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EMINENT DOMAIN - ARIZONA

Arizona Electric Power Cooperative, Inc. v. DJL 2007 LLC

Court of Appeals of Arizona, Division 1 - May 9, 2019 - P.3d - 2019 WL 2052325

Electric power company brought actions to condemn rights of way for electric transmission lines after the expiration of its original right of way that it obtained from the Bureau of Land Management (BLM) before the BLM transferred the public land to private owners. A second power company intervened.

The Superior Court granted companies' motion for partial summary judgment. Landowners appealed and companies cross-appealed.

The Court of Appeals held that:

- Companies' mere occupation after expiration of original right of way was not a taking establishing valuation date for just compensation for new rights of way, and
- Value of companies' pre-taking improvements would not be included when calculating just compensation.

Electric power company, a private corporation with power of eminent domain, could not effect a taking by occupation after expiration of its right of way that Bureau of Land Management (BLM) had granted it for electric transmission lines, and therefore the valuation date for purposes of fixing just compensation to new private landowners, who were BLM's transferees, for company's new rights of way was not the date of expiration of original right of way but the date that the jury determined damages and company paid full compensation; company simply became a holdover tenant on date of expiration of original right of way, and company could not take landowners' property in a constitutional sense until after trial and payment.

Power companies retained ownership of electric transmission lines and structures after expiration of right of way from Bureau of Land Management (BLM), and therefore the value of companies' improvements would not be included when calculating just compensation to private landowners, which were BLM's transferees, for companies' condemnation of new rights of way for lines, even though companies failed to pay rent to landowners and promptly remove the improvements from the property, where landowners did not demand removal of the lines and structures after the grant expired, companies were holdover tenants between expiration of the grant and the date of the taking, and landowners were found entitled to rental damages.