



## Chapter 3

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# Can a Right-of-Way for Electric Transmission or Gas Pipelines Be Used to Install Fiber Optic Lines Without Paying Additional Compensation to the Landowner?

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### § 3.01. Introduction.

Gas and electric companies in the United States own and operate an extensive network of pipelines and electric lines over public and private property. In general, the pipelines and electric lines are operated on private property pursuant to right-of-way agreements, and operated on public property pursuant to state law or local regulations. These utility rights-of-way are an important asset, especially in heavily developed areas where it would be very expensive to develop such corridors today.

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In recent years, gas and electric companies have sought to exploit that asset by using the rights-of-way for fiber optic lines. Some companies have sought to use the rights-of-way themselves for fiber optic lines and others have sought to sell the right to lay fiber optic lines to telecommunications companies. The use of gas and electric rights-of-way for fiber optic lines, however, raises questions of whether the original easements granted the right to install and operate fiber optic lines. Must the original landowners be compensated since the gas and electric companies are profiting from such transactions? Can the gas and electric companies sell or lease the right to third parties? Finally, must the gas and electric companies allow every telecommunication carrier access to their rights-of-way and pipelines so they can lay fiber optic lines or can they maintain control over to the rights-of-way?

Section 3.02 of this chapter gives a general background on rights-of-way, and the law that applies to rights-of-way. This section distinguishes the difference between private property rights-of-way and public property rights-of-way. Section 3.03 of this chapter discusses whether easements for gas pipelines and electric lines include the right to lay fiber optic lines. Section 3.04 analyzes the ability of the gas or electric company to sell or lease any rights to install and operate fiber optic lines. Section 3.05 covers possible causes of actions that landowners may have against gas or electric companies for installing fiber optic lines in the existing rights-of-way. Section 3.06 raises the issue of whether the easement owners must give all telecommunication companies access to their lines or, if they can, keep these companies out at their discretion.

### **§ 3.02. Rights-of-Way Generally.**

#### **[1] — Over Private Property.**

A right-of-way is the right belonging to a party to pass over the land of another.<sup>2</sup> A right-of-way is an easement and it is considered to be land.<sup>3</sup> Specifically, a right to lay underground pipes in the land of another is an

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<sup>2</sup> *Ryder v. Petrea*, 416 S.E.2d 686, 688 (Va. 1992).

<sup>3</sup> *Panhandle Eastern Pipe Line Co. v. State Highway Comm'n*, 294 U.S. 613, 618 (1935).