



EASEMENTS AND RIGHTS-OF-WAY: ELIMINATING THE CONFUSION

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While landowners are rarely familiar with the “ins and outs” of easements and rights-of-way, not all utilities are completely familiar with the details either. This report provides a brief summary of easements and rights-of-way, what they entail, some of the challenges associated with them, and how they can be addressed.

An easement is a permanent right authorizing a person or party (such as a utility) to use the land or property of another (the landowner) for a particular purpose. For utilities, this usually involves acquiring certain rights to build and maintain transmission lines and (usually) transmission substations.

A right-of-way (ROW), on the other hand, is the actual land area that is acquired for a specific purpose, such as a transmission line and substations. That is, while an easement is a land right, an ROW is the actual land itself. The utility obtains an ROW for its transmission line and substations through the purchase of an easement.

The utility begins the process by offering the landowner what it considers to be a fair price for the easement. The fair market value for the easement rights is based on a percentage of the appraised value of the land. However, the landowner does not have to accept the first offer by the utility. He or she can negotiate, and the utility is then also obligated to negotiate in good faith. The landowner also has a right to have his or her own appraisal of the land made by a qualified appraiser, after which the price can be negotiated.

If the utility and landowner cannot agree on the easement or payment amount, the utility may pursue a state-governed process called “condemnation” (part of states’ “eminent domain” laws), under which a judge and a panel of impartial individuals decide whether

an easement is needed, and, if so, what its fair value is that the utility must pay the landowner.

Once the amount has been agreed on, the landowner is typically given a one-time payment for the easement. However, in some cases, landowners may elect to receive installment payments, with interest paid annually on the remaining balance. In either case, the landowners continue to have the responsibility for paying taxes on the land. |

Once an easement agreement is in place, the landowner can continue to use the land for most purposes, as long as those purposes do not interfere with the construction, operation and maintenance of the transmission line and substations. For example, landowners/farmers can usually continue to use the land for raising crops or as pasture land. Landowners can also continue to use the land for other activities, such as hunting, hiking, etc., again, as long as the activities do not interfere with the construction, operation and maintenance of the transmission line and substations. However, the utility does have a right to ask for what it considers to be certain necessary restrictions on the use of the land in the easement agreement. For example, easement agreements allow the utility to keep the line ROW clear of vegetation, buildings and other structures that could interfere with line and substation operation.

An easement is considered perpetual, not subject to termination or expiration. The utility, the landowner who signed the easement, and all future owners of the property are bound by the terms of the easement agreement. However, the utility can release its easement rights if it so chooses, such as it might want to do if it removes the transmission line and substations.