

“High Voltage Power Lines – Measuring the Impact on Real Property Market Value”

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No doubt, the vast majority of the 3,273 (2007) electric utility companies in the United States would argue that high voltage electrical transmission lines are just part of today’s landscape and really do not impact real estate values. On the other hand, certain publications, such as those referenced by the National Association of Realtors (www.realtor.org) indicate some or a significant impact on property values from high voltage electric transmission lines.

A sampling of “*Frequently Asked Questions*”, published by various electric utility companies is as follows:

- “Does a power line affect property values? Generally speaking, no. It is our experience that there is little, if any, diminution in value due to the location and operation of a transmission line.” (American Transmission Company, www.atcllc.com)
- “What is the impact of transmission lines on property values? Montana Alberta Tie, Ltd. (MATL) has commissioned a study regarding land values throughout the Canadian portion of the MATL route. This study was prepared by licensed appraisers at Serecon Land Valuation and Agricultural Consulting. Based on Serecon’s findings, MATL’s offers for land value represent a premium on the market value of the subject land. According to Serecon, the market value of the subject property considered many factors, including proximity to the nearest farming centres, proximity to existing farming operations, and productivity of the soils. The existence of transmission infrastructure is only one factor out of many that would be considered by a prospective purchaser. Ongoing annual payments are designed to offset any financial impact the transmission infrastructure has on farming operations and, as such, will alleviate the impact that the transmission infrastructure would have on the resale of the subject agricultural property”. (Montana Alberta Tie, Ltd., www.matl.ca)
- “Will a power line affect my property value? An article titled ‘Power Lines Do Not Affect Property Value’ was published in the Appraisal Journal in July 2009. It shared the results of a 10-year study of 1,200 home sales. The study is called ‘High-Voltage Transmission Lines: Proximity, Visibility, and Encumbrance Effects,’” by James A Chalmers, PhD. and Frank A. Voorvaart, PhD. (Great River Energy, www.Webmaster@greenergy.com)

- “What impact does a transmission line have on property value? Based on market study evaluations, experience with growth and development near power lines in Utah and in consultation with MAI appraisers, it is generally believed that power lines in the vicinity of homes do not diminish property value.” (Rocky Mountain Power, www.rockymountainpower.net)

- “How will my property values be affected in areas where a transmission line is projected to cross? Transmission lines are an essential part of getting electricity to you. Countless successful residential developments, commercial and industrial complexes and retail centers are located adjacent to electric transmission lines (throughout Texas, including lines similar to those proposed in this area). Transmission lines exist adjacent to virtually all types of land uses. There is no definitive study establishing an adverse effect on property values.” (Lonestar Transmission, www.lonestar-transmission.com)

- “How do you compensate people who believe their property value will be reduced because of the transmission line? The Heartland Team recognizes that some property owners are concerned about potential impacts on the value of property located near to or having a view of the transmission line but not crossed by the right-of-way. This potential impact will be one of the many topics for the Alberta Utilities Commission (AUC) to consider. Transmission lines are common in urban areas. Previous studies have indicated that transmission lines have either a small or no discernable impact on property values, and that where an effect is found, it tends to diminish rapidly with distance from the line and to dissipate over time. Please click on the following links to access various studies on Property Values:

High-Voltage Transmission Lines: Proximity, Visibility, and Encumbrance Effects, Chalmers & Vorvaart, The Appraisal Journal, Summer 2009

Further analysis of transmission line impact on residential property values, M. Wolverton, Appraisal Journal, July 2003. Note: This is an analysis of the Bottemiller, Cahill, and Cowger 2000 study listed below.

Impacts on Residential Property Values Along Transmission Lines-An Update Study of Three Pacific Northwest Metropolitan Areas, Bottemiller, Cahill and Cowger, Right of Way Magazine, July/August 2000

Transmission line impact on Residential Property Values-A Study of Three Pacific Northwest Metropolitan Areas, Bottemiller, Cahill, and Cowger, Right of Way Magazine, September/October 1996

Power lines and Land Value, Cowell, The Journal of Real Estate Research, 1990”

(Heartland Transmission Company, www.heartlandtransmission.ca)

Oncor Electric Delivery Company, LLC - FAQ's does not address the property value question. (www.oncor.com)

Lower Colorado River Authority - FAQ's does not address the property value question. (www.LCRA.com)

The National Association of Realtors publishes “*Field Guide to Effects of Power Lines on Property Values*,” which refers to the following articles relating to power lines and property values:

- As Transmission Line Projects Proceed, Property Owners Ponder Offers and Safety Concerns ([Http://kennebecjournal.maintoday.com/news/local/5031848.html](http://kennebecjournal.maintoday.com/news/local/5031848.html)); (Kennebec Journal, May 18, 2008)
- High voltage transmission lines, electric and magnetic fields (EMF) and how they effect real estate prices (<http://siliconvalleyrealestateinfo.com/electric-and-magnetic-fields-emfs-and-how-they-effect-real-estate-prices.html>); (Silicon Valley Real Estate Guide, Jan. 3, 2008)
- Further analysis transmission line impact on residential property values; (Appraisal Journal, July2003)
- Power lines, visual encumbrance and house values: A micro-spatial approach to impact measurement; (Journal of Real Estate Research, May/June 2002)
- Do you want your children playing under those things? The continuing controversy about high voltage, electromagnetic fields, human health, and property values; (Assessment Journal, May/June 2001)
- Power lines and property values: The good, the bad, and the ugly; (The Urban Lawyer, Spring 1999)
- Electromagnetic radiation field property devaluation; (Appraisal Journal, Jan. 1996)

Not surprising, virtually all literature produced by the electric utilities either downplay or outright state that power lines do not impact property values, and an ample amount of real estate oriented articles conclude otherwise.

So, let's take a look at some of the articles and studies - those primarily published by real estate appraisers and other real estate professionals. The following are not intended to be a complete listing of such articles and studies, but rather a sufficient sampling to understand the various views and opinions on this subject:

The Effects of Electric Transmission Lines on Property Values: A Literature Review; Thomas O. Jackson and Jennifer Pitts, *Journal of Real Estate Literature*, 2010, Vol. 18, No.2, 239-259

Review of survey research: Kinnard (1967) "In general, the attitudes of those who influence residential sales were more negative about the effects of a power line than the attitudes of the homeowners". Solum (1985) "Solum concluded that despite some concerns and inconveniences, the resale price of all three property types [agricultural, recreational, or residential] was not reduced due to the transmission line easement". Delaney and Timmons (1992) "Approximately 84% of respondents indicated that the market value of residential property near a HVOETL is negatively affected and the average estimate of the decline in value was 10%." Kung and Seagle (1992) "About 50% of the respondents said they consider the transmission lines an eyesore, while 47% do not. About 72% of those who saw the lines as an eyesore said the lines had no effect on the purchase price. There has been some evidence that has linked electromagnetic fields to health problems such as cancer, but these findings are debated and no direct causal relationship has been discovered. None of the homeowners surveyed saw the lines as a potential health hazard. However, 87% claimed that if they had known of potential health risks, they would have paid less for their home or looked elsewhere." Priestley and Evans (1996) "The survey results indicated that many of the nearby residents felt this line is a negative element in their neighborhood and that it has moderately negative impacts on health and safety, property values, and aesthetics; 87% of respondents indicated that the lines have an adverse effect on the attractiveness of their neighborhood."

Statistical Sales Price Analyses: Brown (1976) "Overall, the properties with power lines sold for higher prices than their pairs without power lines. It is unreasonable to conclude that this higher price was due to the power lines and easements, but it appears that the lines did not negatively affect land value." (Brown did conclude, "The easement required to build the line does reduce the rights of the property owner, and power line structures normally have an adverse impact on the efficiency of farming operations."). Colwell and Foley (1979) "The results of this study show that the selling price becomes higher as distance from the transmission line increases. The selling price increases at a decreasing rate and quickly approaches as asymptote. The most substantial impacts, of approximately 6%, are observed between 50 and 200 feet from the line, but the lines seem to have little or no effect at distance beyond 200 feet." In a follow-up study, Colwell (1990) "The models show that the selling price of residential property increases as distance from the power line increases. The price increases at a decreasing rate and quickly approaches an asymptote. The negative impacts tend to diminish or disappear over time." Rigdon (1991) "concludes from his literature review that transmission line effects, in general, are not significant and not easily measurable." Hamilton and Schwann (1995) "The authors find that properties adjacent to a line lose 6.3% of value due to proximity and visual impact. Properties more distant from a line lose on average only 1% of their value." De Rosiers (1998) "This model shows that a residential property both adjacent to an HVTL easement and facing a pylon experiences a drop in value due to the visual encumbrance (on average the decrease was 9.6% of the mean house price)." Wolverson and Bottemiller (2003) "offer a confirmatory study of an earlier article by Cowger, Bottemiller, and Cahill (1996). "This confirms the results of the original study, that prices are not significantly affected by the presence of an HVTL. The data also shows no difference in appreciation rates between homes along an HVTL right-of-way and homes located further away from the HVTL." Chalmers and Voorvaart (2009) They concluded that "the only variable that appears to have any kind of systematic effect is the encumbrance variable; although its statistical significance varied and the effect was 'generally small'." The authors also addressed potential effects due to the visibility of the transmission line structures and found a lack of any significant impacts on sales prices."

Other Studies and Techniques:

Bigras (1948-1961)	No effect on value
Carll (1954)	No effect on value
Kinnard (1954-1964)	Larger lots near ROW sold for the same price as smaller lots more distant from the ROW
Kung & Seagle (1989-1990)	No effect on value
Cowger, Bottemiller & Cahill	No effect on value

Jackson/Pitts Conclusions: "The studies reviewed, while having some inconsistencies in their detailed results, generally pointed to small or no effects on sale price due to the presence of electric transmission lines. Some studies found an effect but this effect generally dissipated with time and distance. The effects that were found ranged from approximately 2% to 9%. Most studies found no effect and in some cases a premium was observed."

Power Lines and Property Values Revisited, Jennifer M. Pitts and Thomas O. Jackson, PhD, MAI; *The Appraisal Journal*, Fall 2007

This article explores some of the findings of earlier articles and studies with the addition of the author's more recent market interviews conducted with local realtors and appraisers in several central California communities about current market conditions on the price effects of HVTL. They concluded "half of the realtors and appraisers interviewed said they had not observed negative impacts on either residential sale prices or days on market due to the presence of power lines." Their final conclusions were stated as "Both the market interviews and academic literature show that the impacts of power lines on residential properties are varied and difficult to measure. The impacts from the power lines, as well as other negative externalities, depend on many factors, including market conditions, location, and personal preference."

Comments on Property Lines and Property Values Revisited (Letter to the Editor), David M. Harding and Arthur E. Gimmy; *The Appraisal Journal*, Winter 2008

"Readers should know the full story since the jury did not accept the government's approach. The recent research summarized by the authors consisted mostly of telephone interviews by Jennifer M. Pitts, with minimal on-site field investigations (Dr. Jackson did his field work of the locations he cited from an aircraft)."

Response to Comments on Property lines and Property Values Revisited (Letter to the Editor), Thomas O. Jackson, PhD, MAI and Jennifer M. Pitts, *The Appraisal Journal*, Winter 2008

"The issues raised in the rebuttal letter from Mr. Harding and Mr. Gimmy, and other issues as addressed in our response, would suggest that this could be an area for additional research. While few new empirical findings concerning property value impacts from power lines have been published in recent years, there may still be opportunities for additional study, especially as real estate markets in many areas begin to change. In any such studies, though, the local development context, including highest and best use issues, should be considered."

Electric Transmission Lines: Is there an impact on Rural Land, Thomas O. Jackson, Ph.D., AICP, MAI, CRE, FRICS, *Right of Way*, November/December 2010

Summary: "The analysis presented here investigated the extent to which rural land values in Wisconsin have been adversely impacted by the presence of high-voltage electric transmission lines. The general finding was that there were small (1.11% to 2.44%) discounts that could be attributable to the presence of the lines and the encumbrance of the properties by the easements. Neither of these small differences was statistically significant."

High-Voltage Transmission Lines: Proximity, Visibility, and Encumbrance Effects, James A Chalmers, PhD, and Frank A. Voorvaart, PhD., *The Appraisal Journal*, Summer 2009

Summary of Conclusions: "The research reported here investigates the effect of existing 345-kV transmission lines in Connecticut and Massachusetts on the value of properties sold over the period 1998-2007...In the four study areas examined here, there is no evidence of systematic effects of either proximity or visibility of 345-kV transmission lines on residential real estate values. Encumbrance of the transmission line easement on adjoining properties does appear to have a consistent negative effect on value, although the statistical significance with which it is measured varies. The hypothesis that property values are more vulnerable to transmission line effects in a down market also is considered; although no evidence supports that proposition that there are greater effects in a down market, the number of observations in the relevant period is small. Finally, the hypothesis that higher-valued properties are more vulnerable to transmission line effects is considered; again, the data provides no

support for that hypothesis. The professional literature combined with the results reported here support the position that a presumption of material negative effects of HVTLs on property values is not warranted.”

Do High-Voltage Lines Zap Property Values? Elizabeth Razzi, *Washington Post*, August 4, 2009

(In response to the Chalmers/Voorvaart article) “Their ‘no effect’ message is a surprise. Electric lines have to go somewhere, of course, but few people relish the idea of living next to big metal towers that carry high-voltage current. It’s logical to think there might be at least some downward tug on home values. And plenty of people may be happy to buy a nice house at a bit of a discount because it’s next to power lines. Markets tend to sort such things out.

But a closer read of the actual report on which the story is based, High-Voltage Transmission Lines: Proximity, Visibility, and Encumbrance Effects, reveals that this is hardly a trustworthy research paper. If appraisers in the field rely on this article, they could produce skewed valuations.

First clue: The study was paid for by **Northeast Utilities**, in anticipation of expansion of a high-voltage transmission grid in New England. Second clue: The authors, **James A. Chalmers** and **Frank A. Voorvaart** are consultants in the fields of real estate damages and real estate litigation.”

Other Studies From Earlier Research:

Electric Transmission Lines and Property Value, Stanley Hamilton and Gregory Schwann, *Land Economics*, Vol. 71, No.4, p.436 (1995); Their study contrasted sales in four separate Vancouver neighborhoods of residences adjacent to power lines of 60kV or greater from 1985 to 1991. The sample size was impressive, containing 12,907 transactions in the four study areas. The percentages decreases in property values were not as great as those originally measured in the Houston area in Bolton’s 1993 study. Hamilton/Schwann concluded to an undeniable drop in value: “We find that properties adjacent to a line lose 6.3 percent of their value due to proximity and the visual impact.”

The Potential Impact of EMF on Property Values, Arthur Gimmy, MAI; EMF Regulation and Litigation Institute, New Orleans (1994); In part, the seminar presented a matched-sales analysis of California residential properties that indicated diminutions in lot values from properties abutting power line easements of 18% to 53.8%.

Summary of the Literature and Studies:

It is not surprising that numerous articles and studies conducted over the past 30 to 40 years have ended with different conclusions. Many of the “so-called” empirical studies were commissioned by electric utility companies with seemingly predicted results. The most recent article appearing in *The Appraisal Journal*, essentially concludes that the existence of high-voltage power lines do not impact property values, yet their work was paid for by a utility company in the process of acquiring property for power lines. As the Washington Post article suggests, it’s difficult to give credibility to these conclusions under those circumstances.

Is Legal Liability a Market Consideration?

Chapter 752. High Voltage Overhead Lines-Texas Health & Safety Code

752.001. DEFINITIONS. In this chapter:

- (1) "High voltage" means more than 600 volts measured between conductors or between a conductor and the ground.
- (2) "Overhead line" means a bare or insulated electrical conductor installed above ground but does not include a conductor that is de-energized and grounded or that is enclosed in a rigid metallic conduit.

752.003 TEMPORARY CLEARANCE OF LINES.

- (a) A person, firm, corporation, or association responsible for temporary work or a temporary activity or function closer to a high voltage overhead line than the distances prescribed by this chapter must notify the operator of the line at least 48 hours before the work begins.
- (b) A person, firm, corporation, or association may not begin the work, activity, or function under this section until the person, firm, corporation, or association responsible for the work, activity or function and the owner or operator, or both, of the high voltage overhead line have negotiated a satisfactory mutual arrangement to provide temporary de-energization and grounding, temporary relocation or raising of the line, or temporary mechanical barriers to separate and prevent contact between the line and the material or equipment or the person performing the work, activity, or function.
- (c) The person, firm, corporation, or association responsible for the work, activity, or function shall pay the operator of the high voltage overhead line the actual expense incurred by the operator in providing the clearance prescribed in the agreement. The operator may require payment in advance and is not required to provide the clearance until the person, firm, corporation, or association responsible for the work, activity, or function makes the payment.
- (d) If the actual expense of providing the clearance is less than the amount paid, the operator of the high voltage overhead line shall refund the surplus amount.

752.004. RESTRICTION ON ACTIVITIES NEAR LINES.

- (a) Unless a person, firm, corporation, or association effectively guards against danger by contact with the line as prescribed by Section 752.003, the person, firm, corporation, or association, either individually or through an agent or employee, may not perform a function or activity on land, a building, a highway, or other premises if at any time it is possible that the person performing the function or activity may:
 - (1) move or be placed within six feet of a high voltage overhead line while performing the function or activity; or
 - (2) bring any part of a tool, equipment, machine, or material within six feet of a high voltage overhead line while performing the function or activity.
- (b) A person, firm, corporation, or association may not require an employee to perform a function or activity prohibited by Subsection (a).

752.005 RESTRICTION ON OPERATION OF MACHINERY AND PLACEMENT OF STRUCTURES NEAR LINES. Unless a person, firm, corporation, or association effectively guards against danger by contact with the line as prescribed by Section 752.003, the person, firm, corporation, or association, either individually or through an agent or employee, may not:

- (1) If the erect, install, transport, or store all or any part of a house, building, or other structure within six feet of a high voltage overhead line;
- (2) install, operate, transport, handle, or store all or any part of a tool, machine, or equipment within six feet of a high voltage overhead line; or
- (3) transport, handle, or store all or any part of supplies or materials within six feet of a high voltage overhead line.

752.007. CRIMINAL PENALTY.

- (a) A person, firm, corporation, or association commits an offense if the person, firm, corporation, association, agent, or employee violates this chapter.
- (b) An offense under this section is punishable by a fine of not less than \$100 or more than \$1,000, confinement in jail for not more than one year, or both.

752.008. LIABILITY FOR DAMAGES. If a violation of this chapter results in physical or electrical contact with a high voltage overhead line, the person, firm, corporation, or association that committed the violation is liable to the owner or operator of the line for all damages to the facilities and for all liability that the owner or operator incurs as a result of the contact.

Does Section 752 of the Texas Health & Safety Code have an impact on the market value of real property? Section 752.003 requires anyone doing temporary work within six feet of a power line to notify the company at least 48 hours before any activity begins in order to de-energize or otherwise separate and prevent contact between the line and the material or equipment and the person performing the work. Section 752.004 restricts the activities within six feet of the power line, including placing tools or equipment while performing any function or activity. Does this include automobiles in a parking lot? Does this require notification each day that any activity or function is to be performed within six feet of the power line?

What happens if a person, firm, corporation, or association does not contact and negotiate with the power company prior to commencing a function within six feet of the power line? Section 752.005 clearly states that a violation of this chapter is liable to the owner or operator of the power line for all damages to the facility and for all liability that the power line company may incur. And to top that, Section 752.007 makes a violation of this chapter a criminal penalty.

Let's take a look some of the cases that have dealt with this issue:

Moore v. Southwestern Elec. Power Co., 737 F. 2d 496-Court of Appeals, 5th Circuit 1984. The facts in this case are undisputed. The accident in question occurred on July 10, 1979. At the time of the accident, Leroy Moore, Jr., a 17 year-old young man, was working for Valmac Industries, a chicken processing company in Tenaha, Texas. While loading chickens on a truck from a chicken house on Valmac's premises, Moore was electrocuted when the truck he was working on became energized by contact with a SWEPCO power line. SWEPCO argued

that it was entitled to full indemnification by Valmac for any claims arising out of Moore's death because Valmac violated section 1436c of the Public Utilities Act (the predecessor to Chapter of the Texas Health & Safety Code, citing virtually the same language). The court held that Valmac must fully indemnify SWEPCO for whatever amount SWEPCO is required to pay plaintiffs. On what must have been routine work by Valmac and its 17 year-old employee, they must have forgotten to call the power company 48 hours in advance before loading chickens on the truck and became responsible for all of the power company's liabilities.

Olson v. Central Power and Light Co., 803 SW 2d 808 – Tex: Court of Appeals, 13th Dist. 1991. “On January 6, 1983, Manley Smith, an Olson employee (Olson Plastering Company), sustained personal injuries as a result of contacting an electrical overhead power line owned, operated and maintained by CP & L. Olson had been hired in connection with the construction of a three story office building located near CP & L's electrical power lines. Smith filed suit against CP & L and others for the injuries resulting from his electrocution. Olson's workers' compensation carrier provided workers' compensation benefits to Smith. Smith did not sue Olson. However, Olson was made a party to the suit when CP & L filed a third part suit against them to recover statutory indemnity from Olson pursuant to article 1436c, 7(b) of the Texas Public Utilities Act (predecessor to Chapter 752). Olson answered that he was immune from liability to third parties pursuant to the Texas Workers' Compensation Act, Tex.Rev.Civ.Stat.Ann.art. 8306, 3(a) & (d). CP & L settled with Smith and this cause was severed. CP & L and Olson filed cross-motions for summary judgment: Olson argued that the Texas Workers' Compensation Statute was controlling and CP & L argued that the Texas Public Utilities Act was controlling. The trial court denied Olson's motion in its entirety and granted CP & L's motion except for attorney's fees, expenses and interest incurred in defending CP & L in Smith's suit.” By the way, the Court of Appeals overruled the trial court and granted attorney fees and expenses to CP & L.

Ronald L. Hullum, Plaintiff-Appellant, v. The SKYHOOK CORPORATION, et al., Defendants, Exxon Corporation, Defendant-Appellee, No. 84-2079; United States Court of Appeals, Fifth Circuit (1985). This suit resulted from an accident in which Ronald Hullum was electrocuted while installing an Exxon Sign at a service station. The service station was operated by James Fennell in Sulphur Springs, Texas, as a sub-lease from Pogue Oil Company. On February 13, 1979, Bright Sign Company sent a crew, which included Hullum, to the station to erect the sign. The selected location for the sign was within close proximity of an overhead power line. No one notified the power company to turn off the power. The boom of the sign truck came in contact with the power line, and Hullum sustained multiple injuries. The substance of this case was whether or not Exxon was liable. The trial court found that Exxon was not liable because Hullum did not comply with Sections 3, 6, and 7 of article 1436c of the Texas Public Utilities Act.

Tammy Presley, Individually and as Representative of the estate of Kevin Lee Presley, Appellant v. Gulf States Utilities Company and Entergy Gulf States, Inc., Appellee, October, 2010. “This is an appeal from a summary judgment in favor of Gulf States Utilities Company and Entergy Gulf States, Inc. Appellant argues that Chapter 752 of the Texas Health & Safety Code does not bar plaintiff from recovering against the utility company for its negligence. Ms. Presley brought the wrongful death suit against the defendants after her husband was electrocuted. At the time of the accident, Mr. Presley was employed as a dump truck driver for Fairway Construction Company. While at the work site (construction of an earthen lake), Presley raised the bed of the dump truck and noticed that a pin was missing. Between hauls, Presley took it upon himself to stop at an auto parts store to obtain the missing pin. He raised the bed of the truck, presumably to better access the tailgate latch. ‘It is undisputed that Presley's electrocution resulted from a contact between the raised bed of the dump truck and the power line. It is also undisputed that the power line was carrying 34,000 volts of electricity if measured

between conductors and 19,000 volts if measured to ground.’ Ms. Presley asserted that the defendants were ‘negligent in failing to: maintain the power line at a sufficient height so as not to pose a danger, respond to prior complaints regarding the need to raise the power line, implement and follow policies and procedures for responding to requests to raise a power line, maintain the power line in accordance with Federal and State statutory guidelines and industry standards, warn Presley of the dangerous condition, take reasonable precautions, perform reasonable inspections, and for violating the Electrical National Safety Code.’ Entergy filed a motion for summary judgment asserting that pursuant to Chapter 752 of the Health and Safety Code, Presley owed Entergy indemnity for damages associated with the incident and, therefore, was precluded from recovering under the asserted causes of action. The trial court granted Entergy’s motion for summary judgment and this appeal followed.” The appeal court affirmed the judgment of the trial court.

Also see the following:

Houston Lighting, Etc. v. Eller Outdoor Adv., 635 SWW 2d 133 – Tex: Court of Appeals 1982

Texas Department of Transportation v. City of Floresville Electric Power Light System, Court of Appeals of Texas, San Antonio 2001

From reading these cases, it is apparent that without strictly complying with Chapter 752, on a daily basis, a landowner has liability to the power company when an easement crosses the owner’s property. Typical language reserved to the property owner within Petitions for Condemnation usually include the following:

Defendants will retain the full use and enjoyment of the Easement Tract, subject only to the rights of (the power company) and ingress and egress on, over, under and upon the Easement Tract...

Defendants shall not be permitted to place or operate any temporary or permanent equipment or object with the Easement Tract without first complying with the National Electrical Safety Code and any other applicable law or regulation.

Defendants shall hold title to the land subject to these aforementioned rights of the (power company) and may make any use of said land that is not prohibited herein or that will not interfere with the construction, maintenance or operation of said line.

Considering the Chapter 752 restrictions placed on property encumbered with a high-voltage power line, the reservations to the property owner are essentially meaningless. Throw in the National Electrical Safety Code, and the practical uses for power line rights-of-way are nil.

Are The Negative Visual Effects of a Power Line a Community Damage?

The community damage principle allows the Texas Constitution to legally limit property damage compensation. Community damages can be described as those experienced in common with the surrounding community and are neither special, nor unique to a remainder property.

Most eminent domain attorneys are generally familiar with those certain community damage factors held by the Texas Supreme Court in *State v. Schmidt*¹ and subsequent cases. However, as a recap, such damages have basically been defined by the courts to include lessened visibility, increased circuitry of travel, noise and dust. Note that negative visual effects are not among the compensable damages set forth in *Schmidt* and subsequent cases.

Though the argument is made by electrical company condemnors that the negative visual effects of a power line reach beyond the boundaries of an individual property and, therefore, are community in nature, even community damages can sometimes be recovered where the landowner shows the damages are peculiar and not the type shared with community at large. *Felts v. Harris County*, 915 S.W.2d 482, 485-486 (Tex. 1996). The Court has also stated that “injury to several landowners on the same street is not community injury simply because they suffer alike.” *Interstate Northborough Partnership v. State*, 66 S.W.3d 213, 223 (Tex. 2001).

The primary, controlling case establishing the admission of aesthetic damages evidence involving electrical power lines is *Texas Power & Light Co. v. Jones*, 293 S.W. 885 (Tex. Civ. Appl. 1927, writ ref’d). In *Jones*, the power company condemned an easement over land owned by Jones for the purpose of constructing a high voltage power line. The case held that the jury was allowed to consider testimony regarding the “unsightly” nature of power lines in determining whether the remainder suffered a reduction in market value.

The compensability of negative visual effects as being special in nature seems to be supported in both *Butler v. State*² and *Interstate Northborough*. Although the *Butler* Court excluded much of the landowner’s damage under *Schmidt*, the Court held that “evidence concerning the aesthetic view from the remainder is clearly not a Schmidt Factor; it is a compensable element of damage to the remainder that the landowner is entitled to present to the jury.” In *Interstate Northborough*, the Court held that compensable damages for increased-proximity injuries included: loss of curb appeal, loss of green space, and loss of buffer zone.

Interestingly, and unlike the *Schmidt* landowners, the condemnee for a new power line cannot be said to have assumed the risk of loss by purchasing property on an existing public improvement, or to have claimed damages arising from expansion of existing infrastructure. Also, it can be said that the power line condemnee is subject to potential, special value loss due to the new construction of a high voltage line that is imposed on their property for the benefit of the general public.

Overall, the community damage question regarding negative visual aesthetics from power lines continues to be challenged in court with condemnors arguing that remainder damages are shared by the community; while, condemnees often respond that remainder damages are uniquely suffered by the condemned property on which the towers, cables and lines are built.

Conclusions:

As touched on in this paper, there are many unresolved issues when it comes to measuring the impact of high voltage power lines on real property market value. Value issues include, but are not necessarily limited to, the appropriateness and accuracy of both quantitative and qualitative analysis/studies; the effect of Section 752 of the Texas Health & Safety Code relative to typical reservations given the property owners in power line takings; and compensability considerations for negative visual effects. As previously mentioned, the vast majority of electric

¹ *State v. Schmidt*, 867 S.W.2d 769 (Tex. 1993)

² *Butler*, 973 S.W.2d at 757

utility companies throughout the country would likely contend that high voltage power lines are an ordinary part of the landscape, having little or no impact on property values. However, conventional wisdom, together with some of the literature, would hold that high voltage power line takings are a “something”, rather than a “nothing.” According to the Public Utility Commission (PUC) brochure, “Texas Landowners and Transmission Line Cases at the PUC,” property owners with habitable structures within a distance of 500 feet from the centerline of a proposed 345-kV transmission line project are considered to be on “directly affected land.” Notwithstanding, the Texas Department of Transportation publishes the magazine “Texas Highways”; however, it is unclear as to whether any of the major electrical utility companies in Texas publish a similar periodical promoting any recognized, aesthetic attributes associated with “Texas High Voltage Power Lines.” Based on the widespread negative perception of high voltage power lines, it does not appear to be a significant leap of faith or conjecture to see that high voltage power lines can have a measurable impact on property values. This impact is ordinarily property specific, and measurement can include one or a combination of acceptable approaches. Such compensation measurements will not unexpectedly result in differing values on occasion and, therefore, the potential trips to the courthouse for years to come. However, as General George S. Patton once said, “If everybody is thinking alike, then somebody isn’t thinking.”