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1. Introduction

Eskom being a major player in the acquisition of rights should adhere to industry norms and government policy when acquiring rights. To deviate substantially from these norms will set a precedent, and in turn have a negative effect on any future acquisition.

This guideline is based on the interpretation of the above in line with business principles and industry norms. A clear guide should be applied when negotiating a price to be paid as consideration to a landowner to grant permission to register servitude rights on a property for the purpose of establishing Transmission infrastructure. It must also be recognised that each individual land portion and the effect of any servitude will be unique, and therefore the compensation/consideration to be paid or offered will be made up of different categories.

For a land owner his property is in many cases his fixed asset and not just part of a property portfolio. His property is also his home and only source of income. The agreement between Eskom and the land owner is one in perpetuity, it is therefore essential that good relations are upheld.

2. Purpose

The purpose of this document is to give guidance and process to be followed when determining consideration to acquire rights for Eskom Transmission. This guideline is aligned to the principles outlined in the South African Constitution, Act 108 of 1996, the Expropriation Act 63 of 1975, and Eskom's Policy for Management of Immovable Assets and Rights.

The guideline provides parameters within which, Land and Rights negotiators may negotiate a consideration amount that will be agreeable to all parties. All servitude acquisition and sale agreement negotiations within Transmission should follow these guidelines, where possible.

3. Applicability / Responsibility

The guideline is applicable to all servitude acquisition and sale agreements transactions within Transmission Division. All negotiators and managers within Transmission Division will be responsible to apply the principles and processes outlined hereto to ensure consistency and uniformity.

Transmission Services Land & Rights Manager and the relevant Eskom tender committees are responsible to apply their minds and adjudicate individual submissions using ethical business principles and norms. This will ensure that the contents of this document are adhered to and interpreted accordingly.

4. Definitions

Consideration: the amount to be paid to the land owner for the right-of-way across a property and does not include compensation for damages

Compensation: is the amount paid for actual damages on a property during construction

Industry Norm: an accepted standard used by institutions that have a right to acquire land or servitude in the interest or benefit of the public.

Servitude: the “right vested in one person of deriving some advantage from the property of another” (Simpson and Sweeney, 1973).

Property: immovable property such as land.

Market Value: “The probable price that a willing and informed purchaser will pay a willing and informed seller in a normal open market transaction at the date of valuation when neither party is under any anxiety or compulsion to sell or purchase, other than their normal desire to transact”.

Date of valuation: the date on which the valuation report was completed.

Strip valuation: Categorisation of different land use values within defined geographical areas.

Solutuim: money paid over and above the market price as per the Expropriation Act

Before and After Valuation: Determination of the value of the property prior to the construction of the Transmission line and after such construction. It is a determination of the impact of the servitude on the burdened property.

5. Abbreviations:

ROD: Record of Decision

DEAT: Department of Environmental Affairs and Tourism

TX: Transmission Division

VAT: Value Added Tax

SARWA: South African Rights of Way Association

CGT: Capital Gains Tax

6. Industry Norms

The value that is regarded as the starting point for negotiations is the market value of land, as determined by the registered professional valuer. This is in keeping with other institutions that have legal rights to acquire land for the public good who base their compensation/consideration as per the Expropriation Act, very similar to the proposed Eskom methodology

Telkom, in terms of the Telecommunications Act, is defined as a “fixed line operator” which gives them certain powers to expropriate land if necessary, usually offering a once off payment for a site servitude.

The cellular operators normally opt for lease agreements rather than servitude agreements. These agreements frequently contain indirect compensation like free airtime minutes as “sweeteners” as well as direct monthly payments for the site or way leave rights to the site.

7. General Principles of determining Consideration

- It is important that negotiations culminate in a win-win situation for both Eskom and the landowner. The land owner is in most cases an Eskom client. This approach is based on capitalising and maintaining any existing goodwill between the parties involved. The landowner's consent to the Transmission servitude can be seen as a very influential cost and time variable to the project, it also forms part of the conditions of the Environmental Authorisation (EA) as issued by the Department of Environmental Affairs and Tourism. (DEAT).
- Compensation which cannot be determined during the negotiation stage for damages which the land owner may suffer as a result of the exercising of the rights should not be included in the consideration.
- The consideration price will be based on 100% of market related land value for the area to be taken by the servitude or 100% of the actual financial loss incurred as a result of the power line / substation as determined by a registered professional valuer.
- Where a servitude or restriction area occupies 50% or more of the total area of any property, the whole property may be purchased, but only at the owner's insistence.
- If, after an area has been surveyed, it is found that the area of restriction is larger or smaller than that negotiated for, the necessary adjustments may be made to the consideration payable.
- The South African Institute of Valuer's, Organised Agriculture and the South African Right of Way Association should be consulted if a new consideration methodology outside government guidelines is proposed, to ensure uniformity in the industry.
- Eskom's interests must receive priority in all decision making processes. The approval amount will be the basic amount to which Eskom is committed and does not include interest, VAT, and legal fees.
- The agreement between Eskom and the land owner is one in perpetuity. It is therefore essential that good relations are upheld. In order to maintain fairness to the individual and sound relations between the land owner and Eskom, it is crucial that fair consideration, in terms of the prescribed principles, be paid and that equal rights are maintained throughout.
- Land value and any other premiums/solutium, if applicable, should be documented separately so as not to distort the market value of land.

8. Roles and Responsibilities

The Transmission Services Land & Rights Manager will be responsible to implement and maintain the business practices related to this guideline.

9. Implementation Date: 1 May 2008.

10. Related / Supporting Documents

- **Property Valuation in South Africa: A J Jonker**
- ***“Extract” New approved method of servitude consideration calculation as approved by Transmission R300m Divisional Procurement Committee in July 2006.*** Ref LR2006\07\10\EG\01 - Ernest Grunewald
- **Route selection policy (TPC 41-786)**

- SARWA RoW Manual

11. EXCLUSIONS

- a) Crop damage, loss or theft of livestock claims, etc. caused during construction phase should be excluded in the compensation value due to the following reasons:
 - They are difficult to budget for, as the construction methods vary,
 - weather conditions during construction,
 - properties are unique,
 - different crops,
 - price volatility.
- b) Eskom will be liable for actual crop damage and any other loss to landowners during the construction phase.
- c) Environmental damage caused to servitude, for example gates, berms, bridges, access roads, rehabilitation etc. (normally contractor responsibility, however monitored by Eskom) should be included in the construction tender process.
- d) It must be noted that landowners are requesting for example: profit share, free or subsidised electricity, monthly rentals, etc. These requests are not in line with the Expropriation Act and therefore cannot be accommodated.

12. ASSUMPTIONS

- a) Temporary staff and contractors, who are used to acquire servitudes on behalf of Transmission, should be trained in the principles of this document.
- b) Expropriation is not a simple or easy solution as it is time consuming and tedious. In the interests of business the Tender Committee will need to be flexible towards unique circumstances. The risk of landowners not willing to agree could have serious delay on new Eskom Transmission infrastructure.
- c) The conditions laid down in the Record of Decision obtained from the Department of Environmental Affairs and Tourism will be adhered to.
- d) Eskom's interests must receive priority in all decision making processes.
- e) If the owner is prepared to grant Eskom the necessary rights and the consideration cannot be agreed upon, the parties concerned may agree that the owner grant the right to Eskom as stipulated in terms of section 9 (1) (a) of the Expropriation Act 63 of 1975 and to have the consideration determined as therein provided for. If an application for the determination of the consideration is not made in terms of said Act within six months from date of this agreement, the option will be exercised and the consideration offered shall be the consideration payable for the acquisition of the rights set out in this option.
- f) Note should be taken that Eskom's duty in a court will not be to persuade the court of the least amount that can be paid, but rather that a fair consideration has been offered to the person expropriated for any loss or inconvenience suffered as the result of the expropriation.
- g) A new bill which is still being drafted will take precedence over the current Expropriation Act once enacted. Thus all conditions referred to will have to be aligned to the new Expropriation act..

13. Transmission Land & Rights Consideration Process:

At first glance it would be reasonable to assume that an equitable way of determining consideration for a servitude rights is to use a comparative sales method (i.e. comparison of the recent land values for similar properties in the area.

Eskom invariably needs land and rights over land from **unwilling** sellers, and like other institutions often has to pay a premium to obtain such land or such rights.

In order to pay an unwilling seller for the "forced" purchase of his property the consideration should be calculated as if expropriation is taking place: sect 12(1)(a) of the Expropriation Act 63 of 1975): "In the

case of a right, except in a registered right to minerals, an amount to make good any actual financial loss caused by the expropriation or the taking of the right.”

First Negotiations and Offer:

- A strip or site valuation report by a professional valuer, appointed in line with Eskom's procurement procedure, should be obtained before any form of negotiations can begin. This should be used as a general consideration basis for first negotiation, excluding any individual issues unique to the land.
- If the owner is prepared to grant Eskom the necessary rights and the consideration cannot be agreed upon, the parties concerned may agree that the owner grant the right to Eskom as stipulated in terms of sect 9(1)(a) of the Expropriation Act 63 of 1975 and to have the consideration determined as therein provided for. If an application for the determination of the consideration is not made in terms of the said Act within six months from date of this agreement, the option will be exercised and the consideration offered shall be the consideration payable for the acquisition of the rights set out in this option.
- The strip valuation should include but not limited to the following:
 - Detailed land use study of the area being valued
 - The land values should be based on strip valuation and not on property specific. Thus each land use should have an indicative range of values per area of study.
 - The terms of reference as stipulated during the tender process should be strictly adhered to.
- The following land uses categories should be clearly differentiated in the valuation report
 - Natural Grazing (veld)
 - Cultivated Grazing (pastures)
 - Cultivated Lands (different types i.e. maize, sunflower)
 - Arable Lands
 - Game Farms and Game Farm potential
 - Eco-Tourism and Eco-Tourism potential
 - Irrigated land
 - Other (to be specified)

Solatum or 10% Premium:

- It is important to note that this tool is not a must but should be used as a bargaining tool and only if an agreement on based on the market value can not be reached.
- In circumstances where the consideration based on the strip valuation is not fair and equitable taking into account the unique qualities of the land, or where there are financial impacts not considered in the strip valuation report a solatum or a premium of up to 10% of the strip valuation may be introduced in the negotiations. To be able to introduce such incentives, a Tender committee approval should be sought.
- Solatum is calculated as follows:
 - Ten per cent of total amount, if it does not exceed R100 000; plus
 - Five percent of the amount by which it exceeds R100 000, if it does not exceed R500 000; plus
 - Three percent of the amount by which it exceeds R500 000, if it does not exceed R1million; plus
 - One percent (but not amounting to more than R10 000) of the amount which it exceeds R1 000 000.
 - Note. Solatum calculates to a maximum of R55 000 and represents an additional allowance for compulsory acquisition.’(Sect 12(2) of the Expropriation Act)

Premium based on additional and multiple power lines:

- Similar to the solatuum above, it is important to note that this tool is not a must but should be used as a bargaining tool and only if an agreement based on market value can not be reached.
- In the event that the land is already impacted by an existing power line a solatuum or a premium of between 5% and 10% may be added to the strip valuation or normal market value of the servitude.
- The percentage of the premium should be based on the number of power line servitudes of 88kV and above.
- The percentage to be added will depend on the power line position on the property and its impact thereon. Basically if the lines are parallel and on the edge of the farm an amount of say 5% may be offered, and if the existing line and the proposed line cut through the middle of the property then 10% premium may be offered per existing line cutting the property in half. The maximum percentage will be 100% of the value of the servitude. This premium will not be used in the case where a before and after valuation has been done on the property.
- In the event that the servitude for multiple power lines is being negotiated, the negotiator may add up to 10% on the strip or market valuation per power line depending on the impact severity of the servitude on the land.

The Before and After Valuation:

In circumstances where the market value plus all solatuims and premiums added are not satisfactorily and thus there is still no consensus between Eskom and the Landowner and or if requested by the land owner, the Before and After valuation should be proposed., i.e. investigate the effect of the servitude on the value of the property or any loss suffered by the land owner due to the servitude.

An external valuer (registered with SA Council of Valuers) mutually agreed by Eskom and the land owner should be appointed (adhering to the Eskom commercial procedure) to carry out the before and after valuation. The valuer must determine the market value of the property on a willing seller willing buyer basis and also the value of the property after it has been impacted by the servitude. The difference between the two amounts is the "value" or consideration to acquire the servitude.

Minimum payment:

In some instances the area to be taken is very small and compensation amounts equate to small insignificant amounts below R 5, 000. This minimum consideration takes into account the following costs incurred by the landowners:

- The inconvenience and time relates to negotiations
- Security risks
- During the registration process the land owner must perform certain tasks such as obtain a commissioner of oaths signature, certain originals and photo copies are needed, postage and petties
- Traveling costs relating to registration of the documents.

Legal costs for landowner consultations:

If negotiations are difficult, or the land owner insists on legal advice, or other professional opinions, these costs may be carried by Eskom. It must however be agreed as to reasonable rates and time constraints.

14. OTHER ADDITIONAL COSTS TO LAND VALUES

14.1. RE-LOCATION OF OBSTACLES

Obstacles that can be identified during the acquisition stage for example but not limited to: houses (formal and informal), sheds, dams, windmills, trees, water tanks, car-ports, boreholes, landing strips, irrigation, etc. should be relocated and a fair compensation should be determined.

Depending on the circumstances, these should either be compensated for or replaced by Eskom, the unique circumstances of each case should be determined by the negotiator in consultation with the relevant expert matter (e.g. Quantity Surveyor for buildings). Payment of these should be negotiated, an agreement should be reached, for example with regards to re-location of dwellings, Eskom should pay 75% upfront and a further 25% on completion of the re-location. All supporting documents and motivations should be attached to the tender committee submission.

With regards to tribal land each transaction will be guided by the tribal authority and the occupant.

Each re-location transaction should be ratified by an in house Eskom Quantity Surveyor. The negotiator should supply the necessary documents, photos and other documents as required by the QS to make an informed assessment and decision.

14.2. Tribal Resolutions

14.3. CAPITAL GAINS TAX

Each case must be calculated on merit.

After consultation with corporate tax it has been decided to "GROSS UP", when required servitude acquisition agreements by 20% of the land value portion excluding premiums. This will in all instances allow the land owner to pay to SARS his portion of CGT.

15. Authorisation:

This document has been seen and accepted by:

[\(i.e. The manager/s of the divisions who shall be affected by the content of this document\)](#)

| Name | Designation |
|-------------------|---|
| MM Ntsokolo | Managing Director (Transmission Division) |
| W Majola | GM Transmission Services |
| Tsholofelo Molefe | GM Transmission Finance |
| N Kleynhans | Chairperson Lands and Rights Tender Committee |
| B Stolp | Lands and Rights Acquisition Manager |
| E Grunewald | Lands and Rights Consultant |
| Antonie Mammes | Corporate Commercial Consultant |
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16. Revisions

| Date | Rev. | Remarks |
|-------------|-------------|----------------|
| | 0 | |

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(normative)

THE CONSTITUTION READS (Extract)

Sect 25 of the Constitution of South Africa – Act 108 of 1996:

Property

1. No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
2. Property may be expropriated only in terms of law of general application
 - a. for a public purpose or in the public interest; and
 - b. Subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.
3. The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including
 - a. the current use of the property;
 - b. the history of the acquisition and use of the property;
 - c. the market value of the property;
 - d. the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
 - e. The purpose of the expropriation.

Annexure B

THE EXPROPRIATION ACT READS (Extract)

Section 12 of the EXPROPRIATION ACT 63 OF 1975:

Basis on which compensation is to be determined.—

(1) The amount of compensation to be paid in terms of this Act to an owner in respect of property expropriated in terms of this Act, or in respect of the taking, in terms of this Act, of a right to use property, shall not, subject to the provisions of subsection (2), exceed—

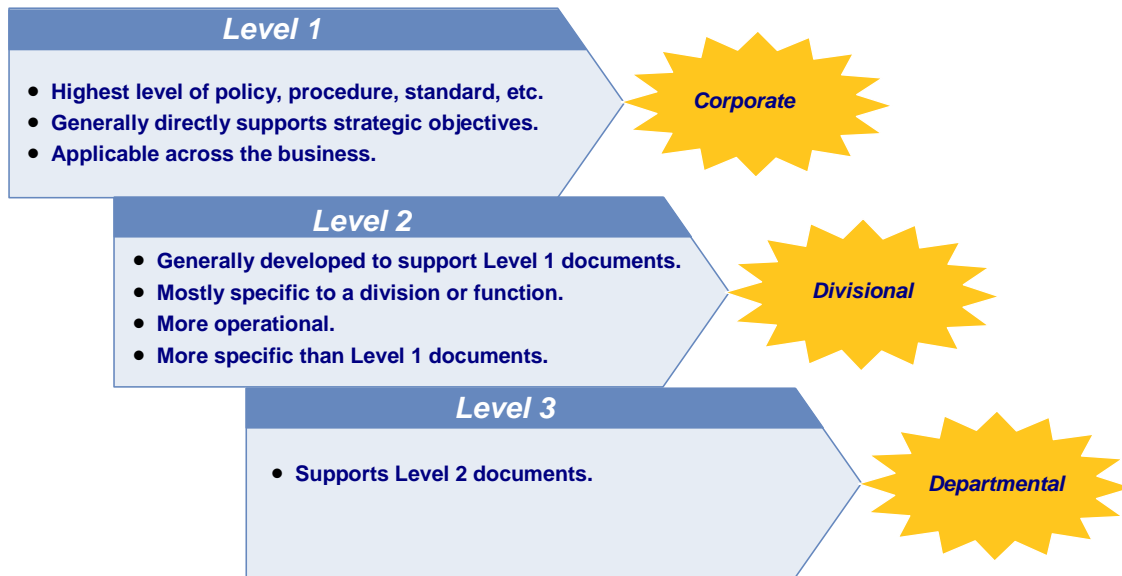
- a. in the case of any property other than a right, excepting a registered right to minerals, the aggregate of—
 - i. the amount which the property would have realized if sold on the date of notice in the open market by a willing seller to a willing buyer; and
 - ii. an amount to make good any actual financial loss caused by the expropriation; and

[Para. (a) amended by s. 11 (a) of Act No. 45 of 1992.]

- b. in the case of a right, excepting a registered right to minerals, an amount to make good any actual financial loss caused by the expropriation or the taking of the right:

[Para. (b) substituted by s. 11 (b) of Act No. 45 of 1992.]

Eskom Document Hierarchy (as an example)



References:

Property Valuation in South Africa A J Jonker)

Annexure B

(informative)

Eskom Document Numbering (as an example)