

Bond Case Briefs

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EMINENT DOMAIN - TEXAS

City of Killeen v. Oncor Electric Delivery Company LLC

Court of Appeals of Texas, Austin - February 28, 2025 - S.W.3d - 2025 WL 648521

Electric transmission and distribution utility brought action against city, seeking declaratory judgment and injunctive relief to prevent city from condemning utility's streetlight system, alleging city lacked constitutional authority to condemn system and that taking by condemnation would violate Texas Constitution.

City filed plea to jurisdiction, arguing trial court lacked subject-matter jurisdiction over suit on bases of ripeness and governmental immunity. The District Court denied city's plea, and city filed interlocutory appeal.

The Court of Appeals held that:

- Utility's claims for declaratory and injunctive relief against city were ripe, although city had not yet voted to file a condemnation suit;
- As a matter of first impression, Property Code waived city's governmental immunity; and
- Utility had a viable constitutional takings claim against city regarding a going concern for which city's immunity was waived.

Electric transmission and distribution utility's claims for declaratory and injunctive relief against city to prevent city from condemning utility's streetlight system were ripe, although city had not yet voted to file a condemnation suit, as utility had shown a threat of litigation in the immediate future that could lead to the concrete injury of the loss of possession of the streetlights and the concomitant inability to comply with its statutory duty under the Public Utility Regulatory Act (PURA) to provide continuous and adequate service and the operational difficulties that would occur during a transfer of possession; city had followed all the necessary statutory steps to file a condemnation petition and had informed utility multiple times of its intent to file a condemnation suit if an agreement to purchase the streetlights could not be reached.

Texas Property Code waived city's governmental immunity for electric transmission and distribution utility's claims for declaratory judgment and injunctive relief to prevent city from condemning utility's streetlight system, where city had invoked its eminent-domain authority by taking all the steps required for a condemnation suit, and utility's claims against the city's threatened exercise of that authority were ripe.