



Threading the Needle

Navigating Typical Distribution Right of Way Concerns

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Distribution Pipelines (low pressure pipelines designed to serve customers along their route) present an array of challenges ranging from their proximity to existing underground and above ground utilities to how their installation impacts individuals and businesses during construction. In most all cases, space is a commodity and frequently unavailable except outside of existing road rights-of-way. In recent years, locating the distribution pipeline on private property paralleling the road right-of-way has become the preferred alternative. By doing so, you limit the need to disrupt traffic, reduce permitting, eliminate restoration of construction damages to roads and establish a dedicated location for the pipeline. Stakeholders

are better informed and maintenance and operation of the pipeline is simplified and can be performed in a safer manner.

EXISTING UTILITIES

Existing utilities are one of the primary determining factors when it comes to the routing of distribution pipelines. In many cases, especially in urban areas, there is simply no room available in the public rights-of-way to lay a new pipeline. The use of HDD (horizontal directional drilling) construction practices has mitigated these problems, but not eliminated them. Water, sewer and electric utilities struggle for available ground and eventually necessitate the need to go outside DOT right-

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of-way to lay distribution pipelines. Even as you exit the road right-of-way, you may find that other utilities have already encumbered the private lands immediately adjacent to the road right-of-way, pushing the pipeline right-of-way further into private property. Land requirements can sometimes be reduced by using portions of these existing utility rights-of-ways for workspace or where the easements are non-exclusive, by partially overlapping a portion of the new pipeline easement onto a portion of an existing parallel utility easement.

DEFINING EXISTING RIGHTS-OF-WAY

Determining the widths of existing distribution utility rights-of-way can be an arduous task. Most new easements are recorded and have defined widths, but older ones may have been acquired under a blanket easement with no width specified. Companies that hold these types of easements often maintain a certain width over years and claim rights through prescriptive easements. Decades ago when many of these easements were acquired, company policies did not require easements be recorded or made public record. In these cases, you will need to contact the company's land representative to determine when they were obtained and get copies of any records that they can provide. You can then follow-up with courthouse research to locate any recorded documents that might provide constructive evidence in support of the rights granted on your parcel (old plats or references to the facility on adjacent properties). To avoid laying in existing rights-of-way, due diligence is required. Failure to do so can result in the new pipeline being moved off of DOT right-of-way only to encroach on another existing utility right-of-way.

LEGACY STAKEHOLDER RELATIONSHIPS

Distribution easements are unique in that the pipeline is crossing stakeholders who are either current customers or who have the potential of becoming customers. This often requires working with a landowner to resolve legacy problems that predate the current project before you get to

negotiating any new easement rights. Whether the stakeholder is a homeowner or high-use customer who owns a production plant or institutional facility (school, hospital, etc.), the distribution companies expect and require that everyone be treated in the same professional manner. Working through legacy concerns complicates negotiations and intensifies the need for open and honest communications between the agent, the landowner and the distribution company.

PRIVATE LANDOWNER AND BUSINESS IMPACTS

Any pipeline that crosses a private owner has some impact on the property it traverses. Distribution pipelines tend to impact numerous small lots and businesses because they are designed to provide service or make service available to anyone along their route. These impacts include aesthetic damages related to the removal of trees or landscaping, saw cutting driveways, impacts to signage, limiting access to businesses during construction or safety concerns for landowners. Construction methods such as HDD's or boring of driveways mitigate many of these impacts if there is room. Space dictates all, from having enough room for a bore pit to being able to string the pipeline to facilitate a HDD. Many times, there is not room and the pipeline must be installed by ditching across the property. When these circumstances occur, landowners and businesses can be impacted more severely and efforts must be made to try and mitigate the impact. Some common measures are:

1. Working with landowners or businesses to coordinate construction times.
2. Limiting the duration that a driveway is closed (hours instead of days).
3. Closing only one access/drive at a time if multiple access points are available.

Each requires involvement and coordination between the landowner, land agent, construction contractor and distribution company.



Both landowners and businesses can be impacted by the construction of a pipeline.

VALUATION

Determining the value of the right-of-way across various properties requires that the land agent keep in mind many of the factors that have been noted in previous paragraphs. These rights-of-way are typically very narrow with limited workspace, so even if a 100% fee value is placed on the right-of-way the amount of compensation is usually seen as very little by the landowners. Skill and imagination are needed by the land agent to negotiate these settlements. Agents will need to carefully balance their explanation of the value of the impact against the potential benefit that availability of the utility may afford. Loss of large trees and impacts to aesthetic value (loss of landscaping) can provide agents with additional negotiating options beyond a simple before and after valuation approach. Though public utility companies installing distribution pipelines typically have the right of eminent domain, there may not be sufficient time to exercise that right or it may

not be economically practical. As a result, the land agent must rely on his or her negotiating skills to arrive at a mutually agreed upon compensation while not exceeding budgetary limits.

CONCLUSION

Though distribution pipelines present many challenges, they are not insurmountable. Close communication between all stakeholders is critical. Navigating these concerns successfully against the backdrop of today's fast-paced construction schedules, congested corridors and active residential and business concerns requires planning, organization and an intentional right of way acquisition strategy. ■

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