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THE HOUSTON lawyer

Volume 63 – Number 6

May/June 2026

REAL ESTATE LAW

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PRIVATE ENTITIES, PUBLIC AUTHORITY: Eminent Domain in Texas

Texas serves as a hub for establishing data centers in the wake of the artificial intelligence era. As a result, while 95% of land in Texas is privately owned,[1] there continues to be an increased need for more land and resources. The power of eminent domain can potentially facilitate this increasing need, though simultaneously threatening to dwindle Texas landowner's property rights. As most commonly known, eminent domain power allows a sovereign state to appropriate or condemn private property to promote the general welfare. However, state legislatures may also delegate this power to individuals or private corporations. In Texas, the Legislature has expressly delegated its eminent domain power to electric corporations, electric utilities, and common carriers.[2] Whether a governmental entity or private entity is exercising eminent domain powers, the Texas Constitution requires that the condemnation be for public use and that the landowner receives just compensation. But when does an entity qualify as an electric corporation, electric utility, or common carrier and what is the scope of their eminent domain powers? What is the condemnation process under the Texas Property Code? And when may the "paramount importance doctrine" be used as a defense to condemnation? This article explores these critical issues.

I. Who Can Exercise Eminent Domain Authority?

In addition to the government, certain private entities with delegated authority may exercise eminent domain powers. In Texas, an "electric corporation" or an "electric utility" has a broad power of eminent domain authority to enter on, condemn, or appropriate land to construct, maintain, and operate its lines. The exercise of this authority is via condemnation. Condemnation by these electric companies is only proper if the company can show there is a public use.

Similarly, "common carriers" may exercise eminent domain authority, provided that they can show that there is a reasonable probability that at least one unaffiliated entity will benefit from the use of the pipeline such that the pipeline is for public use.

A. Electric Corporations & Electric Utilities

Under the Texas Utilities Code, an "electric corporation" is defined as "an electric current and power corporation."[3] A "corporation" is defined more generally and includes a partnership, limited partnership, or master limited partnership; a limited liability company; a combination of business entities composed exclusively of corporations or in which a corporation is a general partner; and a gas utility or electric utility regardless of form of organization but not including a municipally owned utility.[4] Conversely, an electric utility includes "a corporation…that generates, transmits, or distributes electric energy" in Texas and whose operations are subject to the judicial and legislative processes of Texas.[5]

B. Common Carriers

Under the Texas Natural Resources Code, "a common carrier may enter on and condemn the land, rights-of-way, easements, and property of any person or corporation necessary for the construction, maintenance, or operation of the common carrier pipeline."[6] The Code delineates seven common carrier categories, which include owning, operating, or managing a pipeline or any part of a pipeline in the State of Texas for the transportation of:

1. "crude petroleum to or for the public for hire";
2. "crude petroleum to or for the public for hire and the pipeline is constructed or maintained on, over, or under a public road or highway";
3. "crude petroleum to or for the public for hire which is or may be constructed, operated, or maintained across, along, over, or under the right-of-way of a railroad, corporation, or other common carrier";
4. "crude petroleum, bought of others, from an oil field or place of production within [Texas] to any distributing, refining, or marketing center";
5. coal;
6. "carbon dioxide or hydrogen in whatever form to or for the public for hire" if the entity expressly agrees to comply with the duties and obligations of a common carrier; and
7. "carbon gasification, the products of carbon gasification, or the derivative products of carbon gasification... for the public for hire" if the entity expressly agrees to comply with the duties and obligations of a common carrier.[7]

While a private corporation could once succeed in establishing its common carrier status "simply b[y]...declar[ing] itself a common carrier on [the proper] form," in *Texas Rice I*, the Texas Supreme Court clarified that "[t]o qualify as a common carrier with the power of eminent domain, the pipeline must serve the public; it cannot be built only for the builder's exclusive use."[8] In other words, if a pipeline company constructs and maintains a pipeline for the sole purpose of transporting its own gas to and from its own sites for its own use, the pipeline does not serve a public use, precluding common carrier status.[9] Instead, to establish common carrier status, the entity must demonstrate "a reasonable probability [(i.e., more likely than not)] that the pipeline will at some point after construction serve the public" by transporting oil or gas "for one or more customers who will either retain ownership of their gas or sell it to parties other than the carrier."[10] Subsequently, in *Texas Rice II*, the Texas Supreme Court clarified that an entity satisfies this "reasonable probability" test with evidence establishing that the pipeline will serve even one customer unaffiliated with the pipeline owner (and whose interest will not eventually return to the pipeline owner).[11]

II. The Condemnation Process

If an entity can establish common carrier status or if the entity fits the definition of "an electric corporation" or an "electric utility," the entity generally must follow three steps to initiate condemnation proceedings: (1) provide a bona fide offer and attempt to negotiate with the property owner directly; (2) if unsuccessful, file a condemnation petition in the district court where the property is located; and (3) attend a hearing by a three-commissioner panel.

While this article won't detail what does or does not constitute a public use, on a broad scale, condemnation is proper only if it serves a public use.[12] As explained above, the provision of power or other materials to at least one person has been deemed a public use.[13] Moreover, if a statute provides the authority to "own, hold and use such lands, right of way, easements...as may be necessary for the purpose" of the corporation, then in enacting the statute, the legislature has found "that electric power lines constitute a public use for which rights-of-way may be condemned."[14]

In exercising its eminent domain authority, an entity has the right of entry to survey the property, provided that it gives proper notice and representations to the property owner.[15] Based on this survey, the entity must provide a bona fide offer to the property owner which includes both the initial and final offer. At this point, the property owner should be made aware of their rights and may negotiate as they see fit. If the parties cannot come to an agreement, then the condemning entity may file a condemnation petition.[16]

The condemning party has two proper venues when filing its petition for condemnation, (1) the county court at law for the county in which the owner of the property resides if the property (in whole or in part) is also located in that county, or (2) the county court at law in any county in which the property is located.[17] If the county has no county court at law, the condemnation petition should be filed with the district clerk.[18] When the petition is filed, the judge has 30 days to appoint three disinterested real property owners who reside in the county and who are to serve as special commissioners to assess the damages of the property owner.[19] This action is to determine the compensation the property owner will receive. At the conclusion, the commissioners issue written decisions as to damages, costs, etc., and the condemner may take possession of the condemned property.[20]

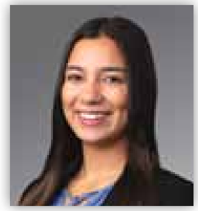
III. The Paramount Importance Doctrine as a Possible Defense to a Proposed Condemnation

One defense to a proposed condemnation is the "paramount importance doctrine." Under the paramount importance doctrine, Texas courts "have long held that condemnees may prevent a condemnation" by showing "(1) the property is already devoted to public use; and (2) the condemnation would practically destroy or materially interfere with the use to which it has been devoted."[21] If the party makes that showing, "then the burden shifts to the proposed condemnor to establish that the necessity for the condemnation is so great as to make the new enterprise of paramount importance to the public, and it cannot be practically accomplished in any other way."[22] If the proposed condemnor succeeds in showing paramount importance but fails to show that its purpose could not be accomplished in any other practical way, then the proposed condemnor is not entitled to relief under this doctrine.[23] Texas courts have consistently held that this doctrine does not present "a jurisdictional issue but an issue to be litigated during the merits because the doctrine 'does not implicate the power of one unit to bring the other to court.'"[24]

Conclusion

Eminent domain in Texas illustrates the legal tension between infrastructure development and private property ownership in a rapidly growing state. Through statutory delegation, the Legislature has authorized certain private entities—such as electric corporations, utilities, and common carriers—to exercise condemnation powers traditionally associated with government. These delegated powers are structured around constitutional requirements of public use and just compensation and are implemented through a defined procedural framework under the Texas Property Code. Judicial interpretations, including those clarifying common carrier status and the limits of delegated authority, continue to shape how and when this power may be exercised.

As Texas' economic and technological development drives increased demand for land and infrastructure, eminent domain will remain a central legal mechanism for facilitating that growth. Doctrines such as paramount importance and statutory procedural safeguards provide a means for evaluating competing public uses and ensuring compliance with constitutional principles. Together, the statutory scheme and evolving case law reflect Texas' ongoing effort to balance efficient development with legal constraints on the exercise of delegated public authority.



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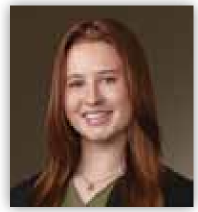

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Endnotes

1. StateImpact Texas, Eminent Domain, NPR, https://stateimpact.npr.org/texas/tag/eminent-domain/ (last visited Apr. 14, 2026).
2. TEX. UTIL. CODE. § 181.004 (electric corporation); TEX. UTIL. CODE § 181.042 (electric utility); TEX. NAT. RES. CODE § 111.019 (common carriers).
3. TEX. UTIL. CODE § 181.001(2).
4. *Id.* § 181.001(1)(A)-(D).
5. *Id.* § 181.041(1)(B).
6. TEX. NAT. RES. CODE § 111.019.
7. *Id.* § 111.002.
8. *Tex. Rice Land Partners, Ltd. v. Denbury Green Pipeline-Tex.s, LLC.*, 363 S.W.3d 192, 200 (Tex. 2012).
9. *Id.*
10. *Id.*
11. *Denbury Green Pipeline-Tex., L.L.C. v. Tex. Rice Land Partners*, 510 S.W.3d 909, 913 (Tex. 2017), as revised on denial of reh'g (Apr. 7, 2017).
12. *Dyer v. Tex. Elec. Serv. Co.*, 680 S.W.2d 883, 885 (Tex. App.—El Paso 1984, writ ref'd n.r.e.).
13. *Id.* at 884 (holding that a public utilities company condemnation for an electric power line for the provision of power to only one person was proper and considered for a public use).
14. *See id.*
15. TEX. NAT. RES. CODE § 111.019(d)-(e).
16. TEX. PROP. CODE § 21.012(a).
17. *Id.* § 21.013(a).
18. *Id.* § 21.013(b)-(c).
19. *Id.* § 21.014(a).
20. *Id.* § 21.021(a).
21. *Canyon Reg'l Water Auth. v. Guadalupe-Blanco River Auth.*, 258 S.W.3d 613, 617–18 (Tex. 2008); *DCP Sand Hills Pipeline, LLC v. San Miguel Elec. Coop., Inc.*, No. 04-19-00288-CV, 2020 WL 6748725, at *5 (Tex. App.—San Antonio Nov. 18, 2020, pet denied).
22. *DCP Sand Hills Pipeline*, 2020 WL 6748725, at *5.
23. *City of Houston v. Ft. Worth & D. Ry. Co.*, 619 S.W.2d 234, 237 (Tex. App.—Houston [1st Dist.] 1981, writ ref'd n.r.e.).
24. *Town of Westlake v. City of Southlake*, No. 02-21-CV, 2021 WL 6069104, at *4 (Tex. App.—Fort Worth Dec. 23, 2021, no pet. h.) (citing *State v. Montgomery Cnty.*, 262 S.W.3d 439, 445 (Tex. App.—Beaumont 2008, no pet.)); *accord Harris Cnty. Fresh Water Supply Dist. No. 61 v. Magellan Pipeline Co., L.P.*, 649 S.W.3d 630, 647 (Tex. App.—Houston [1st Dist.] 2022, pet. denied).