

TMCCP Presents

Legislative Update Seminar

August 17-18, 2017, San Marcos, Texas

HANDOUT FOR

“Utilities”

with speaker Georgia Crump

Attorney and Chair, Energy & Utility Practice Group, Lloyd Gosselink

TEXAS MUNICIPAL CLERKS CERTIFICATION PROGRAM

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2017 Texas Municipal Clerks Certification Program

LEGISLATIVE UPDATE

Embassy Suites, San Marcos, Texas
August 17-18, 2017

By: Georgia N. Crump

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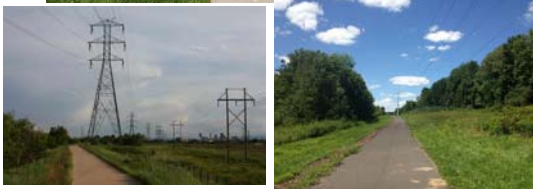
Feel Free to Hike! And Bike!

§ 75.007 Tex. Civ. Prac. & Rem. Code – defines trespassers and duty of care owed to them.

(c) liability of landowner for injury to a child caused by “highly dangerous artificial condition on the land” if:

- ❖ knew or should have known trespass was likely;
- ❖ knew condition existed and knew of unreasonable risk of harm;
- ❖ child didn’t know better;
- ❖ risk outweighed burden of eliminating risk; and
- ❖ failure to exercise reasonable care to eliminate danger or protect child.

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❖ 2013 – bill adopted, but limited to Harris County.

❖ 2015 – HB 931 adopted – state-wide application:

❖ Limits the liability of electric utilities for public use of utility right-of-way

❖ Utilities remain liable for willful or wanton acts or gross negligence (the same liability as cities have for city parks)

❖ Allows creation of hike & bike trails by cities at no cost for underlying land (avoiding costs that could run as high as \$1 million/linear mile)

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Supported by cities state-wide – why controversial?

❖ Very arduous trail for approval:

- March 22 – heard by House State Affairs
- May 11 – committee substitute (substantially changed from original) passed by House
- May 16 – heard by Senate Business and Commerce
- May 23 – amended on Senate floor – back to original language, 31-0
- May 25 – back on House floor, failed to concur with Senate changes, 63-78
- May 28 – back on House floor on motion to reconsider earlier vote
- May 28 – 10:59 p.m., passed 83-46; House adjourned 2 minutes later. Last bill passed by 85th Legislature

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Hike & Bike

❖ Requires an agreement with the City that allows public access and use for recreation, exercise, relaxation, travel, or pleasure.

❖ Utility makes no representations that premises are safe for these purposes; assumes no responsibility for damages arising out of such use.

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What's in a Name?

- ❖ Railroad Commission Sunset Bill - HB 1818
 - ❖ Railroads? Nope.
 - ❖ Trains? Not any more.
 - ❖ Buses? Are you kidding?
 - ❖ Texas Energy Resources Commission? No.
 - ❖ Texas Energy Commission? No.
- ❖ Postponed multiple times – finally avoided sunset this year.
- ❖ No name change, no independent judges to hear rate cases.

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Anything positive in Sunset?

- ❖ Oil & Gas Division directed to develop annual plan for monitoring and enforcement activities. Must keep records to show effectiveness.
- ❖ Adds revenues to Oil & Gas Clean-up Fund
- ❖ From Pipeline Safety & Regulatory Fees (new)
- ❖ Must develop best practices for inter- and intra-state pipeline facilities and transportation of gas.

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The Certainty of Death and Taxes – and Higher Electric Bills

- ❖ SB 735 – started life as an omnibus electric utility reform bill.
- ❖ Found acceptance in a modified form:
 - ❖ Requires the PUC to establish a schedule under which it periodically reviews the fairness of electric utility rates – IOUs only.
 - ❖ Includes other changes to rate-setting procedures – a mixed bag for consumers.
 - ❖ Cities still able to initiate base rate proceedings as regulatory authorities.
 - ❖ Extends ability of IOUs to make distribution rate changes between rate cases.
 - ❖ Allows the PUC to take more time to review Sale, Transfer, Merger applications – such as Berkshire-Hathaway's purchase of Oncor – consider additional information, consider actions taken by other jurisdictions (bankruptcy), other good cause

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Low-Income Assistance? Maybe.

- ❖ SB 1976 – If requested by the PUC, Health & Human Services Commission will help to develop an automatic process for identifying low-income electric and telephone customers.
- ❖ Providers can offer customer service, discounts, bill payment assistance, and other.
- ❖ Providers can't be *required* to do anything if no reimbursement comes their way.

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Low-Income Assistance? Yes.

- ❖ SB 758 – Applies only to CPS Energy and San Antonio Water System.
 - ❖ Modifies existing bill payment assistance program in Local Gov't Code.
 - ❖ Removed requirement that low-income customers have to receive disconnection notice before being eligible for program.

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Can You Hear Me Now?

- ❖ SB 1004 – new Chapter 284 Local Gov't Code:
 - ❖ "Deployment of Network Nodes in Public Right-of-Way"
- ❖ Public Policy statement:
 - ❖ Increase access to advanced technology and information
 - ❖ Need for reliable wireless networks and services
 - ❖ State must be competitive in the global economy

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How to accomplish these policy goals?

- ❖ Mandate access by network providers to PROW – a public resource to be used to support deployment as a “matter of statewide concern and interest.”
- ❖ Cities must allow access to PROW by wireless providers.

Background:

- ❖ Chapter 283, Loc. Gov’t Code:
 - No “access lines” provided by network providers
 - Wireless services not regulated by PUC
 - Providers signing license agreements
 - Complaints brought by ExteNet and Crown Castle against Houston & Dallas
 - PUC says Ch. 283 governs

§ 284.101 – a Network Provider is authorized to:

- ❖ Construct and operate Network Nodes and Node Support Poles in the PROW.
- ❖ Modify or replace utility poles or NSP in PROW.
- ❖ Collocate on Service Poles – traffic signals, light standards, signage.

What can a city do?

- Require a permit for Nodes, Node Support Pole, and Transport Facilities.
- Charge a PROW use fee for each Node and Support Pole, and Transport Facilities.
- Require compliance with PROW management ordinances and undergrounding requirements.
- Restrict new poles in parks and residential areas
- Restrict installation in historic and design districts.
- Adopt a Design Manual.

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What is a Network Node?



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Size restrictions for Node:

- ❖ Antenna must fit within 6 cubic feet (real or imaginary).
- ❖ Not be higher than 3 feet above the pole.
- ❖ Must not protrude more than 2 feet from side of pole.

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Size restrictions for other equipment:

- No more than 28 cubic feet; no more than 2 feet protrusion.

Ground-Based enclosures:

- No more than 3½ feet high, wide, or deep.

Pole-Mounted enclosures:

- Not more than 5 feet tall.

Node Support Poles:

- Not higher than lesser of:
 - 10 feet above tallest utility pole within 500 linear feet;
 - 55 feet.

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Shot-Clock for Permitting

- Determine completeness and notify applicant within:
 - ✓ 30 days for Node or Node Support Pole
 - ✓ 10 days for Transport Facility
- Act on a permit within certain timeframe, or deemed approved:
 - ✓ 150 days for Node Support Pole
 - ✓ 60 days for Network Node
 - ✓ 21 days for Transport Facility

City Water Rates for Schools

- ❖ HB 2369 amends Water Code.
 - ❖ A city providing retail water or sewer service to a public school district cannot charge the district a fee based on the number of students or employees in addition to the rates the city charges the district for its services.
 - ❖ Provides appeal to PUC; burden of proof on city; PUC can fix fees to be charged by city.

Drone On

- ❖ HB 1424; SB 840
 - ❖ Now a criminal offense to fly a drone over criminals (city, county, state, or federal).
 - ❖ Limits photography from drones of critical infrastructure; allows electric utilities to do so for their purposes.
 - ❖ No drones over sports venues seating 30,000+, unless over 400' altitude.

It Pays to Conserve!

- ❖ HB 1571
- ❖ Amends Chapter 302, Loc. Gov't Code – Energy Savings Performance Contracts.
- ❖ Broadens definition of energy savings to include estimated amount of avoided expected future operations & maintenance costs for city contracts.
- ❖ Can also use any source of funds for these contracts (weatherization, automatic energy control systems, rainwater harvesting, recycling, etc.).

Prisons Can be Made to Conserve, Too

- ❖ HB 965
- ❖ City-owned utility can require correctional facility to comply with city water conservation measures.
- ❖ Unless operator certifies to Texas Dept. of Criminal Justice that doing so would endanger health and safety at the facility or unreasonable operation costs.

Don't Lose Your Water!

- ❖ HB 1573: Texas Water Development Board can:
 - ❖ implement rules requiring city water loss audits by trained personnel, and
 - ❖ provide training on water loss audits on website.
- ❖ HB 1648: City providing water to 3,300 or more connections must designate an employee as the water conservation coordinator in city's water conservation plan filed with TWDB.

Try Again Next Time:

- ❖ HB 1460 – would have allowed Austin Energy’s large customers/group of customers to petition PUC to review rates. (Not supported by AE’s large customers.)
- ❖ HB 1459 – would have capped AE’s general fund transfer and limit use of revenues.
- ❖ HB 1461 – would have required AE to transfer outside-city customers to neighboring electric cooperatives.
- ❖ HB 1427 – Zoning of electric substations.

Several bills on Grid Security – study threats from electromagnetic, geomagnetic, terrorist, and cyber-attack threats.

- ❖ Electric Grid Security Advisory Committee.
- ❖ Security audits.

Any questions?
