SERIOUS IMPACTS OF ENCROACHMENTS

Protecting your existing right of way assets

BY JASON MCDADE

After seven years as a Right of Way Specialist for Alabama Power Company's Right of Way Services department, I can count on just one hand how many access rights I have acquired for Alabama Power. However, my department provides an extremely valuable service to our company and its operations through the management of our existing transmission line in right of way assets.

The matter of encroachments upon rights of way is a serious and never-ending challenge. Our rights of way are extremely critical to our business and in many ways, they cannot be duplicated. But we are not unique in this respect because encroachment management impacts every entity that has a right of way, from utilities and transportation companies to municipalities. None of us are immune to encroachments and addressing them after they happen can often become costly and problematic to current and future operations.

Managing Your Existing Right of Way

As with any asset, there is always some level of maintenance and rights of way are no different. Whether performing vegetation maintenance or ensuring the proper usage of the right of way, maintenance activities are an essential function of the utility, highway department or municipality. This is certainly the case for acquired easements.

From a utility perspective, we focus on providing our customers with safe and reliable energy. As such, we strive to keep our right of way assets free from any encroachments that may interfere with the construction, maintenance and operation of our system. We aim to provide readily available and consistent information to the general public. We also monitor for ownership changes and tract usage changes. For instance, it is not uncommon for a new owner to take a tract originally used for recreational purposes and turn it into a commercial farming operation. This scenario presents many potential issues. An active right of way management program that focuses on managing existing rights of way can often come up with solutions that will allow both parties to operate successfully without interfering with the other operation.

And let us not forget the professionals who work within the right of way asset daily. We must ensure that they are able to do their job without having to work around foreign obstacles. The presence of encroachments can delay work, increase maintenance cost and potentially create a hazardous work environment.

Finally, there are the legal concerns associated with right of way protection. Frankly put, if you do not protect your right of way asset, you are open to losing acquired rights and introducing other potential liability issues. Since the laws in each state vary, it is recommended that you consult with an attorney in order to better understand the challenges of allowing encroachments to remain unchecked. From there, develop a plan to address new and existing encroachments. These resolutions can be achieved though license agreements, removal of the encroachment through negotiations or, in certain cases, by litigation. In addition, any plan to address encroachments should call for the reevaluation of existing items that are dismissed as non-issues, as the passage of time or behavior can quickly change an immaterial matter into a real and complicating encroachment.

Public Outreach is Essential

To be successful, your team should do more than just monitor your existing right of way asset. Your team should look for and develop innovative solutions that help achieve your desired intent. One of the most important initiatives your team can take on is public outreach. The reality is, most issues that arise from encroachments come from a simple misunderstanding, which can be avoided by targeting entities that are aware of potential issues long before the encroachment is found. Here are a few highlights of what that outreach looks like:

- Developing relationships with local municipalities in an effort to be included in dialogue from the onset of a potential proposed development.

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- Developing relationships with state agencies that are directly involved with training and certifying professionals who work around our rights of way, such as forestry owner and homebuilder associations.

- Developing relationships with state and local natural resources and conservation professionals, such as hunter education providers.

The above are just a few initiatives that may provide insight on how to enhance your right of way management operations and bring additional value to your organization. The key is to build these relationships and ensure a consistent message is being communicated.

Final Thoughts

A successful right of way agent who manages your existing right of way will share certain traits and skills to that of an acquisition agent. But there is a stark difference in the day-to-day operations that should be recognized. An acquisition agent will meet with a landowner and discuss acquiring rights, while an agent who manages existing right of way may meet with a landowner who has potentially built their home within someone's easement. As you can imagine, it takes someone with strong dispute resolution skills to navigate conversations of this nature.

Sam Brannon, a right of way specialist with over 30 years of experience points out, "In many cases, right of way is not always the sacrosanct strip of earth we sometimes think it is. We build better relationships with local governments and the developing community by looking for newer and smarter ways to manage our interests, while ensuring that our rights are not compromised." ✪

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