

Dear Colleagues, Clients and Friends of the Firm,

Welcome to another issue of **Eminent Domain Plus+**.

Our mission is to deliver information that you find relevant, interesting and helpful.

Please feel free to share, save, and/or delete it.

Today's Post: What are the Supremes Up to?

[The Texas Supreme Court and General Easements](#)

Recently, in *Southwestern Electric Power Company v. Lynch, et al.*, the Texas Supreme Court decided an important case regarding the interpretation of general easements – *i.e.*, an easement without a fixed width. This is a significant decision given properties all across Texas are burdened by general easements.

In this lawsuit, property owners in Bowie County owned land burdened by a 1949 utility easement held by Southwestern Electric Power Company ("SWEPCO"). The easement document provided for an easement or right-of-way "for an electric transmission and distributing line ... at or near the location and along the general course now located and staked out by the said SWEPCO over, across and upon the following described lands." The easement also allowed for the reconstruction of the line, and it did not provide a specific width for the easement.

When SWEPCO sought to reconstruct the transmission line in 2014, it offered property owners \$1,000 to supplement the existing easement to include a stated width of 100 feet and other desired terms. When no agreement could be reached, SWEPCO reconstructed the line under the terms of its existing easement. The property owners sued, seeking a declaratory judgment that SWEPCO's easement was limited to the amount that SWEPCO had historically used, namely 15 feet on either side of SWEPCO's transmission line. The trial and the Texarkana Court of Appeals sided with the property owners. SWEPCO appealed to the Texas Supreme Court.

The Texas Supreme Court sided with SWEPCO on the issue of contract interpretation, holding that a general easement "does not render an easement ambiguous or require a court to supply the missing term." Because the easement was not ambiguous, there would be no reason to admit extrinsic evidence (like historical use) to interpret the easement. Noting that the "parties to the easements never agreed to a particular width" and surmising that this was likely in anticipation of future technology, the Texas Supreme Court saw "no reason to disturb ... long-standing treatment of general easements in Texas."

The Texas Supreme Court cautioned that the holder of a general easement must utilize the land in a reasonable manner and only to an extent that is reasonably necessary.

Faced with similar cases in South Texas, and prior to the Texas Supreme Court's decision in *SWEPCO*, the attorneys at **SPIVEY VALENCIANO, PLLC** advised their clients to enter into supplemental agreements with local transmission line companies, thereby obtaining a fixed easement width and additional compensation. These negotiations resulted in materially favorable easement terms for the property owner, balancing the glaringly one-sided nature of these general easements (which dated back to the 1920s). To read the entire opinion, [follow this link](#).

[The United States Supreme Court and Virtual Hearings](#)

The United States Supreme Court's decision to hold oral arguments in May 2020 remotely via telephone conference and to make live audio available to the public marks an unprecedented increase in public access to the court. [To learn more, see this calendar brought to you by SCOTUSblog.](#)

Closing Thoughts:

As we all continue to work and weather through these unprecedented times, we hope you continue to stay healthy, positive and informed. We wish you and yours good health and great spirits!

* * *

This document is intended to provide general information about legal matters of current interest. This document is not intended as legal advice applicable to specific facts and circumstances, nor does it create any attorney-client relationship between any reader and SPIVEY VALENCIANO, PLLC. Readers should not act upon the information contained in this document without professional counsel.

* * *

About SPIVEY VALENCIANO, PLLC

SPIVEY VALENCIANO, PLLC is a litigation boutique that represents property owners across the the State of Texas in complex eminent domain matters. The firm also represents property owners with significant holdings or affiliated property owners in contested PUC electric transmission line routing cases (CCN Applications). The firm also represents clients in select litigation matters and is frequently engaged to serve as trial co-counsel in pending jury trials. The firm provides complimentary case reviews for prospective eminent domain clients, which may be scheduled by contacting Jim or Soledad via email.

For more information, visit [SPIVEY VALENCIANO, PLLC](#).

[For better viewing, select "Load All Images."](#)



Jim Spivey
Partner
San Antonio Office
(210) 416-3115
[Email](#)



Soledad Valenciano
Partner
Dominion Office
(210) 315-1657
[Email](#)