

SERVITUDE NEGOTIATION AND THE EIA PROCESS

Transmission lines are constructed and operated within a servitude (55 m wide for 400 kV lines) that is established along the entire length of the line. Within this servitude, Eskom Transmission have certain rights and controls that support the safe and effective operation of the line.

The process of achieving the servitude agreement is referred to as the Servitude Negotiation Process, or just the negotiation process. The negotiation process is undertaken directly by Eskom Transmission. The following important points relating to the negotiation process should be noted:

- Servitude negotiation is a private matter between Eskom Transmission and the appropriate landowner.
- The negotiation process involves a number of stages (see below), and culminates in the “signing” of a servitude. Here Eskom Transmission enters into a legal agreement with the landowner.
- The agreements will detail such aspects as the exact location and extent of the servitude, and access arrangements and maintenance responsibilities, as well as any specific landowner requirements.
- Compensation measures are agreed in each case.
- The negotiation process may take place at any time in the planning of a new line.
- This process must be completed (i.e. the agreement must be signed) with the relevant landowner before construction starts on that property.
- The negotiation process is independent of the EIA process.

The EIA process has become important in the initial planning and route selection of new Transmission lines. For this reason, it is usually preferable that the negotiation process begins after the EIA has been completed. At this stage there is greater confidence in the route to be adopted, and it would be supported by environmental authorisation. However, it may be required that the negotiation process begins earlier, and may begin before, or run in parallel with the EIA process. This may be due to tight timeframes for the commissioning of the new line, knowledge of local conditions and constraints, etc. Eskom Transmission has a right to engage with any

landowner at any time, though they do so at risk if environmental authorisation has not been awarded.

1. The Negotiation Process

The national Eskom Transmission office is responsible for the negotiation process for all new Transmission lines. The negotiation process can be extensive, often running into years on the longer lines. It is, therefore, critical that the process is correctly programmed and incorporated into the planning of a new line. The negotiation process involves the following steps:

- i. Initial meeting with the landowner.
- ii. The signing of an “option” to secure a servitude (this indicates that the owner will accept that the line will cross his property, subject to conditions to be finalised in the negotiation of the servitude agreement). An option is valid for one year.
- iii. Once the route is confirmed (i.e. options are signed with the upstream and downstream landowners), the servitude agreement will be finalised with the individual landowners. This agreement will set out the conditions for the establishment and operation of the servitude, and will be site-specific (as different landowners may have different requirements). Compensation payments are made when the servitude is registered at the Deeds office.
- iv. Once construction is complete and the land rehabilitated to the landowners satisfaction, the landowner signs a “Final Release” certificate. Until the “Final Release” certificate has been signed, Eskom Transmission remains liable for the condition of the land.
- v. Once the clearance certificate is signed, the responsibility for the line and servitude is handed over to the regional Eskom Transmission office.

2. Servitude Maintenance Responsibilities

The management of a Transmission line servitude is dependent on the details and conditions of the agreement between the landowner and Eskom Transmission, and are therefore site-specific. These may, therefore, vary from location to location.

However, it is common that there is a dual responsibility for the maintenance of the servitude:

- Eskom Transmission will be responsible for the tower structures, access roads (including erosion and rutting), watercourse crossings, and gates and fences relating to servitude access.
- The landowner will retain responsibility for the maintenance of the land and land use within the servitude (e.g. cropping activities, veld management, etc.).

Exceptions to the above may arise where, for example:

- Dual use is made of the access roads and gates.
- Specific land use limitations are set by Eskom Transmission within the servitude which directly affect the landowner (e.g. forestry).

Notwithstanding initial compensation for such circumstances, different maintenance agreements may be entered into between the landowner and Eskom Transmission. For example, responsibilities for access road maintenance may rest with the landowner (instead of Eskom Transmission), or vegetation control responsibilities may rest with Eskom Transmission in the second instance. Maintenance responsibilities are, ultimately, clearly set out in the servitude agreement.