

Wisconsin Legislative Council



Anne Sappenfield
Director

TO: REPRESENTATIVE ROBERT BROOKS

FROM: Anna Henning, Principal Attorney

RE: Regulation of Large Electric Transmission Line Siting and Electric Utilities' Eminent Domain Authority

DATE: August 27, 2025

At your request, this memorandum briefly summarizes: (1) the regulatory process for siting large electric transmission lines in Wisconsin; and (2) public utilities' authority to use eminent domain.

STATE ELECTRIC SITING PRIORITIES

Wisconsin's state energy policy includes locational priorities for siting large electric transmission lines.¹ Section 1.12 (6), Stats., states that:

...it is the policy of this state that, to the greatest extent feasible that is consistent with economic and engineering considerations, reliability of the electric system, and protection of the environment, the following corridors should be utilized in the following order of priority:

- (a) Existing utility corridors.
- (b) Highway and railroad corridors.
- (c) Recreational trails, to the extent that the facilities may be constructed below ground and that the facilities do not significantly impact environmentally sensitive areas.
- (d) New corridors.

Together with the Department of Natural Resources and the Department of Transportation, the Public Service Commission (PSC) must implement the policy above "in making all decisions, orders, and rules affecting the siting of new electric transmission facilities." [s. 196.025 (1m), Stats.] In practice, whether locating a proposed transmission line within an existing utility, highway, or railway corridor is

¹ The locational priorities were created in 2003 Wisconsin Act 89, as part of a larger set of changes enacted to streamline regulatory processes for certain electric and natural gas facilities.

“feasible” may depend on determinations the PSC makes when exercising its authority under the regulatory process discussed below.²

STATE REGULATION OF ELECTRIC TRANSMISSION LINE SITING

Any entity seeking to construct a high-voltage transmission line³ must first obtain a certificate of public convenience and necessity (CPCN) from the PSC. [s. 196.491 (3) (a) 1., Stats.] The PSC may not grant a CPCN unless it finds that a proposal satisfies a range of statutory requirements. For example, a proposal must not provide facilities unreasonably in excess of future needs or add to the cost of service without proportionately increasing the value or quantity of service, and the proposal must satisfy the public’s energy needs.

Most relevant to siting, the PSC must determine that all of the following criteria are satisfied before granting a CPCN for a given proposal:

- The proposal’s design and location is in the public interest considering alternative sources of supply, alternative locations, individual hardships, engineering, economic, safety, reliability, and environmental factors.
- The proposed facility will not have undue adverse impact on ecological balance, public health and welfare, historic sites, geological formations, the aesthetics of land and water, and recreational use.
- The proposal will not unreasonably interfere with the orderly land use and development of the area involved.

[s. 196.491 (3) (d), Stats.]

To assist the PSC in determining whether those criteria are satisfied, the PSC’s administrative rules require a CPCN application for a proposed electric transmission line to include certain information regarding proposed routes for the line. Together with a range of other information regarding each route option, the application must specify the pertinent factors considered in choosing those routes, including engineering, economic, safety, reliability, and environmental considerations. [s. PSC 111.55 (10), Wis. Adm. Code.]

The statutes provide various opportunities for public input as part of the CPCN process, including opportunities for more informal input, such as by submitting written comments or speaking at “scoping sessions,” and more formal participation as a party to a contested case hearing. Both informal and formal comments submitted during the CPCN process are entered into the record for consideration by the PSC commissioners.

When approving a CPCN application, the PSC may impose conditions necessary to ensure that a proposed facility complies with the requirements specified under state law. [s. 196.491 (3) (e), Stats.]

POWER OF EMINENT DOMAIN

Wisconsin law authorizes various public and private entities to exercise the power of eminent domain to condemn property, subject to procedural and substantive requirements. Examples of such requirements

² See *Town of Holland v. PSC*, 2018 WI App 38 (upholding the PSC’s approval of a proposed transmission line location outside of an existing utility corridor, because the PSC had a rational basis for determining that the location within the existing corridor was not feasible).

³ In this context, a “high-voltage transmission line” generally means “a conductor of electric energy exceeding one-mile in length designed for operation at a nominal voltage of 100 kilovolts or more, together with associated facilities.” [s. 196.491 (1) (f), Stats.]

include payment of "just compensation" for property taken, a determination that a given condemnation is necessary, and a procedure for judicial review.⁴

That eminent domain authority extends to certain private entities, including public utilities, for limited purposes. Most relevant to this memorandum, Wisconsin law authorizes condemnation by both of the following types of private corporations:

- Any Wisconsin corporation furnishing electric light or power to the public, for additions or extensions to its plant and for the purpose of conducting tests or studies to determine the suitability of a site for the placement of a facility.
- Any Wisconsin corporation organized to furnish light to any city, village, or town or the inhabitants thereof, for the construction and maintenance of its plant.

[s. 32.02 (6) and (8), Stats.]

If a proposed condemnation relates to a project for which a CPCN is required under Wisconsin's utility regulations, the power of condemnation generally arises only after the PSC has issued a CPCN for the project. [s. 32.03 (5) (a), Stats.] In addition, a CPCN constitutes the determination of necessity for any such condemnation. [s. 32.07 (1), Stats.]

Wisconsin law generally requires an additional procedural step for condemnation of certain farmland. Specifically, the Department of Agriculture, Trade and Consumer Protection (DATCP) must prepare an "agricultural impact statement" for any project involving the "actual or potential exercise of eminent domain," if the project affects more than five acres of a farm operation⁵ that is at least partially located within a town.⁶ DATCP then must distribute an agricultural impact statement to various entities and groups. A condemning authority must wait until at least 30 days after the agricultural impact statement is distributed before negotiating with the relevant property owner. [s. 32.035, Stats.]

Please let me know if I can provide any further assistance.

AH:jal

⁴ For more information regarding landowners' rights in the condemnation process, see Department of Administration, *The Rights of Landowners Under Wisconsin Eminent Domain Law*, <https://doa.wi.gov/Legal/The%20Rights%20of%20Landowners%20Under%20WI%20Eminent%20Domain%20Law.%20Procedures%20Under%2032.06%20read.pdf>.

⁵ In this context, "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural commodities resulting from specified agricultural uses, for sale and home use, and customarily producing the commodities in sufficient quantity to be capable of contributing materially to the operator's support. [s. 32.035 (1) (b), Stats.]

⁶ For projects affecting farmland located wholly within a city or village, DATCP may choose to prepare an agricultural impact statement if the potential condemnation would have a significant effect on any farm operation as a whole.