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RE: Acquisition of Easements Over 10 or More Parcels

Dear Managers:

A recent question was presented regarding the process by which public power districts may engage in right-of-way acquisitions through condemnation; specifically, the notice and negotiation aspects of that acquisition process. The process outlined below applies only to those projects involving ten or more separately owned tracts of land. The general process, set forth by Chapter 25 is then modified for projects with a voltage capacity of thirty-four thousand five hundred volts or more, as set forth in Chapter 70.

NEB. REV. STAT. §§ 25-2501-2506 provides the procedure in which private property is to be acquired.

NEB. REV. STAT. § 25-2501 defines intent and purpose as follows:

Section 25-2501. Intent and purpose.

It is the intent and purpose of sections 25-2501 to 25-2506 to establish a uniform procedure to be used in acquiring private property for a public purpose by the State of Nebraska and its political subdivisions and by all privately owned public utility corporations and common carriers which have been granted the power of eminent domain. *Such sections shall not apply to:*

(2) Public utilities and cities of all classes and villages when acquiring property for a proposed project involving the acquisition of rights or interests *in ten or fewer separately owned tracts* or when the acquisition is within the corporate limits of any city or village;

Section 25-2502. Includes definitions:

Section 25-2502. Terms, defined.

As used in sections 25-2501 to 25-2506 and 70-301, unless the context otherwise requires:

(1) Agency shall include the State of Nebraska and any department, board, commission, or similar entity thereof which possesses the authority to acquire property either with or without the use of eminent domain, any political subdivision of the State of Nebraska, and any *privately owned public utility corporation* or common carrier not exempted by section 25-2501 which possesses the authority to acquire property through the use of eminent domain;

Section 25-2502 (2) defines property to include:

(2) Property shall include any right or interest in real property, including but not limited to easements, but shall not include easements for public utilities located adjacent to and within ten feet of a public road right-of-way; and

(3) Negotiations shall mean communications between representatives of the agency and the property owner or his representatives who are specifically authorized to attempt to reach agreement on terms by which the agency shall acquire such property.

Based upon the plain language of the statute, I interpret “adjacent to and within” to mean “within” ten feet right-of-way based upon the organization of the sentence.

NEB. REV. STAT. § 25-2503 then details the notice process and content of the notice required to acquire private property. This section provides that any agency proposing to acquire private property for a public purpose shall give notice of such proposed acquisition at least forty-five days before beginning negotiations for such acquisition. The notice shall be directed to *each owner of property over or across which any right or interest is to be acquired* and shall be deemed properly given if delivered personally or mailed by registered or certified mail addressed to the property owner and to the address shown on the tax records in the office of the county treasurer, except that such notice shall be sufficient if given to the administrator or executor of the estate of a deceased person, the trustee of a trust estate, the guardian of the estate of a minor or incompetent person, or a conservator. The notice shall (1) describe the property proposed to be acquired and the compensation to be given for such property, (2) include a statement of the authority for the acquisition, (3) include the nature of and necessity and purpose for which the land shall be used, (4) include the title, right, or interest in the property to be acquired, (5) specify the amount of property needed for the public purpose, (6) include the reasons for selecting the proposed location or route, and (7) state that if approval of any other agency is required, the condemner shall set forth which other agency’s approval shall be necessary and, when the acquisition involves a highway, power line, telephone line, or similar project, shall include a map showing the proposed route to be followed by the project.

NEB. REV. STAT. § 70-301 provides additional procedures for public power districts acquiring rights-of-way for projects with a voltage capacity greater than thirty-four thousand five hundred volts. “Such district, corporation, or municipality shall give public notice of the proposed location of such pole lines or underground lines with a voltage capacity of *thirty-four thousand five hundred volts or more* which involves the acquisition of rights or interests in *more than ten separately owned tracts* by causing to be published a map showing the proposed line route in a legal newspaper of general circulation...” The publication must be done thirty days prior to beginning negotiations.

The essential question then becomes what does the term “ten separately owned tracts” mean? There is no definition provided and little context in which to ascertain the meaning. For guidance, a look at the only other statute in which the term “separately owned tracts” appears is NEB. REV. STAT. § 25-2504, which provides the notice and hearing procedure if a project is relocated. It is this language that leads to a reasonable interpretation that “ten separately owned tracts” means ten individual landowners and not simply ten separate tracts of land.

Section 25-2504 provides:

If the agency relocates the proposed project following such hearing and such relocation would require the acquisition of rights or interests in the **property of more than ten additional owners of separately owned tracts** to whom notice was not previously given, the agency shall give notice as provided in section 25-2503 to such additional owners and shall hold a public hearing as provided in this section with reference solely to that part of the project which has been relocated; Provided, that the time restrictions in section 25-2503 and this section shall not be applicable to any such additional notice, hearing, or negotiations.

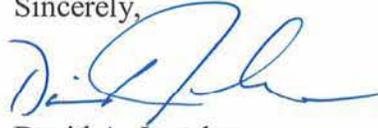
Without a definition of “separately owned tracts” or interpretative case law, it appears that the plain language of the statute leads to a conclusion that a project requiring a right-of-way would need to involve greater than ten separate landowners before the notice and hearing statutes are triggered.

After giving notice as outlined above,

The agency shall hold a public hearing on the proposed project and acquisition at least thirty days before beginning negotiations for such acquisition. Notice of such public hearing shall be published at least ten days prior to such hearing in a legal newspaper published in and of general circulation in each county, if such a newspaper exists, or if no such newspaper is published in the county, notice shall be published in a newspaper which has been designated as the official legal notice publication by the county board and is of general circulation in the county or counties in which the hearing is to be held. When the proposed acquisition consists of property from more than one county, a hearing shall be held in the county seat of each county. When the proposed acquisition is countywide in scope, the hearing shall be held at the county seat. When the proposed acquisition involves a lesser area, the hearing shall be held in a location convenient to the property to be acquired. When the proposed acquisition involves property located outside this state, the hearing shall be held at the principal office of the agency.

Therefore, in summary, if a project with a capacity of 34,500 volts or more includes 10 or more landowners and the entirety of the project is *not* located within ten feet of the public right of way, notice must be given to the affected landowners 45 days prior to negotiations. Additionally, a map of the proposed location must be published in a legal newspaper at least 30 days before beginning negotiations.

Sincerely,



David A. Jarecke

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