

National Energy
Board



Office national
de l'énergie

Landowners' Guide to Land Agreements



Canada

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Landowners' Guide to Land Agreements

Paper NE23-188/2017E
978-0-660-07994-3
PDF NE23-188/2017E-PDF
978-0-660-07993-6

This title is published separately in both official languages.

Copies are available on request from:

Library and Publication Services
National Energy Board
Suite 210, 517 Tenth Avenue SW
Calgary, Alberta T2R 0A8

Telephone:
403-292-4800
1-800-899-1265

Fax:
403-292-5576

Copies are available for pick-up at the NEB office: Library Second Floor

Email: publications@neb-one.gc.ca
www.neb-one.gc.ca

This publication is available upon request in multiple formats

Printed in Canada

© Sa Majesté la Reine du Chef du Canada 2017 représentée par l'Office national de l'énergie

Guide des propriétaires fonciers relatif aux accords d'acquisition de terrains

Paper: NE23-188/2017F
978-0-660-07996-7
PDF: NE23-188/2017F-PDF
978-0-660-07995-0

Le titre est publié séparément dans les deux langues officielles.

Pour obtenir des exemplaires sur demande :

Bibliothèque et bureau des publications
Office national de l'énergie
Bureau 210, 517, Dixième Avenue S.-O.
Calgary (Alberta) T2R 0A8

Téléphone :
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Deuxième étage

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On peut obtenir cette publication sur supports multiples, sur demande.

Imprimé au Canada



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Important notice to the reader

The guidance provided in this document is based on the *National Energy Board Act*, which applies to federally regulated pipelines and power line companies. Provincial jurisdictions will rely upon the legislation of the province and may differ. Land acquisition agreements will comply with regulatory requirements and other elements will vary depending on the company's policies, which province the lands are located in, and the unique features of those lands.

Seeking professional advice

This document does not replace legal advice for the purposes of negotiating or interpreting a land acquisition agreement or other related contractual documents. Landowners are encouraged to obtain independent legal advice to aid in interpretations of agreement terms and conditions. Landowners are encouraged to review and fully understand what wording is included in their agreement. If there is any wording that is not clear, ask the company for further explanation. Landowners may also consider contacting a local landowner, surface rights group, or farmer advocacy group.



Introduction

Before a federally regulated pipeline or power line¹ is constructed, if a company requires the use of private lands for its project, it negotiates a land acquisition agreement, frequently referred to as an easement or right-of-way agreement. A company representative, usually a land agent, consults directly with affected landowners to negotiate this agreement. The *National Energy Board Act* (NEB Act) has legal requirements about how landowners must be notified that their land is required and what required subject matters must be included in a land acquisition agreement.

The agreement will usually contain a clause about how long it remains in effect. A company usually keeps its right to use the land indefinitely unless it abandons the facility and releases (terminates) its easement rights. The National Energy Board (NEB) through a hearing process, will ultimately determine how a pipeline will be abandoned (i.e., left in the ground or removed). At that time, the NEB will consider the evidence filed, and determine the safest, most secure option for the pipeline's abandonment, as required by the NEB Act.

¹ Power line companies regulated by the NEB and approved by a certificate follow the same land acquisition process as NEB-regulated pipelines. Some power line companies are regulated by the province and will follow different steps and have different expectations around land acquisition according to provincial guidelines.

Until a company removes the easement from the land title or deed, or it is removed by an order of the court, the land remains subject to the easement agreement. The company, the landowner that signed the easement agreement and all future owners of that property (whether they buy the property or inherit it) must abide by the terms of the easement agreement until it is terminated and removed from title.

This document will cover at a high level what landowners can expect a company to discuss with them when negotiating a land acquisition agreement, what the NEB expects companies to include in its land acquisition agreements and the resources available to help with negotiations. The purpose of this document is to provide landowners with an idea of what to expect during the land acquisition process and where they can get further assistance if needed.

Importance of Relationships

When first approached by a pipeline or power company about a proposed project, landowners may be anxious or already worried about what might happen or if they will be treated fairly. The land agent is normally the first person that the landowner encounters during the consultation and negotiation process. The land agent should provide landowners with project specific information and ensure they have the necessary details in order to feel informed. This is also an initial opportunity for landowners to share information on site specific details and concerns pertaining to their lands. Open communication and information-sharing by both parties throughout the consultation process is very important for the establishment of a positive relationship. Landowners can take time to review the documents, seek assistance, ask questions and further educate themselves before making any decisions.

It is important for a landowner to put time and effort into understanding information, asking questions, and raising potential concerns early on, or when they arise.

In the event a landowner and a company need assistance in negotiating an agreement, either party may access the NEB's Alternative Dispute Resolution program to help reach a mutually acceptable agreement. Alternative Dispute Resolution is a voluntary process that occurs separately and independently from the NEB's regulatory processes. The NEB can work with both the landowner and the company to initiate a process designed with them and tailored for their specific situation to resolve any range of outstanding concerns. Natural Resources Canada's Pipeline Arbitration Secretariat is available to address unresolved compensation matters.

The vast majority of land acquisition agreements result from successful negotiations between landowners and companies. Landowners and companies are encouraged to work together to negotiate an agreement on the compensation (including for impacts of construction, such as damages) and the size and the location of the land rights required for the project.

Once constructed, the pipeline or power line will usually be there for a long time and so it is important that this lengthy relationship is started on a solid foundation. The NEB is responsible to oversee the continued safe operation of energy infrastructure. The NEB has Complaint Resolution programs and, as mentioned above, Alternative Dispute Resolution programs to assist the company and landowners as needed.



Land Acquisition Process for NEB Regulated Pipelines and Power Lines

Company	Company & Landowner	NEB
Plans a project and identifies land requirements Notifies landowners that lands are required (section 87 notice)	Discuss the project and start negotiating land acquisition agreements	Assesses the company's project application after it is filed, including land requirements and acquisition process ²

Alternative Dispute Resolution is available at any stage of the process.

Notification that Lands are Required

The NEB Act requires a company to formally deliver (serve) a notice on all owners of the lands needed for the construction of a project. This notice may be provided to the landowner even before a project application is filed with the Board and must be made before lands are acquired. The landowner may be asked to sign a receipt of notice to confirm that they have received the notice.

The notice must include information on the five points described below in order to comply with the requirements of the NEB Act. When reviewing the company's project application, the Board will confirm that the sample notice and agreements the company proposes to use for its project follow the requirements in the NEB Act.

1. *Description of lands*

Companies must provide a legal description of the lands proposed to be affected by the project. A drawing or survey plan of the lands is usually included, along with a short description of the project.

2. *Compensation*

Companies must provide details of the compensation offered for the lands required. This will include options for payment, which can be either as a lump sum or in periodic payments. The landowner selects whether to accept compensation in one lump sum or by annual or periodic payments. Periodic payments are subject to review every five years.

² The NEB does not receive a final copy of the land acquisition agreements.

Land Acquisition Process for NEB Regulated Pipelines and Power Lines (continued)

Company & Landowner	Company	Company & Landowner
Continue negotiations and participate in NEB processes if desired. Land agreements may be signed ³	If application is approved, begins construction once land rights have been obtained, by either a signed land acquisition agreement or a right of entry order registered on title	Continue to communicate regularly through construction, operation, abandonment and post-abandonment

3. Description of land value

Companies must provide a statement of the value of the lands required. When determining the compensation amount, companies will generally consider market value, appraisals or property assessments, and recent sales of comparable properties in the area. The calculation of compensation can depend upon a variety of factors and will vary from province to province and company to company. Landowners can ask questions about how the amount was calculated or for other factors to be considered in the amount and very often the amounts can be negotiated.

4. A description of the procedure for approval of the detailed route

For most projects that require a public hearing, the company must follow the detailed route approval process. This is a decision-making process separate from the public hearing process and is used to determine the project's specific route, timing and methods of construction within the assessed area. However, for some projects, the company may request an exemption from this requirement for a detailed routing process when it makes its application to the Board for the project. Landowners should identify any impacts relating to the proposed location, methods, and timing of construction of the pipeline or power line so that these matters are considered in the Board's decision process for the project.

³ A company may obtain a right of entry order by applying to the NEB. More details on this process are provided in this document.

Regardless of whether the project is subject to a detailed route process or not, the NEB Act requires companies to provide a description of the NEB's regulatory process for approval of the detailed route of the pipeline or power line within the notice.

5. *Negotiation and arbitration procedures for compensation matters*

Companies must provide information about Natural Resources Canada's Pipeline Arbitration Secretariat that offers an arbitration process for unresolved compensation amounts.

Contents of a Land Acquisition Agreement

At a minimum, and in order to comply with the NEB Act, the company must include the following details in the land acquisition agreement:

1. *Compensation for the acquisition of lands and the options for payment (lump sum, annual or periodic payments)*

As mentioned previously in this document, landowner compensation is payable by the company and is offered as an option of a lump sum payment or annual/periodic payments over a period of time. When a landowner chooses annual or periodic payments, the amount is reviewed every five years.

Disputes over compensation for land agreements or for damages can be resolved by seeking independent negotiation and arbitration services offered by Natural Resources Canada. Either the landowner or the company may request this service.

2. *Compensation for damages caused by a company's activities, including the process for claiming damages*

A landowner is not responsible for damages caused by a company or its pipeline or power line. See the text box "How to Document Damages" for more information.

3. *Indemnification of liability*

The landowner is protected from all liabilities, claims or suits caused by the company's operations. However, the landowner is not protected from liabilities, damages, claims or suits filed:

- that result from the gross or intentional fault of the landowner (in the Province of Quebec); or
- as a result of the gross negligence or willful misconduct of the landowner (anywhere else in Canada).

How to Document Damages

1. Identify the company that caused the damage
2. Explain the damage done in writing and/or through photos
3. Describe the location where the damage occurred
4. Describe what the landowner expected would happen (e.g., the fence would be repaired, reseeding would be done with a certain type of seed mix)
5. Describe what has happened
6. Describe the impact of the damage
7. Provide any supporting information (e.g., a quote from a local repair company)
8. Send this information to the company, including the landowner's contact details and preferred method of contact.

4. *Restricting the company's use of the land*

The purpose of an easement agreement is to construct, operate, maintain, and abandon an NEB-regulated pipeline or power line.

Rights of the Company

The company will seek specific rights it has determined it requires in order to install, operate, maintain, and abandon its facilities. The company's rights will be reflected in its proposed form of land acquisition agreement. Therefore, by signing this agreement, the landowner is giving their consent to these rights.

Typical land acquisition agreements outline:

Companies' right to construct, operate and maintain the pipeline or power line

The NEB Act gives the company the right to construct, operate and maintain its pipeline or power line. Companies may expand this to describe their understanding of "construct, operate and maintain".

Commodity transported within the pipeline

In a land agreement, the type of commodity may not be specified, rather, generic terms may be used such as "oil, other liquid and gaseous hydrocarbons". However, when a company applies to the NEB to build a pipeline, it must state the commodity (such as oil, natural gas) to be transported within the pipeline. The NEB's assessment process will consider

and specify, among other things, the commodity allowed to be transported in the pipeline. In the future, if the company wants to change the type of commodity, it must apply to the NEB for authorization to do so.

Access

Through the rights negotiated and conveyed in a land acquisition agreement, a company can access the right-of-way for activities relating to the construction, operation, and maintenance of the pipeline or power line. Some agreements may specify how the company can access the right-of-way (e.g., by using a specific, pre-determined route) and what vehicles or equipment may be used (e.g., a truck). Companies and landowners should communicate in advance to discuss the timing and nature of the work to be performed and access.

In the event of an emergency, a company can access all lands as required, not only the right-of-way, to respond to and manage the emergency. Companies must compensate landowners for any resulting damages.

Administrative matters

It is common for companies to include administrative information in land acquisition agreements to clarify what will happen in the event of a sale, lien or other changes to land ownership. Companies will also include the right to assign or convey the land rights contained in the easement to another company. This would occur when the pipeline or power line is sold either with all the other assets of the company or on its own as part of a system.

Abandonment

A company must apply to the NEB to abandon a pipeline. At that time, the NEB will assess the company's application requesting to either leave the pipeline in place or remove it. The NEB will decide whether the company's proposed method is appropriate, based on the technical information in the application, the company's consultations with landowners, the company's and landowners' preference, evidence filed by interested parties, as well as any implications on safety and the environment and any other factors that the Board determines it needs to assess.

The company and the landowner may negotiate abandonment during the easement negotiation process and may note their respective preferences. The Board must determine, in a public hearing, whether, and upon which conditions a pipeline can be abandoned.

If the NEB determines that the pipeline can be removed, it will include conditions to promote the safe abandonment of the pipeline and the right-of-way is reclaimed and returned to a state comparable with its surroundings.

If a pipeline is abandoned in place (not removed), the company will continue to be responsible for the pipeline and right-of-way and the NEB will continue to provide regulatory oversight.

Damage Prevention Regulations

As a federal regulator of international and interprovincial pipelines, the NEB promotes safe work practices around pipelines. The NEB does this through the *Damage Prevention Regulations* (DPR) and by monitoring and enforcing compliance with those regulations. The NEB promotes public awareness about safety by providing information about regulatory requirements and encouraging co-operation, safety education, and compliance with requirements. Landowners should ensure they are familiar with the DPR before finalizing an easement agreement with the company.

The restrictions on land use as required by the DPR on the landowner's activities can often be reduced or eliminated through commitments by landowners and the company if discussed and understood at the time of negotiation.

Additional Provisions

As with any contractual agreement, the terms and conditions within the land acquisition agreement can be negotiated before signing. This means things may be added to or taken out of the draft agreement provided by the company. It also means that more explanation can be provided using simple language within the agreement after the legal clauses.

In addition to the required NEB Act provisions identified above, companies may include details on some of the following:

- A list of the rights of the landowner and the company under the land acquisition agreement
- Specific items of agreement relating to the landowner's ongoing use of the lands
- Information on the landowner's responsibilities related to damage prevention and safety

- Clarification on administrative matters and operational procedures
- Information on pipeline and power line abandonment process and regulatory accountability

Right of Entry

In the event a landowner and a company do not finalize a land agreement, the company can apply for a right of entry order from the NEB. A right of entry order gives the company the right to enter a landowner's property for the purpose of any or all of construction, operation and maintenance of an approved pipeline or power line. The company's application will include proposed terms and conditions that it requests the Board include with an order, and may or may not directly reflect what had been discussed with the landowner.

In assessing a company's request for an order, the NEB will consider what is submitted both by the company and the landowner in response to the application and then make a decision whether to grant the right of entry order and if so, under what terms and conditions.

If the NEB decides to grant the right of entry order, the company does not take ownership of the land. As with an easement agreement, a landowner is entitled to receive an advance of compensation from the company before the company enters the lands. If the landowner disagrees with the amount of compensation offered by the company, either the landowner or the company may contact Natural Resources Canada's Pipeline Arbitration Secretariat or request support from the NEB's independent Alternative Dispute Resolution services.

Quick Facts about Right of Entry:

- The order must be registered on title before a company can access the lands
- Compensation must be paid once the order is issued
- The order can be replaced by a mutually acceptable agreement
- Landowners can submit their objection to a right of entry and propose terms and conditions
- The NEB decides the terms and conditions of the order if an order is granted

Other Documents

The company may use additional types of agreement documents (e.g. Surface Lease, Access Agreement, Temporary Work Space Agreement, Site Agreement, Above Ground Structure Agreement, Valve Site Agreement, Integrity Dig Agreement) depending how long they need access to the lands and for what purpose.

Need Help or More Information?

Contact the NEB: Toll Free: 1-800-899-1265

Land Matters Group	Damage Prevention	Alternative Dispute Resolution
lmg@neb-one.gc.ca	DPinfo@neb-one.gc.ca	ADR-MRD@neb-one.gc.ca

Contact Natural Resources Canada's Pipeline Arbitration Secretariat for compensation inquiries:

Telephone: 343-292-8878

Email: nrcan.pas-sap.rncan@canada.ca

