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## Understanding Easements and Rights-of-Way – South Dakota

**W**hen people talk about building new transmission lines, they often refer to an “easement” or a “right-of-way.” Although the terms are used interchangeably, they are distinct concepts.

### What is an easement?

An easement is a permanent right authorizing a person or party to use the land or property of another for a particular purpose. In this case, a utility acquires certain rights to build and maintain a transmission line. Landowners are paid a fair price for the easement and can continue to use the land for most purposes, although some restrictions are included in the agreement. An easement is the legal document that is signed by the landowner before the utility proceeds.

### What is a right-of-way?

A right-of-way is the actual land area acquired for a specific purpose, such as a transmission line, roadway or other infrastructure.

### What is the difference between an easement and a right-of-way?

An easement is a land right document, and a right-of-way is the physical land upon which the facilities (transmission line, roadway, etc.) are located.

### How long does an easement last?

Terms of the easement are written in the easement agreement. Most electric utility easements are perpetual and not subject to termination or expiration. Once an easement is

signed, it becomes part of the property record. The utility, landowner who signed the easement and all future property owners, are bound by the agreement terms. If the utility removes the transmission line and abandons the right-of-way, it can release the easement rights.

### How are landowners paid for an easement?

Landowners typically are given a one-time payment based on fair market value for easement rights to their land, traditionally based on the appraised land value. The majority of land is still usable for the same purpose it had been used for, particularly in agricultural settings.

Landowners are also eligible for reasonable compensation for property damage that may occur when the transmission line is constructed and during future repair and maintenance. Those issues are included in easement documents.

### Who pays property taxes for the right-of-way on which the transmission line is constructed?

The landowner continues to pay property taxes on the right-of-way.

### What easement rights will be needed for the construction of a power line?

The CapX2020 utilities will require easements that allow for surveying, construction, operation and maintenance of a transmission line across a defined right-of-way located on the landowner's property. These easements will include the right to clear, trim and remove vegetation and trees from within the right-of-way, as well as tall and dangerously leaning trees adjacent to the right-of-way that may threaten the line if they fall.



### **What activities are allowed within the easement?**

Land within the right-of-way may be used for any purpose that does not interfere with the construction, operation or maintenance of the transmission line. For example, in agricultural areas, the land may be used for crop production and pasture. In areas where the land will be developed, streets, lawn extensions, underground utilities, curbs and gutters, etc., may cross the right-of-way with prior written permission from the utility.

### **Why are there restrictions on the land?**

Providing electrical energy is an essential public service, and some restrictions are necessary within the right-of-way to maintain reliability. Utilities have determined that the best way to prevent outages is to restrict the placement of structures within the right-of-way. For example, if a building or structure in the right-of-way caught fire, it could burn into the power line and take the line out of service for an extended time. Additionally, buildings or other structures in the right-of-way could hamper maintenance crews from accessing the line if an outage occurs.

### **What are the main building and planting restrictions in the easement?**

Conditions will vary, but the primary building and planting restrictions within the right-of-way are in place to ensure that a utility has the necessary clearance for operation and maintenance and to comply with the National Electric Safety Code. Restrictions within the right-of-way prohibit constructing buildings and structures, storing flammable materials and planting tall-growing trees.

### **Why doesn't the utility just buy the land instead of negotiating an easement?**

Utilities' main interest is simply acquiring the amount of land necessary to build and operate a transmission line and not acquiring more land than is necessary for that purpose.

Landowners generally prefer to retain ownership of the property so they can maintain better control over its use within the easement restrictions. Often, retaining ownership allows the landowner continued use of the property for things such as agricultural operations, yard extensions or open space. Most adjacent uses pose no threat to the line and do not create a public hazard.

### **Generally, how large is the area covered by an easement or a right-of-way?**

The voltage and the type of transmission structure being built determine the size of the right-of-way. For 345 kV lines, the typical right-of-way is up to 150 feet wide.

### **What happens when the landowner and utility cannot agree on the easement or payment?**

If an agreement cannot be reached, a utility may pursue a state-governed process called condemnation, under which a judge and a panel of impartial individuals decide whether the easement is needed and its value. The condemnation process, also called eminent domain, varies from state to state. In South Dakota, the process is governed under South Dakota Codified Laws Chapter 21-35, which establishes strict procedures for determining the amount a landowner should be paid by a utility for acquiring a right for construction and maintenance of a transmission line.

The CapX2020 utilities encourage landowners with more specific questions on easements to consult with legal professionals who can provide detailed answers and information about the process.

*\* This fact sheet is not a legal document. It is meant to provide general information about easements and rights-of-way.*