

Condemnation Cases (Sections 110 through 112)

This document is a summary of the procedural steps and opportunities for public participation when the Commission reviews a condemnation case (also known as “eminent domain”), which is regulated under [30 V.S.A. § 110 – 112](#). Underlined text will link you to more information about that step in the glossary or to an external website.

This document is a general guide for the public. It is not a comprehensive list of all the applicable statutory and regulatory requirements for such projects. Every project is unique, and this general guide cannot anticipate or explain all issues that may arise in a case. For specific guidance, please refer to the applicable statutes, rules, and legal precedent, or seek legal advice. Please feel free to contact the [Clerk of the Commission](#) if you have questions about the information in this document.

Typical Procedural Steps

Filing a Petition

Public Comments

Intervention

Scheduling Conference

Discovery

Testimony and Exhibits

Evidentiary Hearing

Stipulation or MOU

Briefs

Oral Argument

Decision

A condemnation case is the involuntary transfer from a landowner to a utility of private property that the utility needs to provide adequate service to the public, with compensation paid to the landowner.

Filing. A condemnation proceeding begins when a utility [files](#) a [petition](#) with the Commission asking to condemn a property interest such as an easement or a portion of land. The petition must explain why the company was unable to acquire the property right without condemnation, and why the property is needed.

The next step is for the Commission to issue a “citation” to the landowner, each affected municipality and planning commission, and any other person who has a legal interest in the property. The citation informs the recipients of the time and place for hearing the petition for condemnation, which begins with a [scheduling conference](#). Recipients of citations may become parties to the case by appearing at the scheduling conference and stating their intent to participate as a party.

Public Comments. [Public comments](#) about the proposed condemnation can be [filed with the Commission](#) at any time.

Intervention. If you did not receive a citation from the Commission, you can request to participate as a party in the condemnation by filing a motion to intervene. To make such a request, you must follow the standard procedures for filing a motion to intervene. For more information about these procedures, please see the explanation under [intervention](#) in the glossary and [Commission Rules 2.209 and 2.407](#).

Scheduling Conference. The purpose of a [scheduling conference](#) is to discuss procedural details and set the schedule leading to the evidentiary hearing and briefing in the case. Scheduling conferences are open to the public. After the scheduling conference, the Commission (or a hearing officer assigned to the case by the Commission) will issue an order summarizing the results of the scheduling conference, which generally include a schedule for the next steps in the case ([scheduling order](#)). Please see [Commission Rule 2.225](#).

Discovery. The discovery process takes place before an evidentiary hearing and allows the parties to the case to exchange information to get a better understanding of what facts they agree on and disagree about. Information produced in discovery is not evidence, unless the Commission admits it into evidence during the evidentiary hearing. Only the parties to the case are permitted to issue discovery requests. Parties to a case must follow standard procedures for discovery. For more information about these procedures, please see the explanation under [discovery](#) in the glossary and [Commission Rules 2.214 and 2.230](#).

Testimony and Exhibits. The parties to the case prepare [testimony](#) and [exhibits](#) that support their position on the case. When a party files testimony and exhibits, it must provide a copy to all the other parties in the case. The deadline for filing testimony and exhibits is usually set in the [scheduling order](#) issued by the Commission after the scheduling conference. Please see [Commission Rules 2.204 and 2.213](#).

Parties to a case may file an objection to the admissibility of some or all of another party's pre-filed testimony and exhibits. Typically objections must be filed at least 14 days before the evidentiary hearing. For more information on filing objections, please see [Commission Rules 2.216 and 2.217](#).

Evidentiary Hearing. At the [evidentiary hearing](#), the Commission will develop an evidentiary record on which to base its decision. This involves admitting the testimony and exhibits and conducting cross-examination of witnesses about their pre-filed testimony and exhibits. The Department of Public Service is required to present its findings and recommendations on the issue of need for the condemnation. The issue of compensation for the condemned property interest will be examined, too.

While the public is welcome to attend and observe an evidentiary hearing, only the parties are permitted to participate. Members of the public can become parties to a case by intervening following the process described above.

An evidentiary hearing may be conducted by the full Commission, two Commissioners, or a hearing officer. The parties must follow the procedures for evidentiary hearings. For more information about these procedures, please see the explanation under [evidentiary hearing](#) in the glossary.

Stipulation or Memorandum of Understanding. Two or more parties may agree to a settlement, also called a [stipulation](#) or [memorandum of understanding](#) (MOU) that resolves some or all of the disputed issues in a case. Settlements can be entered into at any point in a case and may be submitted to the Commission before or after the evidentiary hearing.

Briefs and Proposed Findings of Fact. The parties (and friends-of-the-court) will have an opportunity to file [briefs](#) and [proposed findings of fact](#) after the evidentiary hearing. A brief is a written document that presents a party's legal and factual arguments for consideration by the Commission. Briefs can include proposed findings of fact, which are statements of facts from the evidentiary record that a party wants the Commission to rely on when making its decision. Please see [Commission Rule 2.223](#).

If you are not a party but would like an opportunity to tell the Commission how you think the evidence and law should be applied in the case, you can make a request to file a [friend-of-the-court](#) brief.

Decision. If an evidentiary hearing is held by a hearing officer, he or she will issue an initial [proposal for decision](#) that recommends an outcome to the Commission. The parties to the case will have the opportunity to file written comments on the proposal for decision and ask for [oral argument](#) before the Commission. The Commission will consider the hearing officer's proposal for decision, the parties' comments, and any arguments made at oral argument. The Commission may accept, reject, or modify the proposal for decision and will issue a [final order](#) deciding the case.

If the evidentiary hearing is conducted by the Commission itself, no proposal for decision will be issued. Instead, the Commission will issue a final order following review of the parties' briefs.

If the Commission finds that the utility is entitled to condemn the property or right, the Commission will also determine the compensation to be paid to the property owner.

Final Commission orders are subject to [motions to alter or amend](#) (also referred to as [motions for reconsideration](#)) under [Commission Rule 2.221](#). A motion to alter or amend must be filed within 28 days after a final order is issued. Any final decision by the Commission may be appealed to the Vermont Superior Court. An appeal must be filed within 30 days after a final order is issued.

There are also condemnations that relate to utility lines that already exist. Such condemnations are governed by [Section 111\(a\)](#). This statute creates a different, specific process for when a utility line already exists but there is no evidence that an underlying property right was ever conveyed to the utility to put the line in place on the land. While the standards applied in [Section 111\(a\)](#) condemnations are different from ordinary condemnations, the process for participation is the same.

Up-to-date information about specific cases and deadlines can be accessed anytime in [ePUC](#) .