

BRAUN & GRESHAM
ATTORNEYS AT LAW

Eminent Domain

Your rights as a landowner

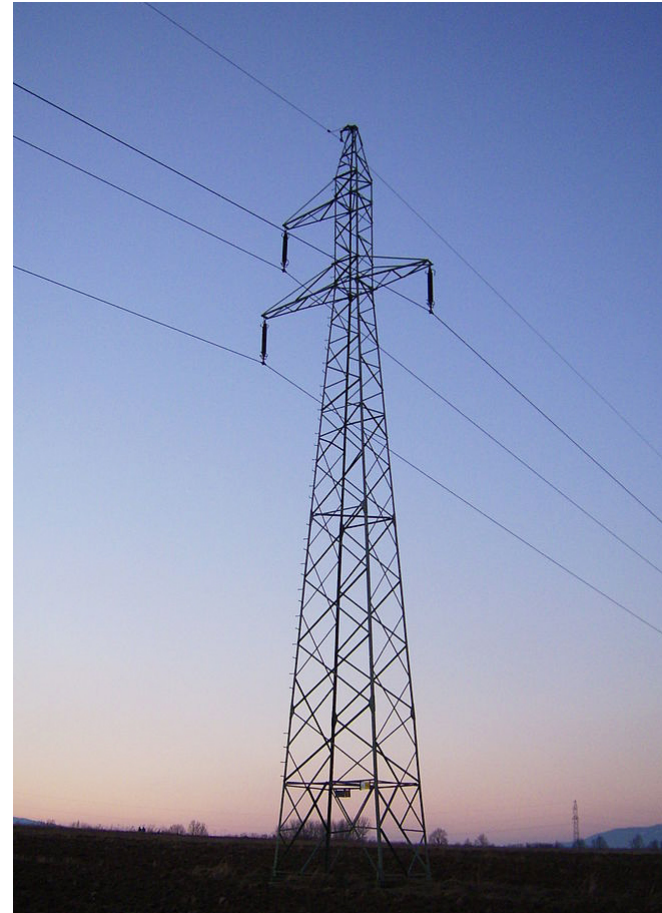
Patrick L. Reznik
Braun & Gresham, PLLC
Attorney & Counselor

WE ARE ADVOCATES FOR YOU AND YOUR LAND



What we're going to cover:

- Legal terms & the law
- Steps in condemnation
- Easement negotiation
- Successful negotiation
 - Who's on your team
- Examples
- Questions



Terms



- What is condemnation?
- What is an easement?

Line Name: Riley Sub-Bowman Sub CREZ
 CCN # 336 Easement #: 269148
 WA #: 10T80009

EASEMENT AND RIGHT OF WAY

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
 COUNTY OF WICHITA §

That, hereinafter called "Grantor," whether one or more, for and in consideration of Ten and no/100 Dollars (\$10.00) and other valuable consideration to Grantor in hand paid by Electric Delivery Company LLC, a Delaware limited liability company, hereinafter referred to as "Grantee", has granted, sold and conveyed and by these presents does grant, sell and convey unto said Grantee, its successors and assigns, an easement and right-of-way for electric power and communications lines, each consisting of variable number of wires and cables, and all necessary or desirable appurtenances including supporting structures, foundations, guy wires and guy anchorages (the "Facilities") over, under, across and upon all that certain tract(s) of land located in Wichita County, Texas, more particularly described in Exhibits A and B, attached hereto and made part hereof.

Together with: (1) the right of ingress and egress over and along the easement and right-of-way and over Grantor's adjacent lands to or from the easement and right-of-way, for the purpose of and with the right to construct, operate, improve, reconstruct, replace, repair, inspect, patrol, maintain and add or remove such electric power and communications lines or other Facilities as the Grantee may from time to time find necessary, convenient or desirable to erect thereon during the initial construction of the Facilities or at any time thereafter; (2) the right to install gates in all existing and future fences crossing the easement and right-of-way, provided such gates will be installed in a manner that will not weaken such fences; (3) the right to relocate its facilities along the same general direction of said lines; (4) the right to trim and cut down trees and shrubbery on the easement and right-of-way, including by use of herbicides or other similar chemicals approved by the U. S. Environmental Protection Agency, to the extent, in the sole judgment of the Grantee, necessary to prevent possible interference with the operation of said lines or to remove possible hazard thereto; and (5) the right to remove at Grantor's expense or to prevent the construction on the easement and right-of-way of any or all buildings, structures and obstructions.

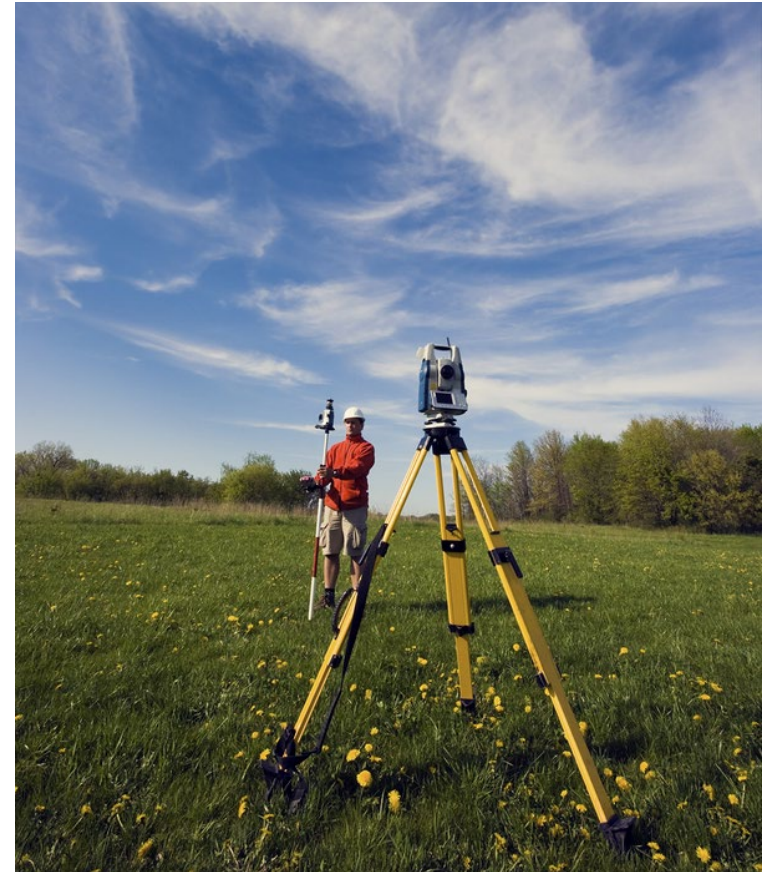
Should Grantee initially install and construct and operate one circuit of the electric transmission line permitted under the terms of this Easement and Right of Way, it is understood that Grantee shall have the right to install, construct, and operate additional circuits, including additional structures or other Facilities if necessary, of the electric transmission line where Grantee determines, in its sole discretion, that demand for electricity or the efficient operation of the line requires such additional circuits.

The law

- U.S. Constitution 5th amendment
 - “requires the government to *compensate* citizens when it takes private property for *public use*”
- Texas Constitution: Article I, Section 17
 - “no person’s property shall be taken, damaged, or destroyed for or applied to *public use* without *adequate compensation* being made”
- Chapter 21 of the Texas Property Code

Steps in condemnation

- **Phase 1:** The call, visit or letters from landman
- **Phase 2:** Negotiating your terms and compensation
- **Phase 3:** Special Commissioners' hearing
- **Phase 4:** District Court / County Court at Law



Phase 1: Survey & route plan

- **“Friendly” landman requests survey**
- **Cooperation is beneficial**
- **Refusal results in court action**



Phase 2: Offer & negotiation

- **Utility / landman makes written offer**
- **First offer is typically “low”**
- **Offer and terms may be negotiable**
- **Landman and / or company lawyers discuss compensation, location and terms**



THE STATE OF TEXAS
LANDOWNER'S
BILL OF RIGHTS

PREPARED BY THE



OFFICE OF THE
ATTORNEY GENERAL OF TEXAS

Initial offer and final offer

- “Bona fide offer” required
- Condemnor’s “initial offer”
- Generally includes a 30-day deadline
- Law requires a written appraisal and 14-day “final offer” before any hearing
- Critical time to have consulted with an attorney



Phase 3: Condemnation Commissioners' Court

- Petition in condemnation (lawsuit)
- Special Commissioners
 - Appointed by Judge
 - Three resident landowners
 - Hearing testimony
 - Decide only compensation
- Right of possession

COPY

CSI:
PARCEL: 21

CAUSE NO.

THE STATE OF TEXAS § CONDEMNATION PROCEEDING FILED
V. IN THE COUNTY COURT OF BELL COUNTY, TEXAS FILE NO. 2
CORPORATION, ET AL §
BELL COUNTY, TEXAS §

THE STATE OF TEXAS'S FIRST AMENDED PETITION FOR CONDEMNATION

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes the State of Texas, herein called Plaintiff, acting by and through the Texas Transportation Commission, represented herein by the Attorney General of Texas who, at the request of the Texas Transportation Commission, brings this action and files this its First Amended Petition for Condemnation seeking the condemnation of the real property and interests or rights pertaining thereto as hereinafter-described, and shows that the owners of said land and their addresses for service, are as follows:

 A TEXAS CORPORATION, who may be served by serving
 , Registered Agent, Killeen, Texas 76542;

 , who may be served by serving the Texas Department of

 who may be served

by serving. Texas, N.A., a Texas State Financial Institution, Registered
Agent Texas 75766;

 , who may be served by serving Inc., a
Texas Corporation, Registered Agent, Houston, Texas

Phase 4: District Court Appeal

- **Jury trial**
- **Decides only on price**
- **Expensive**
- **Use cautiously**



Easement negotiation

- **Price of land AND other damages**
- **Details of route**
- **Location of towers**
- **Temporary workspace agreement**
- **Restore / protect the land**
- **Terms of easement**

Cost estimates to negotiate compensation and easement terms vary widely.



Easement negotiation

- Access points
- Roads
- Improvements
- Fences and gates
- Liability protection
- Future landowner use
- Limits on condemnor use



Market Value – Easements / fee take

- **Total compensation =**
 - Value “before” minus value “after”
- **Value of the “take”**
(permanent easement or fee)
- **“remainder” damage, if any, is compensable**





Matthews Property: Transmission Line Easement Areas



Photo Date: April 17, 2012; Source: Google Earth







Landowner's Appraiser's Compensation summary

Market value of Land:	\$1,025,000
Market Value of Improvements:	\$515,000
Market Value of Whole Property Before Taking:	\$1,540,000
Market Value of Whole Property After Taking:	\$1,220,753
Compensation Damages (Loss in Value):	<u>\$319,247</u>
Oncor Easement Acquisition:	\$9,901
Temporary Construction Easement:	\$3,430
20% Damages to the Remainder:	\$305,916
COMPENSATION:	<u>\$319,247</u>

Utility's Appraisal

\$36,622

VS

Landowner's Appraisal

\$319,247

Successful negotiation

- **Develop a wish list**
- **Form a coalition of landowners**
- **Get a professional team**



Roles of the team

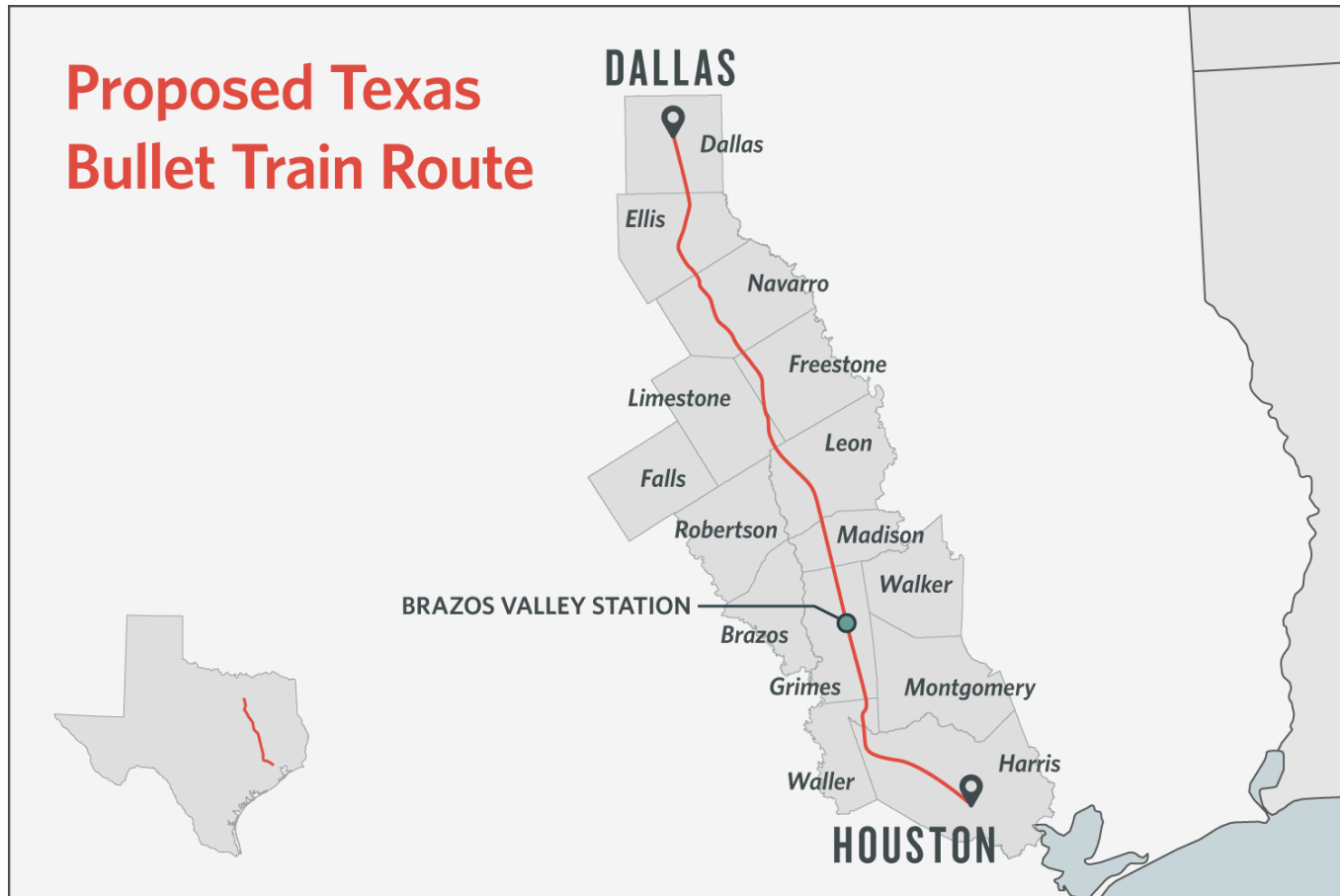
- Landowners
- Lawyers
- Other experts



Attorneys' fees

- **Contingency fees**
 - **No up front fee**
 - **30%-40% of increased price**
 - **Negotiates right of entry and easement**
 - **Landowner pays for appraiser / experts**
- **Hourly fees**
 - **Retainer required**
 - **Landowner pays attorney and appraiser / experts**
 - **Negotiates right of entry, easement and price**

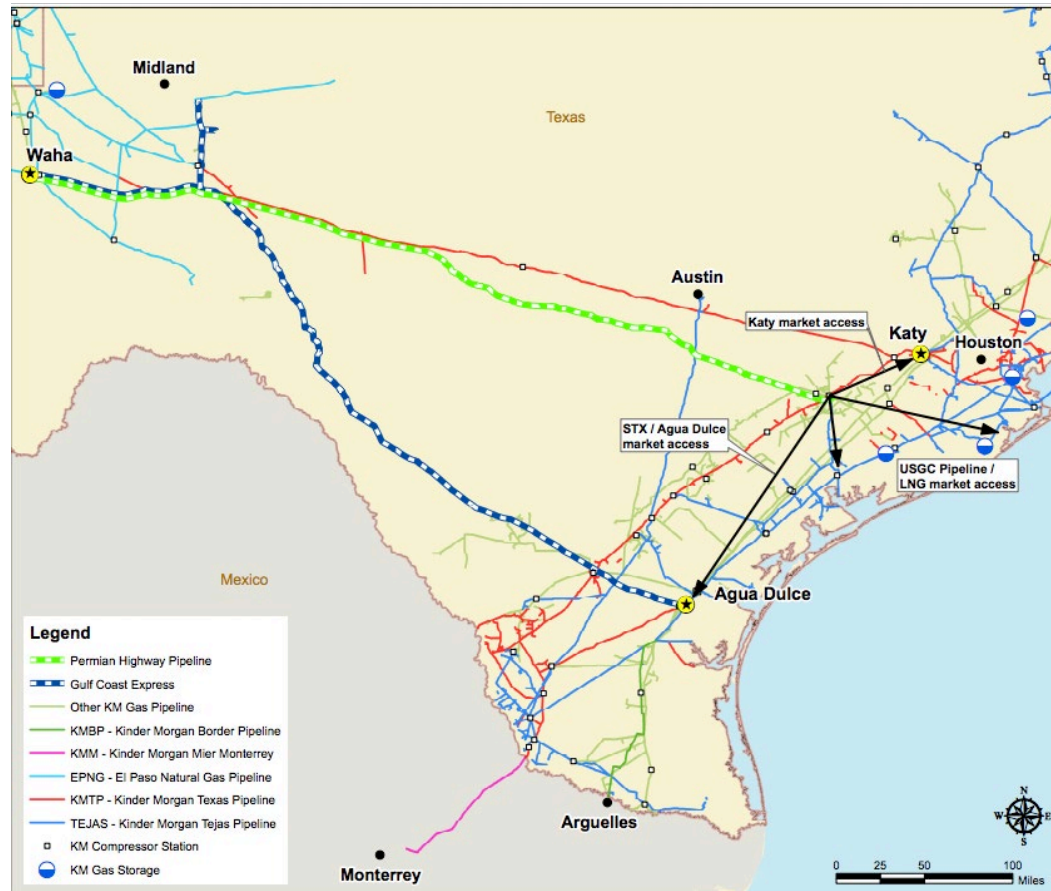
Where we are: Eminent domain issues facing Texans



Where we are: Eminent domain issues facing Texans



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Q&A

Questions? Contact:

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Braun & Gresham's Landowner Alert System



Stay informed on issues affecting landowners and their land.

This free email service comes out once every two weeks and gives subscribers exclusive access to alerts on pipelines, announcements about important changes in the law, and upcoming educational seminars.

www.BraunGresham.com/subscribe

Join TREAD Coalition

Texas Real Estate Advocacy and Defense Coalition is a bi-partisan group that advocates for and defends Texas landowner rights on the state and local levels.

Join today and help us support and defend landowner rights in Texas! We will lobby and safeguard against threats such as property taxes, water usage and eminent domain in each Legislative Session, before state agencies, at the local government level, and in the courthouse.

TO JOIN, VISIT:

<https://treadcoalition.org/membership/>

