Public Utility Easements (PUE’s) are typically found in subdivisions. The land developer dedicates the PUE’s to facilitate the distribution of utilities to the individual lots in the subdivision. Utilities generally utilize these strips in joint trenches when applicable. In older subdivisions, poles and aerial construction were used for power, Telco and CATV.

**Beware** of potential problems. In California there was a case, which is outlined below, involving a PUE. This episode could take place in any state in the Union.
The subdivision on the east side of the two lane state highway was about thirty years old. The documentation was very sketchy as to why they dedicated a twenty-foot PUE. Regardless, the electric, telephone and cable companies all occupied a joint pole line and felt protected by the PUE.

The California Department of Transportation (CALTRANS) was making plans to widen the highway by twenty feet on each side of the existing right of way and notified the three companies that were on the pole line. The notification of course was an order to relocate the pole line. Pacific Gas & Electric (PG&E) originally placed the poles and was also the first to deliver the bill to CALTRANS for reimbursement expenses.

CALTRANS told all three companies that since they were in a PUE they had the same liability as if they were in the public right of way. They would have to bear the relocation expenses themselves!

The Telco engineer, a former student, called me with this concern and expressed surprise and anger over CALTRANS’ decision. I started making some calls and ended up speaking with the head of engineering at CALTRANS in Sacramento. He told me that he had made the decision to treat occupants of PUE’s as if they were in the public right of way and required them to relocate their facilities at their own expense. Was this an unusual incident? Of course it was. It does, however, send up a red flag to utilities: protect your investment by acquiring a recorded easement in your company’s name from the developer of every subdivision. It is very easy to do. The vast majority of developers cooperate and grant an easement over the PUE’s.

This incident raised a red flag for me too. I started asking questions of title companies. I interviewed Steven Brown of New Century Title. Steven is an advisory title officer with New Century. Steven pointed out that the developer offers the streets for dedication as well as the PUE’s. In contract law you may recall that an offer is just that until an acceptance takes place. In a development, who or what, accepts the offer of the dedication? The local agency of course.

What was given to the utilities? A license! You may also recall that a license is revocable.

This now leads me to reinforce the idea of getting a recorded easement in your organization’s name when occupying a PUE.
OWNERS STATEMENT
WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF, OR HAVE SOME RIGHT, TITLE OR INTEREST IN AND TO THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION SHOWN UPON THIS MAP; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS CLEAR TITLE TO SAID PROPERTY, AND WE HEREBY CONSENT TO THE MAKING OF SAID MAP AND SUBDIVISION AS SHOWN WITHIN THE DISTINCTIVE LINES AND HEREBY DEDICATE TO THE PUBLIC FOR STREET, UTILITY AND SANITARY SEWER PURPOSES, BAYHILL PLACE AND EAGLE TRACE LANE AND EAGLE TRACE DRIVE AS SAID PLACE LANE AND DRIVE ARE SHOWN ON SAID MAP WITHIN THE DISTINCTIVE SUBDIVISION LINES.

WE ALSO HEREBY OFFER FOR DEDICATION TO PUBLIC USE ALL EASEMENTS UNDER, ON, OR OVER THOSE CERTAIN STRIPS OF LAND DESIGNATED AS PUBLIC UTILITY EASEMENTS (P.U.E.), STORM DRAIN EASEMENTS (S.D.E), AND SIDEWALK EASEMENTS (S.W.E.), ALL AS SHOWN ON SAID MAP WITHIN SAID SUBDIVISION.

The above statement is copied verbatim from a recorded subdivision map in northern California. Notice that the owners have offered to dedicate to the public the streets and easements. In order to be valid, the offer must be accepted by the public. In this case, the public is the city in which this subdivision is being developed.

Below is the CITY CLERK’S CERTIFICATE from the same subdivision face sheet. The name of the city has been changed for this example.
If you haven’t had the opportunity to acquire easement over a PUE before, following is a sample generic easement with wording that my right of way group came up with to take care of the issue. Caution: before using this wording, check with your legal counsel first. They are the ones who must determine if it is defensible in their opinion. Also, be sure to check with your counsel regarding your state law and PUE’s. When you examine the generic easement, you will notice underlined words in the description. You will then insert appropriate changes to make this format work for your situation. I trust that this article will help you guarantee that your facilities will be protected from un-reimbursed relocation expenses in PUE’s.
Generic Grant of Easement for PUE’s

The undersigned grantor(s) hereby grants to (YOUR CO. /AGENCY) Grantee, its successors and assigns, an easement to construct, maintain, operate, inspect, repair, replace and remove such (FILL IN EQUIPMENT OR FACILITY), as Grantee may from time to time require (INCLUDING INGRESS THERETO AND EGRESS THEREFROM) in, over, under, and upon that certain real property situated in the County of Carbon, State of Pennsylvania, described as:

All That Portion of XYZ Subdivision Recorded On the 2nd Day Of January 2010 in the Office of the County Recorder of Carbon County, State Of Pennsylvania As Map Number 9119 Designated, Delineated, Described and Shown As Public Utility Easement’s (PUE’s) On Said Map.

Grantor(s) also grant(s) to Grantee the right to trim such trees and other foliage and to cut such roots on said property as may be necessary for the protection of Grantee’s facilities. Grantee shall be responsible for any damage caused either intentionally or by any act or omission of Grantee, its agents, or employees while exercising the rights granted herein.

Executed on this ____ Day of __________ 201 __

By: ____________________________________________

By: ____________________________________________

Notary:
Now, a caveat to the above article. In 2003, the City of Stockton ordered all utilities to vacate a PUE to make way for a storm drain. The city was NOT going to pay for the relocations. Pacific Gas & Electric (PG&E) filed suit for reimbursement. The court held that the utilities relied on long term use of the easement and required the city to pay for the relocation! Justice was done.

Jerry Moran is Vice President of NMI Management & Training Services in Oakland, California, which specializes in right of way training. Jerry spent twenty-five years with Pacific Bell in various management & technical positions. He co-founded NMI in 1991.

Jerry’s professional background is:

• Five years in the U.S. Air Force as a telecommunications specialist
• Twenty-five years with Pacific Bell specializing primarily in Right of Way Acquisition
• Taught the Bell System/Bellcore Right of Way schools
• Formerly a Certified instructor for the International Right of Way Association
• Past president of Chapter Two (1998) International Right of Way Association
• Chapter Two’s “Professional of the Year” 1998
• Author of several magazine articles dealing with right of way issues that appeared in technical magazines
• Author of numerous specialized training courses in land and easement acquisition
• Expert witness on land and easements
• Adjunct faculty at the University of Wisconsin’s College of Engineering