§ 15-1729. Eminent domain.

Real property may be acquired pursuant to title 17 of this article under an exercise of the right of eminent domain in the following cases:

1. Real property which is necessary to the full development and utilization of any water power site of which the state is the owner, in whole or in part.

2. Real property which is necessary to the full development of water power sites where such water power sites on a stream, or in a given locality cannot be developed separately as efficiently and economically for the generation of power as under a plan for their development together and the owner or owners of the right to the use of the greater part of the head and volume of usable flow for power at such sites transfer the same to a corporation organized for the production, sale and distribution of heat, light and power to the public as herein provided, or such right is owned by such a corporation and the department determines by resolution that such power sites can be more efficiently and economically developed for the production of power under such a plan than singly, and the heat, light or power is necessary for public use.

3. Real property, on the application of a corporation organized for the production of heat, light or power, after a determination by the Public Service Commission that such property is necessary to the full development and utilization of a single undeveloped water power site, a major part of the head and volume of the usable flow for power at which site is owned by such corporation, for the production of heat, light or power for sale or distribution to the public and that such heat, light or power is necessary for public use. In any county containing a part of the forest preserve as now constituted, for the purpose of establishing the right to exercise the power of eminent domain under this subdivision the ownership of wild or unoccupied land shall be presumed to be in an applicant showing a record title under which the applicant or his grantors has claimed for a period of ten years and it appears that the state and county taxes thereon have been paid by or on behalf of such

applicant or his grantors for a period of five years before the proceeding in which the application is made was begun; ownership in other lands wherever located shall be presumed on showing record title in the applicant for a period of ten years and possession thereunder for a like period.

4. Such right of eminent domain shall be exercised under the provisions of the eminent domain procedure law subject to the following restrictions and limitations:

a. The acquisition of real property for the state shall be on the application of the department, and payment therefor shall be made in the manner provided for the payment of lands appropriated by the state in the Adirondack and Catskill parks under section 3-0305 of this chapter.

b. If a water power site be taken under subdivision 2 of this section, the owner of any such power site shall have the option to receive and own such a proportion of the power resulting from the common development as the head and volume of the usable flow of the water at the site bears to the product of the total head and volume of the usable flow of the waters of the common development, provided he pays a like proportion of the cost of development, maintenance and operation, and consents that his pro rata share of such power shall be pledged to secure such payment, and assents to such reasonable and equitable provisions and regulations in relation to the development and operation thereof for the common benefit and to payment therefor as the department shall prescribe. In case of the exercise of such option by the owner of a developed water power site, such owner shall also be allowed the loss, if any, resulting to him from the excess in value, if any, of the water power owned by him before such common development over the water power right owned by him after such development, after deducting from the value of such power right his proportion of the cost of such development. Such difference in value shall be deemed a part of the damages in the condemnation proceeding, and the payment thereof shall be secured as directed by the court.

c. Before any real property is taken under the provisions of

subdivision 2 of this section, the owner or owners of the right to the use of the greater part of the head and volume of usable flow for power at the sites to be developed in common shall, unless such a corporation be already organized and be the owner of such rights, organize a corporation for the production, distribution and sale of heat, light and power to the public, and shall transfer to such corporation such sites. Such corporation shall file with the Public Service Commission a certified copy of its certificate of incorporation and shall also file with such department a map of the water power sites, and property connected therewith, of which it is the owner, with satisfactory proof that it is the owner thereof, and a map of the water power sites and property which it seeks to acquire for the purpose of making a common development. It shall also file with such department a plan of its proposed development of water power on the property which it owns and which it seeks to acquire. Such corporation shall file copies of such maps and plan certified by the president and engineer of the corporation, or a majority of the directors, in the office of the clerk of the county in which such development is to be made, or if it be in more than one county, in the office of the clerk of each county; and shall give written notice to all actual occupants of lands of which it is not the owner on which such development is to be made, of the time and place such maps and plan were filed, and that such development is to be made on the lands of such occupants. The Public Service Commission shall give an opportunity to persons interested to be heard, investigate and determine whether it is in the public interest that such development be made and whether the power to be produced is necessary for the supply of the public with heat, light or power. If it shall so determine, it may issue to such corporation a certificate that public convenience and necessity require that such development be made, but in granting the certificate the department may expressly except from its certificate any part of the property proposed to be developed as unnecessary to the plan. Such certificate when issued shall be conclusive evidence as to the matters lawfully certified therein in any proceeding under the Condemnation Law to acquire the property, or any part thereof, set forth in such certificate.

5. Real property, on the application of a corporation authorized to do

business in this state and engaged in the production, sale and distribution of heat, light or power to the public, which is necessary to perfect or improve water power already developed, provided that property taken does not impair or injure any developed water power or developed water power site. The corporation may apply for and in a proper case receive from the Public Service Commission a certificate of convenience and necessity for taking the property so to be acquired in the manner and with like effect as provided in paragraph c of subdivision 4 of this section. Any such corporation may also exercise the right of eminent domain to acquire real property in accordance with the provisions of subdivisions 2, 3 and 4 of this section.

6. If it appears that there is a defect of title or any outstanding interest in any of the real property occupied or to be occupied by the project when completed, the corporation making, or having the right to make, the development of the water power may exercise the right of eminent domain for the purpose of acquiring any such outstanding interest or any real property with respect to which the title appears to be or is defective.

7. In any county containing a part of the forest preserve as now constituted, real property, on the application of a corporation organized for the production of heat, light or power, necessary for the development of a water power site or sites, developed or about to be developed, and occupied by a railroad and real property necessary to and for the relocation of such railroad, upon application to and on order of the Public Service Commission authorizing the same and upon thirty days' notice to the railroad corporation. The Public Service Commission shall grant the order if in its judgment the public interest will be promoted thereby. The relocation of the railroad shall be at the expense of the applicant and in accordance with plans and specifications to be approved by such Public Service Commission. The applicant shall not take possession of any real property of the railroad necessary for its operation until such relocation of the railroad shall have been completed. The Public Service Commission upon the assent of the railroad may order the abandonment of such part of the railroad as is necessary to be taken instead of ordering a relocation thereof.

8. Real property, on the application of a corporation organized for the production of heat, light or power, which is necessary for the full development of a water power site or sites, developed or about to be developed, and is used or occupied as burial place or cemetery, and real property necessary to locate and reinter any human remains removed therefrom. Proceedings shall be had for the taking of such real property and removal of such remains in the manner provided by section 15-2117, in so far as the provisions thereof are applicable thereto, but such exercise of the right of eminent domain shall be subject to the sound discretion of the court.