valuation of franchise.**

No financial consideration shall be charged for such franchise. In fixing the value for rate-making purposes of the property of any person, company, or corporation owning it or operating under it no account shall be taken of, and no increased value shall be allowed for, any such franchise, except that the reasonable cost to the petitioners of obtaining said franchise may be included in the cost of constructing said line.

[C24, 27, 31, 35, 39, § **8315**; C46, 50, 54, 58, 62, § 489.7; C66, 71, 73, 75, § 489.8; C77, 79, 81, § 478.8]

#### **478.9 Exclusive rights duration of franchise.**

No exclusive right shall ever be given by franchise or otherwise to any person, company, corporation or city to conduct electrical energy, or to place electric wires, along or over or across any public highway or public place or ground; and no franchise or privilege shall ever be granted for any such purpose for a longer period than twenty-five years.

[C24, 27, 31, 35, 39, § **8316**; C46, 50, 54, 58, 62, § 489.8; C66, 71, 73, 75, § 489.9; C77, 79, 81, § 478.9]

#### **478.10 Franchise transferable notice.**

When any such electric transmission line or lines are sold and transferred either by voluntary or judicial sale, such transfer shall carry with it the franchise under which the said improvement is owned, maintained, or operated. If a transfer of such franchise is made before the improvement for which it was issued is

constructed, in whole or in part, such transfer shall not be effective till the person, company, or corporation to whom it was issued shall file in the office of the utilities board granting the franchise a notice in writing stating the date of such transfer and the name and address of the transferee.

[C24, 27, 31, 35, 39, § 8317; C46, 50, 54, 58, 62, § 489.9; C66, 71, 73, 75, § 489.10; C77, 79, 81, § 478.10]

#### **478.11 Record of franchises.**

The utilities board shall keep a record of all such franchises granted and issued by it, when and to whom issued, with a general statement of the location, route, and termini of the transmission line or lines covered thereby. When any transfer of such franchise has been made as provided in this chapter, the board shall also make note upon its record of the date of such transfer and the name and address of the transferee.

[C24, 27, 31, 35, 39, § 8318; C46, 50, 54, 58, 62, § 489.10; C66, 71, 73, 75, § 489.11; C77, 79, 81, § 478.11]

#### **478.12 Acceptance of franchise.**

Any person, company, or corporation obtaining a franchise as in this chapter provided, or owning or operating under one, shall be conclusively held to an acceptance of the provisions thereof and of all laws relating to the regulation, supervision, or control thereof which are now in force or which may be hereafter enacted, and to have consented to such reasonable regulation as the utilities board may, from time to time, prescribe. The provisions of this chapter shall apply equally to assignees as well as to original owners.

[S13, § 2120-p; C24, 27, 31, 35, 39, § 8319; C46, 50, 54, 58, 62, § 489.11; C66, 71, 73, 75, § 489.12; C77, 79, 81, § 478.12]

#### **478.13 Extension of franchise public notice.**

1. Any person, firm, or corporation owning a franchise granted under this chapter or previously existing law may petition the utilities board for an extension of the franchise. The board shall adopt rules governing extension applications and proceedings with the intent that the extension applications and proceedings are less extensive than original applications and proceedings. Assessment of costs shall be as provided in section 478.4.

2. If the extension of franchise is sought for all lines in a given county or counties, the published notice need not contain a general description of the lands and highways traversed by the lines, but in lieu of containing such description the petitioner may offer to provide to any interested party, free of charge and within ten working days, a current, accurate map showing the location of the lines for which the franchise extension is sought. The public notice shall advise the citizens of the county or counties affected of the availability of such map. If this alternate procedure is not followed, the publication of the description of the lands and highways traversed by the lines shall be done in the manner as in an original application for franchise.

3. An extension under this section shall be granted only for a valid, existing franchise, and the lands, roads, or streams covered by the franchise over, through, or upon which electric transmission lines have in fact been erected or constructed and are in use or operation at the time of the application for the extension of the franchise.

4. The application for the extension of the franchise shall be accompanied by the written consent of the applicant that the provisions of all laws relating to public utilities, franchises, and transmission lines, or to the regulation, supervision, or control thereof which are then in force or which may be thereafter enacted, shall apply to its existing line or lines, franchises, and rights as if the franchise had been granted, the lines had been constructed, or rights had been obtained under the provisions of this chapter.

5. An extension of a franchise is not required for an electric transmission line that has been permanently retired from operation at sixty-nine kilovolts or more but that remains in service at a lower voltage. The board shall be notified of changes in operating status.

[S13, § 2120-o; C24, 27, 31, 35, 39, § **8320**; C46, 50, 54, 58, 62, § 489.12; C66, 71, 73, 75, § 489.13; C77, 79, 81, § 478.13]

94 Acts, ch 1136, §4; 97 Acts, ch 63, §1; 2002 Acts, ch 1048, §4, 5; 2002 Acts, ch 1097, §1

#### **478.14 Service furnished.**

Any city which owns or operates a system for the distribution of electric light or power, and which has obtained electric energy for such distribution from any person or firm or corporation owning or operating an electric light and power plant or transmission line, shall be entitled to have the service reasonably needed by such municipality and its patrons continued at and for a reasonable rate and charge and under reasonable rules of service.

It shall be unlawful for the owner or operator of such light and power plant or transmission line to disconnect or discontinue such service (except during nonpayment of reasonable charges) so long as such operator holds or enjoys any franchise to go upon or use any public streets, highways, or grounds.

Until the municipality and the operator shall agree upon a rate or charge for such service the municipality shall pay and the operator shall accept the rate provided in the expired contract if any existed, and if none existed then the rate before paid. This shall be without prejudice, however, to the right of either party to test in court or before any lawfully constituted rate-making tribunal the reasonableness of such rate.

This section shall not apply if the original service to the municipality was given in case of emergency or for any other temporary purpose.

[C24, 27, 31, 35, 39, § **8321**; C46, 50, 54, 58, 62, § 489.13; C66, 71, 73, 75, § 489.14; C77, 79, 81, § 478.14]

#### **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

**478.16 Injury to person or property.** Repealed by 86 Acts, ch 1198, § 1.

**478.17 Access to lines damages.**

Individuals or corporations operating such transmission lines shall have reasonable access to the same for the purpose of constructing, reconstructing, enlarging, repairing, or locating the poles, wires, or construction and other devices used in or upon such line, but shall pay to the owner of such lands and of crops thereon all damages to said lands or crops caused by entering, using, and occupying said lands for said purposes. Nothing herein contained shall prevent the execution of an agreement between the person or company owning or operating such line and the owner of said land or crops with reference to the use thereof.

[S13, § 2120-t; C24, 27, 31, 35, 39, § 8324; C46, 50, 54, 58, 62, § 489.16; C66, 71, 73, 75, § 489.17; C77, 79, 81, § 478.17]

#### **478.18 Supervision of construction location.**

1. The utilities board shall have power of supervision over the construction of a transmission line and over its future operation and maintenance.

2. A transmission line shall be constructed near and parallel to roads, to the right-of-way of the railways of the state, or along the division lines of the lands, according to the government survey, wherever the same is practicable and reasonable, and so as not to interfere with the use by the public of the highways or streams of the state, nor unnecessarily interfere with the use of any lands by the occupant.

[S13, § 2120-r; C24, 27, 31, 35, 39, § 8325; C46, 50, 54, 58, 62, § 489.17; C66, 71, 73, 75, § 489.18; C77, 79, 81, § 478.18]

2002 Acts, ch 1097, §2

#### **Footnotes**

Removal from highway, chapter 319

#### **478.19 Manner of construction.**

Such lines shall be built of strong and proper wires attached to strong and sufficient supports properly insulated at all points of attachment; all wires, poles, and other devices which by ordinary wear or other causes are no longer safe shall be removed and replaced by new wires, poles, or other devices, as the case may be, and all abandoned wires, poles, or other devices shall be at once removed. Where wires carrying current are carried across, either above or below wires used for other service, the said transmission line shall be constructed in such manner as to eliminate, so far as practicable, damages to persons or property by reason of said crossing. There shall also be installed sufficient devices to automatically shut off electric current through said transmission line whenever connection is made whereby current is transmitted from the wires of said transmission line to the ground, and there shall also be provided a safe and modern improved device for the protection of said line against lightning. The utilities board shall have power to make and enforce such further and additional rules relating to location, construction, operation and maintenance of said transmission line as may be reasonable.

All transmission lines, wires or cables outside of cities for the transmission, distribution or sale of electric current at any voltage shall be constructed and maintained in accordance with standards adopted by rule by the utilities board.

[S13, § 2120-r; C24, 27, 31, 35, 39, § 8326; C46, 50, 54, 58, 62, § 489.18; C66, 71, 73, 75, § 489.19; C77, 79, 81, § 478.19]

84 Acts, ch 1101, § 3

#### **478.20 Distance from buildings.**

No transmission line shall be constructed, except by agreement, within one hundred feet of any dwelling house or other building, except where said line crosses or passes along a public highway or is located alongside or parallel with the right of way of any railway company. In addition to the foregoing, each person, company, or corporation shall conform to any other rules, regulations, or specifications established by the utilities board, in the construction, operation, or maintenance of such lines.

[S13, § 2120-r; C24, 27, 31, 35, 39, § 8327; C46, 50, 54, 58, 62, § 489.19; C66, 71, 73, 75, § 489.20; C77, 79, 81, § 478.20]

#### **478.21 Nonuse revocation of franchise extensions of time.**

1. If the improvement for which a franchise is granted is not constructed in whole or in part within two years from the date the franchise is granted, or within two years after final unappealable disposition of judicial review of a franchise order or of condemnation proceedings, the franchise shall be forfeited and the utilities board which granted the franchise shall revoke the franchise and make a record of the revocation, unless the person holding the franchise petitions the board for an extension of time.

2. Upon a showing of sufficient justification for the delay of construction, the board may grant one or more extensions of time for periods up to two years for each extension.

[C24, 27, 31, 35, 39, § 8329; C46, 50, 54, 58, 62, § 489.20; C66, 71, 73, 75, § 489.21; C77, 79, 81, § 478.21]

94 Acts, ch 1136, §5; 2002 Acts, ch 1097, §3

#### **478.22 Action for violation.**

When the board determines that a person is in violation of this chapter, the board may commence an action in the district court of the county in which the violation is alleged to have occurred, for injunctive relief or other appropriate remedy.

[C24, 27, 31, 35, 39, § 8330; C46, 50, 54, 58, 62, § 489.21; C66, 71, 73, 75, § 489.22; C77, 79, 81, § 478.22]

91 Acts, ch 112, §1

#### **478.23 Prior franchises legislative control.**

Any such franchise heretofore granted under previously existing law shall not be abrogated by the provisions of this chapter, but all such franchises and all franchises granted under the provisions of this chapter shall be subject to further legislative control.

[C24, 27, 31, 35, 39, § 8331; C46, 50, 54, 58, 62, § 489.22; C66, 71, 73, 75, § 489.23; C77, 79, 81, § 478.23]

#### **478.24 Violations.**

Any person, company or corporation constructing or undertaking to construct or maintain any electric transmission line, without first procuring a franchise for such purpose in accordance with the provisions of this chapter, shall be guilty of a serious misdemeanor; and for violating any of the other provisions of this chapter relating to electric transmission lines or disobeying any order or rule made by the utilities board in relation thereto, shall be guilty of a simple misdemeanor.

[S13, § 1527-d; C24, 27, 31, 35, 39, § 8332; C46, 50, 54, 58, 62, § 489.23; C66, 71, 73, 75, § 489.24; C77, 79, 81, § 478.24]

#### **478.25 Wire crossing railroads supervision.**

The utilities board shall have general supervision over any and all wires whatsoever crossing under or over any railway track and shall make rules prescribing the manner in which such wires shall cross such track; but in no case shall the board prescribe a less height for any wire than twenty-two feet above the top of the rails

of any railroad track.

[S13, § 2120-d, -e, -h; C24, 27, 31, 35, 39, § **8333**; C46, 50, 54, 58, 62, § 489.24; C66, 71, 73, 75, § 489.25; C77, 79, 81, § 478.25]

#### **478.26 Wires across railroad right of way at highways.**

The utilities board shall prescribe the manner for the crossing of wires over and across railroad rights of way at highways and other places within the state.

[S13, § 2120-i; C24, 27, 31, 35, 39, § **8334**; C46, 50, 54, 58, 62, § 489.25; C66, 71, 73, 75, § 489.26; C77, 79, 81, § 478.26]

#### **478.27 Wires how strung.**

No corporation or person shall place or string any such wire for transmitting electric current or any wire whatsoever across any track of a railroad except in the manner prescribed by the utilities board.

[S13, § 2120-f; C24, 27, 31, 35, 39, § **8335**; C46, 50, 54, 58, 62, § 489.26; C66, 71, 73, 75, § 489.27; C77, 79, 81, § 478.27]

#### **478.28 Examination of existing wires.**

The utilities board shall, either by personal examination or otherwise, obtain information where railroad tracks are crossed by wires contrary to, or not in compliance with, the rules prescribed by it. It shall order such change or changes to be made by the persons or corporations owning or operating such wires as may be necessary to make the same comply with said rules and within such reasonable time as it may prescribe.

[S13, § 2120-g; C24, 27, 31, 35, 39, § **8336**; C46, 50, 54, 58, 62, § 489.27; C66, 71, 73, 75, § 489.28; C77, 79, 81, § 478.28]

#### **478.29 Civil penalties.**

A person who violates a provision of this chapter is subject to a civil penalty, which may be levied by the board, of not more than one hundred dollars per violation or one thousand dollars per day of a continuing violation, whichever is greater. Civil penalties collected pursuant to this section shall be forwarded by the executive secretary of the board to the treasurer of state to be credited to the Iowa energy center created in section 266.39C.

Any civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in compromise, the board shall consider the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance after notification of a violation.

[S13, § 2120-j; C24, 27, 31, 35, 39, § **8337**; C46, 50, 54, 58, 62, § 489.28; C66, 71, 73, 75, § 489.29; C77, 79, 81, § 478.29]

83 Acts, ch 127, § 42; 91 Acts, ch 112, § 2

#### **478.30 Crossing highway.**

Nothing in this chapter shall prevent any such individual or corporation having its high tension line on its own private right of way on both sides of any highway, from crossing such public highway under such rules

and regulations as the utilities board may prescribe, and subject from time to time to legislative control as to duration and use.

[C24, 27, 31, 35, 39, § 8338; C46, 50, 54, 58, 62, § 489.29; C66, 71, 73, 75, § 489.30; C77, 79, 81, § 478.30]

#### **478.31 Temporary permits for lines less than one mile.**

Notwithstanding the provisions of section 478.1 any person, company or corporation proposing to construct an electric transmission line not exceeding one mile in length and which does not involve the taking of property under the right of eminent domain may obtain a temporary construction permit from the utilities board by proceeding in the manner hereinafter set forth. Said person, company or corporation shall first file with the board a verified petition setting forth the requirements of section 478.3, subsection 1, paragraphs "a" through "h", with the further allegation that the petitioner is the nearest electric utility to the proposed point of service.

The petition shall also state that the filing thereof constitutes an application for a temporary construction permit and shall also have endorsed thereon the approval of the appropriate highway authority or railroad concerned if such line is to be constructed over, across or along a public highway or railroad.

Upon receipt of such petition the utilities board shall consider same and may grant a temporary construction permit in whole or in part or upon such terms, conditions and restrictions, and with such modifications as to location as may seem to it just and proper, however, no finding of public use will be made at the time of the issuance of the permit, such finding to be made, if substantiated by petitioner, at the subsequent consideration of the propriety of granting a franchise for the line subject to the permit. The signature of one utilities board member on such permit shall be sufficient. The issuance of such permit shall constitute temporary authority for the permit holder to construct the line for which the permit is granted.

Upon the granting of such temporary construction permit the utilities board shall cause the publication of notice required by section 478.5 and all other requirements shall be complied with as in the manner provided for the granting of a franchise. If a hearing is required then the petitioner shall make a sufficient and proper showing thereat before a franchise will be issued for the line. Any franchise issued will be subject to all applicable provisions of this chapter.

Notwithstanding anything foregoing, if the utilities board shall determine that a franchise should not be granted, or that further restrictions, conditions or modifications are required, or if the petitioner shall fail to make a sufficient and proper showing of the necessity for the granting of a franchise within six months of the granting of the temporary construction permit, the permit issued hereunder shall become null and void and the permit holder may be required to take such action deemed necessary by the board to remove, modify or relocate the construction undertaken by virtue of the temporary permit issued hereunder.

[C66, 71, 73, 75, § 489.31; C77, 79, 81, § 478.31]

#### **478.32 Rehearing judicial review.**

Any person, company, or corporation aggrieved by the action of the utilities board in granting or failing to grant a franchise under the provisions of this chapter, shall be entitled to the rehearing procedure provided in section 476.12. Judicial review of actions of the board may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

[C71, 73, 75, § 489.32; C77, 79, 81, § 478.32]

## Footnotes

See § 476.13

### **478.33 Cancellation.**

A person seeking to acquire an easement or other property interest for the construction, maintenance or operation of an electric transmission line shall:

1. Allow the landowner or a person serving in a fiduciary capacity in the landowner's behalf to cancel any agreement granting an easement or other interest by certified mail with return requested to the company's principal place of business if received by the company within seven days, excluding Saturday and Sunday, of the date of the contract and inform the landowner or such fiduciary in writing of the right to cancel prior to the signing of the agreement by the landowner or such fiduciary.
2. Provide the landowner or a person serving in a fiduciary capacity in the landowner's behalf with a form in duplicate for the notice of cancellation.
3. Not record any agreement until after the period for cancellation has expired.
4. Not include in the agreement any waiver of the right to cancel in accordance with this section. The landowner or a person serving in a fiduciary capacity in the landowner's behalf may exercise the right of cancellation only once for each transmission line project.

[C81, § 478.33]

**478.34 and 478.35** Reserved.

**478.36 Subsequent construction near buried line.** Repealed by 92 Acts, ch 1103, § 11, 12. See chapter 480.