



The Pitfalls Of Pipeline Easements

If you're approached about an energy easement on your land, know your rights and be a smart negotiator. **BY VICTORIA G. MYERS**

There are more than 2.3 million miles of pipeline in the United States carrying energy supplies throughout the nation. And more miles are being added every year. So it shouldn't come as a surprise that farm and ranch owners often are faced with the burden of providing a spot for the construction of these lines.

Stan Hoover has seen the growth firsthand. This Plattsburg, Mo., farmer started out with one old pipeline running across his land. The line was built in the 1950s. The easement the line was on was purchased by a new pipeline company, and last year they added a 42-inch natural gas pipeline after negotiating another adjacent easement. A third line, this one for crude oil, is set to come through over the summer.

"One thing I've learned: Once you have one line through your property, you can expect them to want more," says Hoover. "It creates a lot of turmoil in your life. And those companies have a lot of rights you never

even think of when you're negotiating that easement."

In Hoover's case, company representatives discouraged area landowners from talking among themselves about how much money they were being paid for easements. "They wanted to handle everything individually," he says. "That was one of the things I really didn't like. We couldn't talk to anybody else about how much their contract was for. It was a secrecy clause. That's something I'd advise against."

Like Hoover, many landowners choose to negotiate easements

Condemnation worries

Many landowners are afraid if they negotiate too hard—or are too reluctant to grant an energy company an easement—their property will be taken by condemnation. But that's pretty unlikely.

Aimee Hess—a Texas real estate, oil and gas, and construction attorney—says in 32 years she has not failed to negotiate an agreement that was better for the client and that the company

on their own, without the expense of legal counsel. The key is to be aware it's what's in writing that really counts. And if you don't feel comfortable with all the legalese, get an expert to read through the contract.

"To a certain point I felt we were able to negotiate with them," says Hoover. "But after having to ask them to come back and repair the land, and finding out that it took about three times as long to do the work as they said it would, I believe it's important to get everything in writing. We had verbal agreements on some things, but I've learned if it's not in the contract, they won't do it."

Aimee Hess says she's seen landowners get "skinned up a dozen ways and not even know it" when dealing with these easement negotiations themselves. Hess is a Texas real estate, oil and gas, and construction attorney who often represents landowners faced with selling an easement to a large pipeline company.

"For me this is a passion," says Hess. "I sometimes see landowners abused by pipeline companies. I want landowners to know the pipeline company is your adversary in this negotiation. The legal documents involved are complex, and you live with it forever once you've signed it. I see clients almost every week who have signed unfair agreements. And once they've signed there's very little an attorney can do to help them."

Hess says companies sometimes discourage landowners from seeking legal counsel, citing the cost. But she says fees are often set, in many cases coming in at \$1,000 or less, depending on the amount of land involved.

"In most cases, experienced attorneys will pay for themselves," she says. "You will get a better agreement based on what's best for you, the landowner, as opposed to what's best for the pipeline company." ●

For more info

To read Aimee Hess' thoughts on pipeline easements, go to www.texasattorneyblog.com

accepted. "The pipeline company generally will not, as a matter of business, give you their best offer first. They expect to negotiate, and they see this as an adversarial relationship," she says.

While condemnation does happen, Hess points out it is a costly, time-consuming procedure for the company, and is generally not the preferred way to work with landowners.

Energy easement questions

While every situation is different and state laws vary, there are a few basic points any energy easement should address:

- ▶ Is the easement limited to a specific area, or is it a blanket easement over your entire property?
- ▶ To what depth will the pipeline be buried?
- ▶ What will the pipeline carry, and what size will the pipe be?
- ▶ Will the land be repaired to its original contour, and will that be maintained as the land packs down?
- ▶ Will topsoil be set aside, replaced and reseeded with whatever grass was there originally, so the land is restored to its original condition?
- ▶ Will damaged waterways or drainage ties be replaced or restored to their original condition?
- ▶ If the land is agricultural, can installation and maintenance work be scheduled at a time when the ground is frozen to prevent or reduce soil compaction?
- ▶ Will fences or other structures affected by the work be repaired to their original condition?
- ▶ If a fence must be cut, will a gate be installed?
- ▶ Will the landowner have the right to use the surface of the easement in any way that doesn't interfere with the pipeline?
- ▶ Will the landowner be reimbursed for crop damage caused by construction or maintenance?
- ▶ Will the landowner be contacted for consent prior to the use of any herbicides for weed/brush control?
- ▶ Will the utility agree to avoid cutting down important trees or, if they remove trees, reimburse the landowner at market rates?
- ▶ Will the company be responsible for any damage caused directly or indirectly by the installation, operation, maintenance or removal of the pipeline?
- ▶ Does the easement terminate if unused for a certain length of time?
- ▶ Will there be above-ground equipment? If so, will the landowner be separately and appropriately compensated?
- ▶ Will there be a separate payment for the easement and any damages?