



Transmission Lines Overview

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Casey, Gentz & Magness, LLP

- The firm is AV®-rated and listed in the Bar Register of Preeminent Lawyers™
- The firm advises clients on a broad range of issues
 - Electric utility, communications, cable television, and insurance regulatory law
- The firm's attorneys have appeared regularly over the last twenty years before the Public Utility Commission of Texas
 - They are very familiar with the Public Utility Regulatory Act and the PUC's rules and hearing procedures



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Brad Bayliff

- Leads the firm's representation of landowners in transmission line cases before the PUC
 - Represented clients including individual landowners, groups of landowners, and developers
 - Received his B.S. and J.D. degrees from Indiana University
- Intern for Chief Justice Thomas Phillips of the Supreme Court of Texas
 - Received the Best Oralist award in the school's moot court competition
- Former real estate broker and developer
- Member of the Indiana House of Representatives from 1986 to 1994



Presentation outline

- What are transmission lines?
- Competitive Renewable Energy Zones (CREZ)
 - Statutes, rules, orders
- PUC approval of a transmission line
 - Initial utility activities
 - Application and hearing process
 - Criteria and factors the PUC considers
- Post-certification process
 - Utility requirements and easements
 - Review of condemnation process



What are transmission lines?

- Circuits that allow for the bulk transfer of electricity
 - From generating plants to population centers
 - This network is referred to as the “grid”
- Lines are typically high-voltage and not insulated
 - Clearance is required for safety
 - Towers range from 120 to 185 feet tall
 - Utility rights-of-way are usually clear-cut
 - Loss of a line can lead to power outages
- Typical concerns of landowners about transmission lines
 - Aesthetics
 - Loss of use of property
 - Electromagnetic fields (EMFs)



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How many transmission lines are being built – and why?

- Since 2008, Texas utilities have constructed
 - 1,137 circuit miles of transmission
 - \$1.38 billion cost
- CREZ statutes, rules, and dockets
 - PURA § 39.904
 - P.U.C. Subst R. 25.174
 - Public Utility Commission of Texas Dockets
 - Docket No. 33672
 - Docket No. 35665
 - Docket Nos. 36801 and 36802
- Next five years (including CREZ)
 - 5,729 circuit miles
 - \$8.2 billion cost



PURA § 39.904(a)

Goal for Renewable Energy

- Set a goal of 5,000 megawatts of renewable generating capacity by January 1, 2015
- Target of 10,000 megawatts of installed renewable generating capacity by January 1, 2025
- Of the renewable generating capacity, the commission shall establish a target of having at least 500 megawatts of capacity from a renewable energy technology other than wind energy



PURA § 39.904(g)

Goal for Renewable Energy

- The commission consulted with the Electric Reliability Council of Texas (ERCOT) and:
 - Designated CREZs in areas where renewable energy resources and suitable land areas are sufficient to develop generating capacity;
 - Developed a plan to construct transmission capacity to deliver, in a manner that is most beneficial and cost-effective to the customers, the electric output from the CREZs; and
 - Considered the level of financial commitment by generators for each CREZ in determining whether to designate an area as a CREZ and whether to grant a certificate of convenience and necessity (CCN).



PURA § 39.904(h)

Goal for Renewable Energy

- In considering an application for a CREZ transmission line, the commission is not required to consider the factors provided by Sections 37.056(c)(1) and (2).
 - The PURA § 37.056(c) factors:
 - (1) the adequacy of existing service
 - (2) the need for additional service



PURA § 39.904(j) and (k)

Goal for Renewable Energy

- The commission must shall file a report with the legislature each even-numbered year. The report must include:
 - An evaluation of the implementation of CREZs;
 - The estimated cost of transmission service improvements needed for each CREZ; and
 - An evaluation of the effects that additional renewable generation has on system reliability and on the cost of alternatives to mitigate the effects.
- The commission and ERCOT shall study the need for increased transmission and generation capacity throughout this state and report to the legislature the results of the study and any recommendations for legislation.



P.U.C. Subst. R. 25.174(a)

Competitive Renewable Energy Zones

- The designation of CREZs was required to be made through one or more contested-case proceedings
 - ERCOT provided a study of the wind energy production potential statewide, and of the transmission constraints that are most likely to limit the deliverability of electricity from wind energy resources



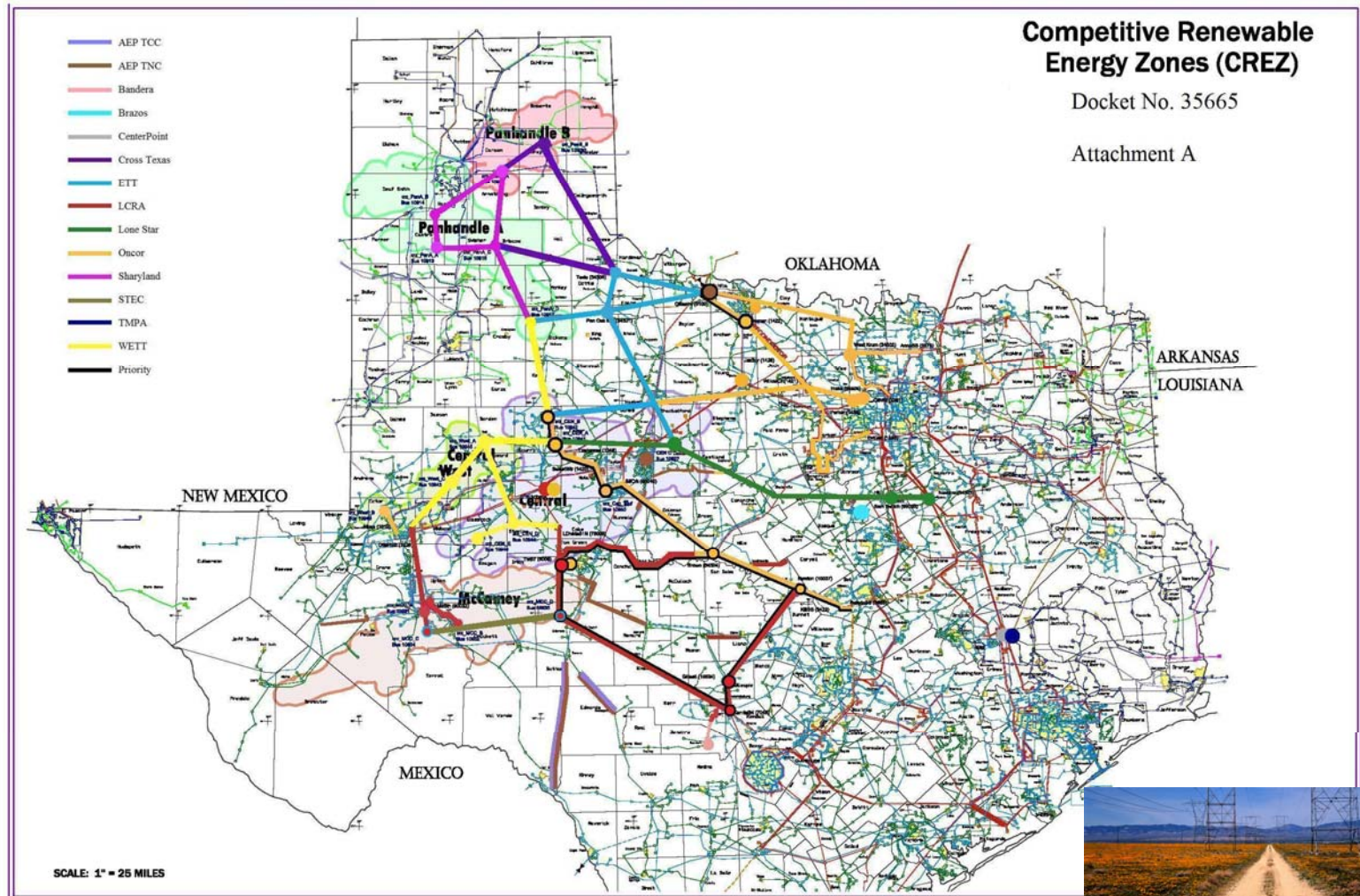
P.U.C. Subst. R. 25.174(a)(4)

Competitive Renewable Energy Zones

- The Commission considered the following in determining whether to designate an area as a CREZ and the number of CREZs to designate:
 - Whether renewable energy resources and suitable land areas are sufficient to develop generating capacity from renewable energy technologies;
 - The level of financial commitment by generators; and
 - Any other factors considered appropriate by the commission as provided by PURA, including, but not limited to, the estimated:
 - Cost of transmission capacity to deliver to electric customers the electric output from renewable energy resources in the CREZ
 - Benefits of renewable energy produced in the CREZ



Where are the CREZ projects?



Public Utility Commission Dockets

- Docket No. 33672
 - Designated CREZ areas
 - ERCOT performed a statewide study
 - Identified 25 areas where best wind generation is available
 - PUC selected five in West Texas and Panhandle
 - Central, Central West, McCamey, Panhandle A, and Panhandle B
 - Selected the CREZ Transmission Plan (CTP)
 - ERCOT identified transmission plans for four scenarios of wind generation levels
 - 5,150 MW to 17,956 MW
 - Selected Scenario 2 – 11,553 MW with over 100 projects



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Public Utility Commission Dockets

- Docket No. 36146
 - Priority projects
 - Facilitate CREZ goals
 - Relieve current congestion
 - 31 projects involve upgrade or modification of existing facilities
 - Assigned to the entities that own those facilities



Public Utility Commission Dockets

- Docket No. 35665
 - Assigned projects to transmission service providers (TSPs)
 - 100 projects to 14 TSPs
 - Garland appealed the order in Docket No. 35665
 - Challenged the Commission's decision not to award any projects to municipally-owned utilities
 - Travis County District Court reversed the PUC and remanded its order for reconsideration
 - PUC assigning subsequent projects in Docket No. 37902



Public Utility Commission Dockets

- Docket Nos. 36801 and 36802
 - Established sequencing of applications
 - 10 priority projects
 - 35 subsequent projects in 25 applications

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CREZ projects

- 10 priority projects
 - Critical to relieve current congestion that is hampering the delivery of existing wind-powered energy to the grid
 - Take precedence in the CREZ implementation process
 - Assigned to Oncor and LCRA, incumbent TSPs
 - Nine were filed on or before Jan. 15, 2010
 - July 6, 2010 – McCamey D – Kendall – Gillespie
- 35 subsequent projects in 25 applications
 - Assigned to Cross Texas, ETT, WETT, LCRA, Lone Star, Oncor, Sharyland, and STEC
 - March 1, March 22, April 12, May 3, May 24, June 14, July 5, July 26



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What is the process for approval of a transmission line?

- Determine whether the project is needed
 - Need has been established for CREZ projects
- Engineering and planning for project
 - Includes public meetings
 - Environmental assessment and routing study prepared
- Utility files CCN application
 - Notice provided to landowners
- PUC hearing
- Post-approval
 - On-the-ground surveys and evaluations
 - Acquisition of rights-of-way
 - Construction



Who participates in and who decides transmission line cases?

- Participants
 - Utility/TSP
 - Landowners/Intervenors
 - PUC Staff (representing the public interest)
- Decision makers
 - State Office of Administrative Hearings (SOAH)
 - Public Utility Commission
 - Three members appointed by the Governor
 - Chairman Barry T. Smitherman
 - Commissioner Donna L. Nelson
 - Commissioner Kenneth W. Anderson, Jr.



Comment vs. intervention

- Comments (protests) are not on the record
 - The PUC may not base its decision on comments
 - Comments may be looked at by PUC Staff or ALJ
 - Protestors do not receive notice of the hearing
 - Protestors may not participate in the hearing
- Intervenors have more rights
 - They may participate in the hearing
 - Submit evidence and cross-examine witnesses
 - Intervenors have obligations
 - Follow the rules, including providing service copies
 - Respond to discovery
 - File testimony or a statement of position or be dismissed
 - Appear at the hearing



Intervention standards

- Must be a directly-affected landowner
 - Transmission line crosses property
 - House within 300 or 500 feet of transmission line
- Other standards
 - Can include nearby property
 - Interest must be different than general public
- A landowner who receives notice may intervene



Important CREZ dates for landowners

- Intervention deadline
 - 30 days after the application is filed
- Prehearing/Technical Conference
 - Shortly after the intervention deadline
- Prefiled direct testimony
 - Two months after the application is filed
- Hearing on the merits
 - Three months after application is filed



Other important dates

- Discovery due throughout the proceeding
 - CREZ – 10-day deadline for response
- Staff testimony
 - 10-14 days after intervenor direct testimony is filed
- Utility rebuttal testimony
 - 7-14 days after Staff's testimony is filed
- Briefs
 - 2 to 3 weeks after hearing
- ALJ's Proposal for Decision (PFD)
 - 6 weeks after hearing
- PUC Open Meeting and final order
 - 4 weeks after PFD issued
(less than 180 days after application filed)



Why are CREZ cases moving so fast?

- CREZ CCNs are filed pursuant to PURA § 39.203(e), which states in part:
 - [T]he commission shall issue a final order before the 181st day after the date the application is filed with the commission. If the commission does not issue a final order before that date, the application is approved.



How is the route selected?

- The criteria and factors the PUC is required to consider are identified in statute
 - PURA § 37.056(c)
- The Commission's rules identify factors that the utility is to consider in the selection of its preferred and alternate routes
 - P.U.C. Subst. R. 25.101(b)(3)(B)
 - The Commission also considers these factors



PURA § 37.056(c)

- The commission shall grant each certificate on a nondiscriminatory basis after considering:
 - The adequacy of existing service; (*not applicable to CREZ*)
 - The need for additional service; (*not applicable to CREZ*)
 - The effect of granting the certificate on the recipient of the certificate and any electric utility serving the proximate area;
- (Continued on next slide)



PURA § 37.056(c)

- The commission shall grant each certificate on a nondiscriminatory basis after considering:
 - Other factors, such as:
 - Community values;
 - Recreational and park areas;
 - Historical and aesthetic values;
 - Environmental integrity;
 - The probable improvement of service or lowering of cost to consumers in the area if the certificate is granted; and
 - To the extent applicable, the effect of granting the certificate on the ability of this state to meet the renewable energy goals.



P.U.C. Subst. R. 25.101(b)(3)(B)

- Routing:

- An application for a new transmission line shall address the criteria in PURA § 37.056(c) and considering those criteria, engineering constraints, and costs, the line shall be routed to the extent reasonable to moderate the impact on the affected community and landowners unless grid reliability and security dictate otherwise.

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P.U.C. Subst. R. 25.101(b)(3)(B)

- The following factors shall be considered in the selection of the utility's preferred and alternate routes . . . :
 - Whether the routes utilize existing compatible rights-of-way, including the use of vacant positions on existing multiple-circuit transmission lines;
 - Whether the routes parallel existing compatible rights-of-way;
 - Whether the routes parallel property lines or other natural or cultural features; and
 - Whether the routes conform with the policy of prudent avoidance.



What information does the PUC consider to make its decision?

- The utility's application and direct testimony
- Prefiled direct testimony by intervenors and Staff
- Rebuttal testimony of the utility and intervenors
- Comments filed by Texas Parks and Wildlife Department (TPWD)
- The hearing on the merits of the application
 - After the hearing, parties file briefs addressing the evidence and legal issues



Application and EA

- Utility/Transmission Service Provider completes the Commission's CCN application for transmission lines
 - Includes basic information about the project
 - Incorporates the Environmental Assessment (EA)
 - Textual description of the project and criteria
 - Many tables with potentially useful data
 - Data on 32 to 38 factors
 - Maps of the proposed routes



Direct prefiled testimony

- Utility
 - Basic testimony supporting the application
- Landowners/Intervenors
 - Describe their property and impact of the line
 - Identify concerns about proposed routes
 - Propose alternatives
 - Support other routes
- Staff
 - Discusses the statutory and regulatory requirements
 - Recommends a route



TPWD comments

- TPWD submits comments on environmental issues
- TPWD reviews the Environmental Assessment
 - Focuses on impact to wildlife and resources
 - Does not review other factors
- Makes recommendations
 - Best route considering environmental impact
 - Accommodations to wildlife and environment
- PUC must respond to TPWD's recommendations
 - Texas Parks & Wildlife Code § 12.0011



Where are the hearings held?

- Hearings usually are at the offices of the State Office of Administrative Hearings
- If there are many intervenors, options include
 - Austin hotels with meeting space
 - Austin Convention Center
 - Conference Center at the University of Texas



What happens at the hearing?

- Admission of prefiled testimony
 - Including rebuttal testimony
- Admission of other exhibits
 - RFI responses
 - Deposition excerpts
- Cross-examination of witnesses
 - Witnesses are under oath
- Transcript is prepared by a court reporter



Are some criteria more important than others?

- The Commission considers and weighs all factors, however, two factors often are important to the PUC
 - Cost
 - Impact on landowners
 - Includes number of habitable structures or prudent avoidance
 - Other factors that can be important
 - Parallel existing compatible rights-of-way
 - Existing transmission lines, roads, other utilities
 - Parallel property lines or other natural or cultural features
- (Continued on next slide)



Are some criteria more important than others?

- The Commission also considers:
 - Community values
 - A shared appreciation of an area or other natural or human resource by a national, regional, or local community
 - This assessment of values and resources to the local community can include:
 - Information obtained at public meetings
 - Comments received from community leaders and the public
 - Recreational and park areas
 - Historical and aesthetic values
 - Subjective perception of natural beauty in a landscape
 - Environmental integrity



How are costs estimated?

- The utility provides cost estimates that include:
 - Right-of-way and land acquisition
 - Engineering and design
 - Equipment and materials
 - Construction of facilities



What is a habitable structure?

- P.U.C. Subst. R. 25.101(a)(3) definition:
 - Structures normally inhabited by humans or intended to be inhabited by humans on a daily or regular basis.
 - Habitable structures include, but are not limited to, single-family and multi-family dwellings and related structures, mobile homes, apartment buildings, commercial structures, industrial structures, business structures, churches, hospitals, nursing homes, and schools.



What is prudent avoidance?

- P.U.C. Subst. R. 25.101(a)(4) definition:
 - The limiting of exposure to electric and magnetic fields that can be avoided with reasonable investments of money and effort

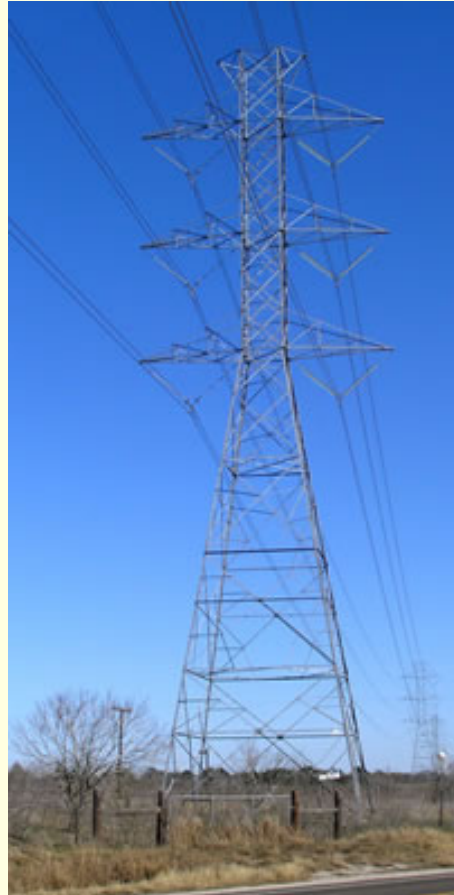


What other factors do landowners raise?

- Environmental
- Historic/archaeological
- Disproportionate impact on landowner
 - Bisect, unable to use property, danger, 2-3 sides
- Reliability of the grid
- Unexploded munitions
- Air strip
- Planned development
- Challenges to utility's data
- Use of monopoles instead of steel lattice towers



Steel Lattice Towers vs. Monopoles



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Steel Lattice Towers vs. Monopoles

- Cost
 - Oncor – monopoles cost 80% more than towers
 - LCRA – monopoles cost “significantly” more
 - Lone Star – Proposes to use monopoles
- Right-of-way required
 - Oncor's towers – 160 feet
 - Oncor's monopoles – 100 feet



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Can landowners represent themselves?

- Yes, but it can require almost a full-time commitment
 - Have to file testimony, pleadings, discovery responses
- Some intervenors are intimidated by the process
 - Can take a great deal of time to learn the rules
 - Can say something that can be used against you
- There is a blizzard of documents
 - Intervenors receive everything filed in the docket
 - Must mail or email everything they file in the docket



May landowners join together?

- Yes, this is common
 - Most often they are on the same segment or line
 - Align because of similar positions
- Can have conflicts
 - Larger landowners often are not completely aligned
 - One or more landowners may support an alternate route that affects others in the group
- The Administrative Law Judge often aligns landowners at the hearing
 - One person assigned to cross-examine witnesses



How are experts used?

- Experts submit substantive testimony about technical aspects of the transmission line
 - Aeronautical consultants
 - Archaeologists
 - Appraisers to challenge cost data for easements
 - Electrical engineers
 - Environmental or natural resource witnesses
 - Real estate consultants
 - Routing or siting consultants



Attorney representation

- Landowners may want to have an attorney represent them in a PUC proceeding
 - Deciding whether to hire an attorney, and choosing the right representation, is an important decision
- An attorney can help the landowner understand the PUC's procedures and the laws and rules that the PUC applies in deciding whether to approve a proposed transmission line
- An attorney is responsible for presentation of the landowner's case
 - Landowner provides input and information to the attorney



Cost of representation

- The cost can vary substantially
 - A single landowner can expect to pay at least \$20-50,000 for a basic case that goes to hearing
 - \$50-100,000 is more likely for a contested case
 - A large, complex case with expert witnesses can cost as much as \$200,000
- Lower costs are possible
 - Group of landowners can share costs
 - Limited representation
 - Still have a “seat at the table”



What happens after the PUC approves a route?

- The PUC has no jurisdiction over compensation, condemnation, or eminent domain issues
- Utility negotiates with the landowner
 - Access for property and environmental surveys
 - Offer of compensation
- Condemnation or eminent domain
 - Tex. Const. art. 1 § 17, 19
 - Just compensation must be provided
 - Taking must be for public purposes, not private
 - Due process must be met
 - *Housing Auth. v. Higginbotham*, 143 S.W.2d 79, 87-88 (Tex. 1940)
 - Only those properties or rights that are necessary



What is the impact on landowners?

- Easements range from 100 to 160 feet wide
 - May need temporary construction road easement
 - The entire width of the easement usually is clear-cut
- If cultural or environmental resources are found
 - Surveys are completed to identify resources
 - Mitigation is undertaken
- Construction cleanup does include revegetation
 - Cropland, pastureland, and grassland can be returned to previous use
- Oncor sample easement
 - <http://dl.dropbox.com/u/3787522/Oncor%20Sample%20Easement.pdf>



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Negotiations for an easement

- Tex. Prop. Code § 21.0112(a)
 - If the condemnor is a private entity with eminent domain authority, it must provide the landowner's bill of rights “before or at the same time as the entity first represents in any manner to the landowner that the entity possesses eminent domain authority.”
 - Not later than 7 days prior to its “final offer,” the landowner must be provided the landowner's bill of rights
- If the parties are unable to reach an agreement on the damages or compensation for the easement
 - A petition is filed, usually in the county court



Negotiation considerations

- Entitled to receive just and adequate compensation
 - No requirement or guarantee that the offer must reflect “market value”
- Compensation
 - Value of easement
 - Remainder damages
- What is included in the easement
 - Cable, fiber, other uses or only electricity
- Site plan meeting before activities begin
- Preservation of existing uses



Condemnation hearing

- Panel of special commissioners is appointed by the presiding judge
 - Three disinterested freeholders who reside in the county
- Assess the value of the land at a hearing and enter a decision reflecting their determination
- Either party may object
- The matter then returns to court and is tried in the same manner as a normal civil action for damages



Other resources for landowners

- PUC's web site
 - Substantive and procedural rules
 - Interchange filing system
- TexasPowerLines.com
 - Links to other resources
- Texas Power Lines Blog
 - Updated more frequently than the web site



PUC Interchange system

- The PUC's online filing system provides free access to documents filed in its dockets at:
 - <http://interchange.puc.state.tx.us>
 - Click on “Login”
 - Enter 5-digit Control (Docket) Number.
 - *No other information is necessary*
 - Click on “Search Now”
 - *The filings in the docket will appear in the order of the date filed*
 - Scroll down to select desired filing.
 - Click on a blue “Item” number at left
 - Click on a “Download” icon at left



TexasPowerLines.com

- Several high power electric transmission lines are constructed each year in Texas
 - There are few online resources for affected landowners
- We developed TexasPowerLines.com to serve as a basic resource for landowners who want more information about transmission lines and transmission line cases
 - <http://www.texaspowerlines.com>



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Texas Power Lines Blog

- A blog on high-power electric transmission line issues before the Public Utility Commission of Texas
- The blog provides more up-to-date information about current issues than the web site
 - <http://blog.texaspowerlines.com/>





Questions?

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