

REGULATIONS ON LAND ACQUISITIONS AND EASEMENTS
FOR
ELECTRICITY INFRASTRUCTURE RIGHT OF WAYS (ROW)

PRELIMINARY PROVISIONS

Preamble

Bearing in mind that land acquisitions and rights of ways for utilities in the electricity sector would increasingly be a recurring issue as the Utilities expand their infrastructure network throughout the country;

Realizing the need to establish a formal process for establishing easement rights for the structures and lines built by the Utility without actually acquiring ownership over the ROW,

This regulation is hereby adopted pursuant to the provisions of the Electricity Act –2001, Part 5, for regulations of easement and acquisition rights to be exercised by the Utilities in the business of generating, transmitting and distribution of electricity.

1. TITLE, EXTENT AND COMMENCEMENT & AUTHORITY

1.1 This shall be called the Right of Ways (ROW) Rules and Regulations for Electrical Infrastructure.

1.2 This regulation shall be enacted from the date of notification by the Competent Authority.

1.3 This regulation applies to the whole of the Kingdom of Bhutan.

1.4 The Utilities may adopt their own local guidelines for their working procedures when undertaking tasks in pursuant to this Regulation.

1.5 This Regulation can be amended from time to time and can be initiated either by the Utilities or the Competent Authority.

1.6 Legal Authority

The legal authority for acquisitions and access of ROW is the Electricity Act 2001 and the Land Act – 1979.

2. ROW THROUGH ACQUISITION AND EASEMENTS

A Utility shall establish its right of ways (ROW) through either direct acquisition of the property or through an easement rights over that property. Whether a piece of land or right of way needs to be actually acquired or whether just an easement is adequate would depend entirely on the use of the rights.

2.1 Acquisitions

Land required for construction of power plants, substations, and other structures that would constitute full taking of the property shall be acquired and hence the actual ownership has to be transferred to the Utility. A taking constitutes an acquisition if because of the structure a land or portion thereof is rendered absolutely useless for any purposes other than the existence of the structures.

These structures would include but not limited to the following:

	Structure	Area required
1	Generating plant	As per project report
2	High voltage substation	As per project report
3	Distribution Substations	

2.2 Easements

A land or portion thereof required for the purpose of constructing transmission lines and underground cables shall be established with the ROW where it does not constitute a full acquisition and hence transfer of the ownership to the Utility is not required. Such right constitutes an easement by the Utility to the property.

These structures would include the following:

	Structure	Easement Required ***
1	400 kV lines	52m
2	220 kV lines	35m
3	132 kV lines	27m
4	66 kV lines	18m
5	33 kV lines	12m
6	11 kV lines	12m
7	LV kV lines	7m

*** In specific locations this corridor might vary depending on the gradient of the slope along which the line runs. The Utility shall be the final technical authority in determining such cases.

3. RIGHTS OF THE UTILITY

3.1 Rights to acquire land

3.1.1 Where any land under private ownership is required to be acquired for setting up a project under license pursuant to Part 3 of the Act, the land may be acquired under the prevailing Land Act on approval of the Minister or the Competent Authority, and such acquisition shall be deemed for a public or national purpose.

3.1.2 Where the Minister or the Competent Authority, is satisfied that the land is required for the purpose of providing or maintaining electricity supply services to the public, and that it is required in the public or national interest, regardless of whether the Licensee is a public or private entity, the Minister shall pursue the acquisition of the land on behalf of the Licensee in accordance with the Land Act.

3.2 Right over public, private and government land and premises

The Licensee/Utility has the right over private, public and government land and premises:

3.2.1 To enter upon any lands and sinks bores and make surveys and do any other acts or things necessary for sinking bores or making surveys.

3.2.2 To draw, erect and maintain power lines and clearances on either side

3.2.3 To enter with any equipment or devices, receive, store, transmit, or supply electricity, water, on , near or under, any land and may enter any land and fell or remove any tree or part of a tree or any obstruction which in the opinion of the Licensee is necessary to fell or remove;

3.2.4 To divert any waterway, lake, swamp or marsh, or alter the bed, course or channel of any waterway;

3.2.5 To enter upon any public or private land or roads and construct any works or place on under or over any such land or road any structure or equipment and may repair, alter or remove any such structure or equipment or any works under its control, and

3.2.6 To do all other things necessary for constructing, maintaining, altering, or using any works or undertakings of, or under the control of, the Licensee, for the purpose of the Act, including but not limited to the following:

a) To open and break up the soil and pavement of any street, railway or tramway;

- b) To open and break up any sewer, drain or tunnel in or under any street, railway or tramway:
- c) To alter the position of any line or works or pipes, other than a main sewer pipe;
- d) To lay down and place electric lines, electrical plant and other works;
- e) To repair, alter or remove the same;
- f) To do all other acts necessary for transmission or supply of electricity.

3.2.7 In the exercise of the rights above the Utility shall observe the environmental guideline or regulation in force and must do as little damage as possible and must, if required, make full compensation to the owner of the land for any loss of income derived from such land or damage caused to the land in consequence of the exercise of the rights.

3.2.8 The Utility may exercise its power under this section by its officers or employees or by any other person authorized in writing by it or the officers or employees of any such person.

3.2.9 The Utility shall, except for the maintenance or repair of an electric supply line, before entering any private land give sixty days notice to the owner of the land, stating as fully and accurately as possible the nature and extent of the acts intended to be done.

3.2.10 The owner of the land may, within thirty days after the receipt of the notice, lodge a written objection with the Authority and the Authority shall specify a date to inquire into the objection.

4. PROCEDURES FOR LAND ACQUISITIONS

Procedures for land acquisitions shall comply with the provisions of the Land Act-1979, Electricity Act-2001 and the existing Government Regulations. As per clause 51 and 52 of the Electricity Act of Bhutan – 2001, the following procedure shall be adopted to acquire any property or to obtain any easement ROW over any property:

4.1 The Utility shall issue notice to the owner, with a copy to the relevant authorities, of the property 60 days prior to the construction of the structure providing the details of the easement/acquisition requirement.

- 4.2 Within 30 days of issuance of such a notice the Utility shall try and enter into a voluntary agreement with the owner of the property.
- 4.3 Should the utility fail to enter into a voluntary agreement with the owner of the property, then the matter shall be referred to the Competent Authority (as empowered by the Minister) and the concerned local authorities.
- 4.4 The Competent Authority shall mediate between the Utility and the property owners and their decision shall be final and binding. This decision shall be issued within 30 days of referring the matter to the Competent Authority.
- 4.5 After the binding agreement is issued by the Competent Authority, the matter shall be referred to the court and the title of the acquired land shall be transferred to the utility and compensation shall be done at the rates approved by the Government. In case of easement rights, this agreement shall be recorded with the relevant authorities.
- 4.6 In the Urban areas, the access and the rights of ways shall be arranged by the respective municipal authorities within 30 days of a formal request submitted by the Utility and recorded with the municipal land registration.
- 4.7 In the rural areas, the easement and the ROW shall be recorded at the district land records. The Gup and the local authorities shall ensure that the ROW is obtained and recorded thus for the Utility.

5. COMPENSATION RATES

- 5.1 For all acquisitions, the compensation rates shall be as per the prevailing rates notified by the Royal Government from time to time and as per section 52.3) of the Act.
- 5.2 For easement rights compensation shall be limited to only the direct damages of property (including crops etc.) during the construction of the utility infrastructures. No payment shall be made to the owner(s) for obtaining the easement rights if there is no direct damage caused to the owner(s). The owner can utilize the ROW area for cultivation of selected crops that does not effect the easement right of the Utility or the stability of the structures erected by the Utility and with prior approval of the Utility.
- 5.3 For erection of transmission towers or erection of structures in case of 66 kV lines and below, compensation shall be paid for the actual area covered by the base of the tower or the poles structures and an easement deed shall be entered into with the owner of the land. For 132 kV and above, whose coverage is large the Utility may decide to acquire the base area.

- 5.4 For stringing of lines (both LV and HV), compensation shall not be eligible for the area falling under the strung lines except for the one time direct damages to the property like destruction of the crops or destruction of any existing structures within the property. Such damages during subsequent seasons shall not be eligible for compensation.
- 5.5 For government land or forest areas no further clearances is required for cutting trees/branches etc. over the ROW for subsequent maintenance.
- 5.6 Assessment of the damages to the property shall be carried out by a joint team consisting of the Utility, land owner, and the local authority and in keeping with the other existing Government rules and regulations (Geog, Dungkha, forest, survey and Dzongkhag).

6. REGISTRATION OF EASEMENT RIGHTS

- 6.1 All easement rights should be registered with the Dzongkhag Authority in case of rural areas and with the Municipal Authority in case of the urban areas as per the provisions of the section 1.4 (Urban Area and Property Regulations, 2003) of the Royal Government of Bhutan.
- 6.2 The Authorities shall ensure that this easement is disclosed by the land owner for all subsequent transaction including proposals for development and sales/exchange or transfer of ownership of the land.
- 6.3 Subsequent to granting of the easement, the land owner shall have the duty to disclose all such easement grants for all subsequent transactions including proposal for development and sales/exchange or transfer of ownership of the land.

7. CRITERIA FOR SELECTION OF SITES & ROW

- 7.1 The Utility shall select the sites that is most technically and economically feasible.
- 7.2 In those Urban areas with high population density and where the market price of land/property is in rapid state of flux, the Utility shall make every effort to provide underground cabling system so that the ROW is limited to underground easement with minimum disruption to the value of the property on the surface.
- 7.3 In face of a conflicting options on the choice of ROW owing to reasons including but not limited to complains/resistance by the owners, the Utility shall use the following prioritization list;
- 7.3.1 The ROW that offers the most technically and economically feasible route shall be selected by the Utility provided that everything else is equal between available ROW options.

- 7.3.2 The line route shall be the most direct route to reduce the number of angle towers and angle poles.
- 7.3.3 Everything else mentioned in the above sections being equal the priority of ROW selection should be for land without structures (buildings/houses/establishment that incurs a substantial investment) over that of land with such structures already erected. All structures should be avoided irrespective of whether it is government or private land to the extent possible.
- 7.3.4 Everything else mentioned in above section being equal, the priority of ROW selection should be for vacant land (Government/Semi Government area) over that of a private land.
- 7.3.5 Everything else in the above sections being equal, in case of the line/infrastructure passing near the property line of two adjacent property of different owners, the ROW shall be established over the common property line to the extent possible.
- 7.3.6 Pre-existing ROW shall take precedence over any other options if there is no requirement for the Utility to change this ROW for technical or other justifiable reasons that it deems fit.

8. REGULARIZATION OF EXISTING ROW

This provision shall cease to apply once all the existing ROW exercised by the Utility is formally regularized as per the provision of the Electricity Act and this regulation.

- 8.1 The Utility shall complete all acquisition or easement actions for all existing power infrastructures in the Kingdom by the date that shall be notified by the Competent Authority.
- 8.2 Should the Utility fail to regularize the existing acquisitions and easements by the date notified by the Competent Authority all subsequent actions by the Utility shall deemed to be that of a new construction of infrastructure and any antecedent or prescriptive rights that the Utility has shall have expired.
- 8.3 The expiry of the antecedent and the prescriptive rights shall not apply should the regularization be delayed due to enactment of new laws and other government regulations despite the Utility having initiated its regularization process in time.

9. CHANGE OF ROW DUE TO SHIFTING OF LINES OR STRUCTURES

9.1 Any shifting of lines required by the Utility for the purpose of upgradation, improvement or network expansion/realignment shall be done by the Utility at its own cost and the Utility shall obtain ROW for its new alignment from the owners.

9.2 Any shifting of existing lines requested by a third party shall be done only under the following conditions and as per the provisions of the selection criteria mentioned in section (7);

9.2.1 There should be no cost implications to the Utility unless explicitly agreed to by the Utility in an earlier agreement or undertaking to comply with some other Acts or laws.

9.2.2 The requesting party shall be responsible for acquiring the new ROW.

9.2.3 The requesting party to bear all costs associated with the shifting of the alignment.

9.2.4 Such shifting to be done only within a reasonable time and minimizing disruption to the supply.

9.2.5 The ownership and the rights of the new line along with its easements and ROW shall automatically pass onto to the Utility but the requesting third party shall have the option to take over the materials and structures of the dismantled line.

10. RIGHTS OF THE LAND OWNERS

The owners of the land/property over which the Utility has obtained ROW are entitled to;

10.1 A just compensation at the rates approved by the Government from time to time for all land acquired by the Utility.

10.2 Compensation for direct damages done to the crop and other structures that is impacted by the acquisition or by the established ROW.

10.3 Retain ownership of the property while easement is granted to the Utility for some specific stated purpose.

10.4 Use the land over which easement is granted for limited purposes and with the prior approval of the Utility.

11. RESTRICTIONS ON THE USE OF AREA UNDER THE ROW

- 11.1 No person or entity shall be allowed to construct any structures or cultivate any crops in the vicinity of the electrical infrastructure and or under/over the easements and ROW obtained by the Utility that is used for a transmission line or underground cable or for an electrical substation.
- 11.2 Adequate clearances shall be maintained for any structures erected along the ROW or within the vicinity of the electrical infrastructure as required by the relevant technical specifications and determined by the Utility.
- 11.3 For constructions of houses and structures in the rural areas the respective Dzongkhag authority shall obtain clearances from the Utility prior to approval of such constructions if the constructions are near the vicinity of the electrical infrastructure or ROW.
- 11.4 For constructions in the urban areas the respective municipal authority or the urban development authority shall obtain clearances from the Utility prior to the approval of such constructions.
- 11.5 Any constructions carried out without the approval of the Utility and in contravention to this regulations shall be fined and violators shall be asked to remove such constructions at their own cost.
- 11.6 For constructions that have been carried out after this construction of the electrical infrastructure in violation of this regulation, the structures shall be removed by the Utility at the cost of the violator.

12. PENALTY

- 12.1 Any person or legal entity violating the provisions of this regulations shall be liable to pay a fine ranging from a minimum of Nu.5000.00 to a maximum limit as assessed by the Competent Authority and also liable to compensate for the full consequential damages and revenue loss in case of disruption to the power supply in the system caused by such acts of that person or that legal entity.
- 12.2 Any structure that has been constructed along the ROW and or constructed near the electrical structures, these structures shall also be removed and the cost recovered from the violator.

13. DISPUTE SETTLEMENT

- 13.1 All disputes shall be settled amicably between the concerned parties through direct negotiation or mediation.

13.2 Should the process in 13.1 fail, then the matter shall be referred to the Competent Authority for settlement as per the Dispute Resolution Process laid down by the Competent Authority.

Definitions

a) Easement

An easement is the right to make certain uses of another person's property (affirmative easement) or the right to prevent another person from making certain uses of his own property (negative easement). The right to run a sewer line across someone else's property would be an affirmative easement. An easement preventing somebody from erecting a structure in his own land would be a negative easement. Among others, easements are acquired by grant, reservation, prescription and by implication. For utilities, most relevant are those created by grants and by implication.

b) Eminent Domain:

The government has the power to take property for public use if it pays "just compensation" to the owner of the property. This power, called the power of eminent domain, makes it possible for the government to acquire private property for highways, water control projects, municipal civic centers, public housing, urban renewal and utility right of ways and other public uses. Governmental agencies can delegate their eminent domain power to private corporations.

c) License/Utility

A legal entity with the license to conduct business in the electricity sector pursuant to the Electricity Act-2001.

d) ROW

Right of Way is defined as the access over other's property by the Utility for the purpose of erecting/operation and maintenance of the electrical infrastructures.

e) Competent Authority

Bhutan Electricity Authority as empowered by the Electricity Act –2001 and the Minister.

APPENDIX I

BHUTAN POWER CORPORATION

LAND ACQUISITION DEED

This acquisition deed is entered between Mr./Mrs. _____ of (address) citizenship ID _____, Geog _____, Dzongkhag _____ (henceforth referred to as the Owner) and Bhutan Power Corporation (henceforth referred to as the Utility) on _____ (dd/mm/yy)

WHEREAS, the Utility wishes to acquire the said property as defined in section..... for the purpose of supplying electricity to its customers entailing works executed in the public interest as specified in (...) of this deed, and as per the provisions of the Land Act (1979) and the Electricity Act (2001);

Whereas the Owner, in consideration of the compensation to be paid as per the above Acts and the existing Government rules and in the interest of the public, hereby agrees to the taking of the property by the Utility and agrees to the transfer of the full ownership and rights of the property to the Utility;

Now this deed witnesseth as follows:

1. The property consists of _____sq.ft. of plot under _____ (commercial, residential, chushing, kamshing) category on Thram No, _____ situated at _____(name of locality) of _____ (geog), _____ (Dzongkhag).
2. The compensation for the above property shall be paid at the rate of Nu. _____/sqft. to be paid through the local authorities (municipality or the geogs and dzongkhags).
3. The ownership shall be transferred to the Utility immediately.
4. The acquisition is made for the purpose of _____ (name of the work/project).

This deed is signed on _____

(Owner)

(For the Utility)

APPENDIX II

BHUTAN POWER CORPORATION

EASEMENT DEED

This easement deed is entered between Mr./Mrs. _____ of (address) citizenship ID _____, Geog _____, Dzongkhag _____ (henceforth referred to as the Owner) and Bhutan Power Corporation (henceforth referred to as the Utility) on _____ (dd/mm/yy)

WHEREAS, the Utility wishes to obtain easement to the said property as defined in section..... for the purpose of supplying electricity to its customers entailing works executed in the public interest as specified in (...) of this deed, and as per the provisions of the Land Act (1979) and the Electricity Act (2001);

Whereas the Owner, in consideration of the compensation to be paid as per the above Acts and the existing Government rules and in the interest of the public, hereby grants easement to the Utility over the property;

Now this deed witnesseth as follows:

1. The property consists of _____sq.ft. of plot under _____ (commercial, residential, chushing, kamshing) category on Thram No, _____ situated at _____(name of locality) of _____ (geog), _____ (Dzongkhag).
2. The compensation for the above property shall be paid at the rate of Nu. _____/sqft. to be paid through the local authorities (municipality or the geogs and dzongkhags).
3. This easement shall be transferred to and respected by all subsequent assignees and owners of the property.
4. The owner has the duty to disclose the easement to the subsequent purchaser or owners during the sale of the property.
5. The owner shall not be allowed to obstruct the ROW acquired through this easement under any circumstances by way of construction of structures, houses, plantations or putting the area to any use that jeopardizes the Utility's structures or impedes the ROW without obtaining the explicit approval of the Utility.
6. Any authorized employee of the Utility shall have the right to enter into the ROW for works related to supply of electricity at any time of the day.
7. The Utility shall have the right to construct any structures along the ROW corridor.

8. This ROW is obtained for the specific purpose of

Describe the project

And extends over(length and width of the corridor).

(Owner)

(For the Utility)