

§4710. Eminent domain

Subject to the provisions of this section, a natural gas utility may take and hold by right of eminent domain lands or rights in lands necessary to the safe, economical and efficient operation of a pipeline and to the provision of adequate service to the public. For purposes of this section, the term "natural gas utility" means an intrastate natural gas pipeline utility or a gas utility other than a gas utility over which the commission's jurisdiction is limited pursuant to section 4702-A. [PL 2011, c. 197, §3 (AMD).]

1. Conditions and standards. A natural gas utility may take and hold by right of eminent domain lands or rights in lands necessary to the safe, economical and efficient operation of the pipeline and to the provision of adequate service to the public if:

A. The natural gas utility has obtained from the commission:

- (1) In the case of a gas utility, authority to provide gas utility service to the area to be served by the proposed pipeline; or
- (2) In the case of an intrastate natural gas pipeline utility, authority pursuant to chapter 45 to construct and operate the proposed pipeline; [PL 1999, c. 605, §2 (NEW); PL 1999, c. 605, §3 (AFF).]

B. The natural gas utility has complied with the provisions of this chapter and in the case of a foreign natural gas utility with Title 13-C, chapter 15; [RR 2001, c. 2, Pt. B, §57 (COR); RR 2001, c. 2, Pt. B, §58 (AFF).]

C. The natural gas utility has obtained from the commission approval of the location to be taken in a proceeding conducted in accordance with the following.

- (1) The commission shall fix a time for a hearing and give written notice of the hearing to the property owner and to the utility seeking to acquire the property. The hearing must be held in the county where the property is situated, unless all parties agree to a different location. At the hearing, all parties in interest may be heard either in person or by attorney, and witnesses may be summoned by either party and attendance compelled as before other judicial tribunals.
- (2) The burden of proof to show the necessity of the particular taking rests on the utility seeking to acquire the property.
- (3) The decision of a majority of the commissioners is final as to questions of fact.
- (4) The commission must issue a written approval if it finds that the taking is necessary and in the public interest, except that the commission's examination of environmental issues affecting the public interest may consist only of whether the natural gas utility has obtained required environmental permits for the proposed pipeline, excluding permits that the utility can not obtain without possessing rights in the property proposed to be taken.
- (5) The commission shall issue a written decision within 30 days of a filing of a request for approval, except that the commission may extend its review of the request for an additional 30 days if it determines additional time is necessary to adequately complete its review. The commission may extend its review for more than an additional 30 days if a party requests an extension of more than 30 days and the commission finds that the additional time is required to avoid unfairness to a party; and [PL 1999, c. 605, §2 (NEW); PL 1999, c. 605, §3 (AFF).]

D. The right of eminent domain is exercised in the manner and under the conditions set forth in chapter 65. [PL 1999, c. 605, §2 (NEW); PL 1999, c. 605, §3 (AFF).]
[RR 2001, c. 2, Pt. B, §57 (COR); RR 2001, c. 2, Pt. B, §58 (AFF).]

2. Public utility facilities. Nothing in this section authorizes a natural gas utility to take by eminent domain property or facilities of another public utility, used or acquired for use in the performance of a public duty, unless expressly authorized in this section or by an act of the Legislature. [PL 1999, c. 605, §2 (NEW); PL 1999, c. 605, §3 (AFF).]

3. Owner's consent required. A natural gas utility may not take, without the owner's consent:

A. Meetinghouses; [PL 1999, c. 605, §2 (NEW); PL 1999, c. 605, §3 (AFF).]

B. Dwelling houses; or [PL 1999, c. 605, §2 (NEW); PL 1999, c. 605, §3 (AFF).]

C. Public or private burying grounds. [PL 1999, c. 605, §2 (NEW); PL 1999, c. 605, §3 (AFF).]

[PL 1999, c. 605, §2 (NEW); PL 1999, c. 605, §3 (AFF).]

4. Public lands. A natural gas utility may not take by eminent domain lands or rights in:

A. A public street or highway; [PL 1999, c. 605, §2 (NEW); PL 1999, c. 605, §3 (AFF).]

B. A public park or reservation; [PL 1999, c. 605, §2 (NEW); PL 1999, c. 605, §3 (AFF).]

C. Other public property; or [PL 1999, c. 605, §2 (NEW); PL 1999, c. 605, §3 (AFF).]

D. The location of a railroad or public utility. [PL 1999, c. 605, §2 (NEW); PL 1999, c. 605, §3 (AFF).]

[PL 1999, c. 605, §2 (NEW); PL 1999, c. 605, §3 (AFF).]

5. Pipeline constructed under or through public property. A natural gas utility may construct a natural gas pipeline under or through a public highway or street, public park or reservation or other public property if the method, plans and specifications for construction have been approved by the authority having jurisdiction over the maintenance of the public highway or street, public park or reservation or other public property and the authority has granted a written location permit to the utility in accordance with section 2302. The natural gas utility has all the rights, privileges and duties arising out of section 2302 to the extent they apply to a natural gas utility.

[PL 1999, c. 605, §2 (NEW); PL 1999, c. 605, §3 (AFF).]

6. Pipelines constructed over or across railroad or public utility. A natural gas utility may construct a natural gas pipeline over or across the location of a railroad or public utility by agreement with the railroad or public utility or, in the event of failure to agree, with the commission's approval and in a place and manner and under conditions determined by the commission. Notwithstanding subsection 4, paragraph D, the commission's approval of a natural gas utility's crossing of a railroad may include authorization pursuant to this section for the natural gas utility to take by eminent domain an easement across the railroad. For purposes of this section "railroad" includes, but is not limited to, a railroad whose abandonment has been approved pursuant to 49 United States Code, Chapter 109. This subsection does not permit the commission to authorize the taking of an easement over lands owned by the State. All work on the property of a railroad or public utility must be done under the supervision and to the satisfaction of the railroad or public utility, but at the natural gas utility's expense. [PL 2001, c. 608, §4 (AMD).]

SECTION HISTORY

PL 1999, c. 605, §2 (NEW). PL 1999, c. 605, §3 (AFF). RR 2001, c. 2, §B57 (COR). RR 2001, c. 2, §B58 (AFF). PL 2001, c. 608, §4 (AMD). PL 2011, c. 197, §3 (AMD).

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