

PUBLIC UTILITY EASEMENTS:

TRAPS THAT CAN CREATE MAJOR PROBLEMS

BY JERRY MORAN

Public Utility Easements (PUE) are typically found in subdivisions. The land developer dedicates the PUE's to facilitate the distribution of utilities to the individual lots in the subdivision. Utilities generally utilize these strips in joint trenches when applicable. In older subdivisions, poles and aerial construction were used for power, telco and CATV.

BEWARE OF POTENTIAL PROBLEMS

Figure 1 illustrates a case in California that involved a PUE. (This episode could take place in *any* state in the Union.)

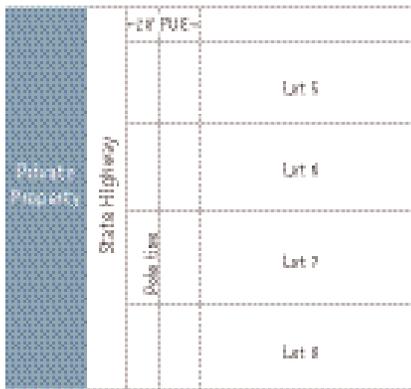


Figure 1

The subdivision on the east side of the two-lane state highway was about 30 years old. The documentation was very sketchy as to why they dedicated a 20-foot PUE. Regardless, the electric, telephone and cable companies all occupied a joint pole line and felt protected by the PUE.

The California Department of Transportation (Caltrans) made plans to widen the highway by 20 feet on each side of the existing right of way and notified the three companies that were on the pole line. The notification of course was an order to relocate the pole line. Pacific Gas & Electric (PG&E) originally placed the poles and was also the first to deliver the bill to Caltrans for reimbursement expenses.

Caltrans told all three companies that since they were a PUE they had the same liability as if they were in the public right of way. They would have to bear the relocation expenses themselves.

The telco engineer called me with this concern and expressed surprise and anger over Caltrans' decision. I started making some calls and ended up speaking with the head of engineering at Caltrans in Sacramento. He told me that he had made the decision to treat occupants of PUE's as if they were in the public right of way

and required them to relocate their facilities at their own expense. Was this an unusual incident? Of course it was. It does, however, send up a red flag to utilities: protect your investment by acquiring a recorded easement in your company's name from the developer of every subdivision. It is very easy to do. The vast majority of developers cooperates and grants an easement over the PUE's.

This incident raised a red flag for me too. I started asking questions of title companies. I interviewed Steven Brown, who is the advisory title officer of New Century Title. Brown pointed out that the developer *offers* the streets for dedication as well as the PUE's. In contract law you may recall that an offer is just that until an *acceptance* takes place. In a development, who or what, accepts the offer of the dedication? The local agency, of course. What was given to the utilities? A license, which you may also recall is revocable.

RECORD EASEMENTS

When occupying a PUE, it is important for an organization to obtain a record easement under their name. Figure 2 is copied verbatim from a recorded subdivision map in northern California. Notice that the owners have *offered* to dedicate to the public the streets and easements. In order to be valid, the offer must be *accepted* by the public. In this case, the public is the city in which this subdivision is being developed.

OWNERS STATEMENT

We hereby certify that we are the owners of, or have some right, title or interest in and to the real property included within the subdivision shown upon this map; that we are the only persons whose consent is necessary to pass clear title to said property, and we hereby consent to the making of said map and subdivision as shown within the distinctive lines and hereby dedicate to the public for street, utility and sanitary sewer purposes, bayhill place and eagle trace lane and eagle trace drive as said place lane and drive are shown on said map within the distinctive subdivision lines.

We also hereby offer for dedication to public use all easements under, on, or over those certain strips of land designated as public utility easements (PUE), storm drain easements (SDE), and sidewalk easements (SWE), all as shown on said map within said subdivision.

Figure 2

Figure 3 is the city clerk's certificate from the same subdivision fact sheet. (The name of the city has been changed for this example.)

CITY CLERK'S STATEMENT

I, Henry Watkins, the city clerk of the city of Livingston Manor, Sonoma County, California, hereby certify that the city council of said city of Livingston Manor, by resolution adopted at a regular meeting of said council, held on the 6th day of December, 2002, did duly approve the accompanying map, and did not accept on behalf of the public any road, storm drainage easements (SDE), or sidewalk easements (SWE) shown thereon as dedicated to public use, and did accept all easements under, on or over those certain strips of land designated as public utility easements (PUE) and did accept all roads for utility and sanitary sewer purposes, all as shown on said map within said subdivision as stated in the owner's certificate shown hereon.

Figure 3

The City Clerk's statement is pretty clear: this city, like many others across the country, does not want to take on the expense of maintaining streets and storm drains. They did, however, take care of providing routes within the property. Notice that they did accept

the offer of the PUE's and only accepted the roads for utility and sanitary sewer purposes.

What does all of the above mean to the utilities? Obviously they may place their facilities within the PUE's and the roadways with no additional consent. In this case, the utilities are pretty safe *except* along the northwesterly boundary of this development. There is a county road that abuts the PUE. If I were the right of way agent, I would elect to get an easement over all of the PUE's in my company's name.

THE GENERIC EASEMENT

If you haven't had the opportunity to acquire easement over a PUE before, Figure 4 is a sample generic easement with wording that my right of way group came up with to take care of the issue. Caution: before using this wording, check with your legal counsel first. Your legal counsel must determine if it is defensible in their opinion. Also, be sure to check with your counsel regarding your state law and PUE's. When you examine the generic easement, you will notice underlined words in the description. You will then insert appropriate changes to make this format work for your situation.

I trust that this article will help you guarantee that your facilities will be protected from un-reimbursed relocation expenses in PUE's. ❖

GENERIC GRANT OF EASEMENT FOR PUES

The undersigned grantor(s) hereby grants to (YOUR CO./AGENCY) Grantee, its successors and assigns, an easement to construct, maintain, operate, inspect, repair, replace and remove such (FILL IN EQUIPMENT OR FACILITY), as Grantee may from time to time require (INCLUDING INGRESS THERETO AND EGRESS THEREFROM) in, over, under, and upon that certain real property situated in the County of Carbon, State of Pennsylvania, described as:

All That Portion Of XYZ Subdivision Recorded On The 2nd Day Of January 2003 In The Office Of The County Recorder Of Carbon County, State Of Pennsylvania As Map Number 9119 Designated, Delineated, Described and Shown As Public Utility Easement's (PUE's) On Said Map.

Grantor(s) also grant(s) to Grantee the right to trim such trees and other foliage and to cut such roots on said property as may be necessary for the protection of Grantee's facilities. Grantee shall be responsible for any damage caused either intentionally or by any act or omission of Grantee, its agents, or employees while exercising the rights granted herein.

Executed on this ____ Day of _____ 200__

By: _____

By: _____

Notary:

Figure 4