



Achieving a Viable Settlement

New statutory body facilitates expropriation process in South Africa

BY ERNEST GRUNEWALD

In 2014, the South African Government took a bold step when it established the Office of the Valuer General (OVG). The OVG was created as an independent statutory body to ensure that the land market serves the greater interests of South African people. We believe it is a positive step, and the government must be commended.

In the past, the Council for Valuers was responsible for dealing with all valuation related matters. But many questioned its effectiveness, especially in preventing practices that border on collusion, corruption, malpractice and price manipulation. Because the council is a legislated institution of appraisers in South Africa, many believed that it was sufficient. However, the government was not convinced, hence the establishment of the OVG.

Putting Things into Perspective

In the Constitution of the Republic of South Africa, the property clause states that no one may be deprived of property and that no law may permit arbitrary deprivation of property. Property may be expropriated only in terms of law of general application for a public purpose or in the public interest. It further states that compensation must be applicable, and that the amount of compensation and the time and manner of payment must be just and equitable, reflecting a balance between the public interest and the interests of those affected, having regard to all relevant circumstances. This includes the property's current use, acquisition history and market value.

To partly give effect to these constitutional requirements, the OVG was established through an Act of Parliament in the Property Valuations Act No. 17 of 2014. The Act provides for the establishment, functions and powers of the OVG. It also addresses regulations for the valuation of property identified for land reform, acquisition or disposal by the state and provides for matters connected therewith.

Meeting Energy Demand

As the sole South African electricity transmission operator, Eskom Holdings State Owned Company Limited (Eskom) has an obligation to ensure that the country's transmission grid is capable of providing the new generation capacity to service the areas of demand. To achieve this, Eskom has created a long-term transmission development plan for 2016-2025.

For the new transmission projects, the typical land uses will be agricultural, mining, traditional tribal, developed and potential development. However, independent power producers, mining companies, developers and cellphone operators are some of the private organizations who use methods of acquisition that are different from those used by state owned companies. This is where the OVG will need to step in and assist.





In our eastern province of Mpumalanga, mining companies are buying surface rights at prices that are far above market values. This is just part of the overall issue. In the northern and northwestern provinces, we have ecological, nature and game reserves where international visitors come to enjoy the African bush or to hunt trophy animals. The landowners of these reserves have, in some areas, overcapitalized their properties with 5-star lodges overlooking the bush. Any transmission line on these properties will affect the view, thereby creating an industrial atmosphere. To prevent this, these landowners push for rights of way prices that cannot be justified. This is also occurring in our coastal areas, where developers of resorts and other tourist destinations are demanding overinflated prices for rights of way.

Pressure versus Policy

Eskom acquisition agents cannot automatically concede to any land value, because once the land and/or right have been acquired, the Eskom agent needs to submit the acquisition proposal to an Eskom Land

and Rights Tender Committee. This committee will consider the submission and make a determination based on an established Eskom Compensation policy, which is similar to the international land valuation methods. Therefore, inflated or skewed land prices will not get approved.

This is where our Eskom agents are put to the test, as they are attempting to negotiate a price that is as close as possible to an amount acceptable to the landowner. In many cases, these negotiations can take up to 24 months. When the project managers cannot move forward because of these delays, they insist that our agents pursue expropriation. Now this is where our agents face another problem, as the expropriation procedure has not worked for Eskom in the past.

For one project, expropriation was attempted with seven landowners in our central province where, after four years, the process stalled. With no other choice, we had to attempt negotiations with the unreasonable landowners. To make this happen, land valuations had to be adjusted in order to arrive at an acceptable settlement. This process has resulted in an unfortunate domino effect.

A Viable Solution

On a typical project, we are able to successfully negotiate with 95 percent of the landowners. For the remaining five percent, the OVG can help facilitate a timely expropriation. In order to make the agent's job more achievable, a two-step approach is planned.

In achieving a viable settlement with landowners who are demanding inflated and unreasonable prices, the first step will be to obtain an appraisal by the OVG. The OVG will conduct a valuation using a registered valuer with extensive experience in property valuation—either a member of the OVG staff or a private practitioner who is a registered valuer. The OVG valuation will then be presented to the landowner, and negotiations will be conducted to achieve a settlement. If the landowner still refuses, the Eskom agent will proceed to the second step—expropriation. With



In 2011, Ernest thanked attendees at IRWA's Annual Conference for the opportunity to embark on a shared mission to benefit right of way professionals in South Africa.

the OVG valuation already completed, there will be no need to conduct another valuation for the expropriation process. And with assistance from the newly-formed subcommittee of the Presidential Infrastructure Coordinating Commission, processes are in place to ensure that the expropriation will be completed in a timely manner.

Over the coming years, Eskom will remain focused on meeting the country's growing demand for electricity. With the Office of Valuer General established, we welcome the promise it offers to expediting our future infrastructure development. 🌱

Ernest is Senior Rights of Way Consultant at Eskom Holdings Ltd. in South Africa. He was instrumental in establishing a relationship with IRWA and forming IRWA Chapter 83 in South Africa, serving as the Chapter's first President.