



Sano Blocker, Chair • Patrick Reinhart, Vice Chair • Julia Rathgeber, President & CEO • Ben Gaffaney, Vice President and Corporate Secretary

March 12, 2019

The Honorable Dan Patrick
Lt. Governor of Texas
P. O. Box 12068
Austin, Texas 78711

Re: CSSB 421

Dear Lt. Governor Patrick:

Yesterday, the Senate Committee on State Affairs passed a Committee Substitute to SB 421, which had been heard the previous week. Over 50 entities testified on the bill, including the Association of Electric Companies of Texas (AECT).

The layout and discussion of the Committee Substitute implied the new bill was the result of compromise among various stakeholders. It was not. We did not see a copy of or have any discussions regarding the new bill before it was laid out and passed yesterday. CSSB 421, although containing wholly new provisions with substantial industry impact, was presented and passed with zero stakeholder input and no opportunity for opposition to be voiced.

The stated purposes of the bill are to ensure that landowners receive a fair initial offer for their land, that sufficient easement terms are provided for landowners, and that public meetings are held in locations where the infrastructure is to be built. What the bill actually does is significantly delay, if not actually stop, the construction of needed electric infrastructure.

Specifically, AECT has the following major concerns about the bill:

- The bill requires electric companies to pay 145% of the market value of the land in an initial offer. This conflicts with the Texas Constitution that requires just compensation, interpreted by Texas courts as fair market value, and the requirements of the Public Utility Commission of Texas (PUC) that expenditures of electric companies to be “just and reasonable.”
- Before making a final offer, a landowner would need to select or approve the utilities’ appraiser. This provision could easily bring public infrastructure to a halt. A single landowner would now be empowered to thwart a needed public project by simply refusing to select or agree to the appraiser a utility can hire. This provision undermines the entire basis of eminent domain and the constitutionally recognized need for it.
- The bill introduces three opportunities for the court system to slow, stop or back up the condemnation process. Each of these provisions could provoke substantial litigation with

possible frivolous attempts to delay or stop infrastructure projects. This is especially true given the prospect of recoverable fees for such attempts.

1. Section 21.0113(e) allows the court to determine whether the condemning entity met the initial offer requirements and abate the proceedings if it determines they have not been met;
 2. Section 21.0114 allows the court to determine whether the condemning entity met the mandatory easement terms requirements and abate the proceedings if it determines they have not been met; and
 3. Section 21.0291 allows the court to determine whether the condemning entity met the public meeting requirements and prohibits the condemning entity from acquiring any easements until the court certifies that those public meeting requirements have been met.
- Finally, the legislation does not take into account the well-established process to protect landowners during transmission routing cases at the PUC. While most of the information supplied to the landowners during that portion of the siting process complies with the requirements of CSSB 421, much of the information cannot be provided, in part because electric companies have not entered landowner property prior to the route being selected. In addition, specific information on third party contractors and the basis for final financial offers are frequently not available at that point in the PUC's process.

There are substantial unintended consequences associated with this bill. Electric companies across Texas are working extensively to build enough infrastructure to meet the demands of our growing economy. This includes our growing urban regions, as well as delivering the electricity needed to keep our oil and gas industry strong, particularly in West Texas. The need for electric infrastructure is critical: according to the Electric Reliability Council of Texas, we only have a 7.4% reserve margin for this summer; slightly over half of that available in previous years. In areas of West Texas, the transmission system is so taxed that without additional projects there will be no ability to hook up new oil and gas customers. Delays and obstructions in constructing necessary projects to serve the growing the electric system will create long-term ramifications. These ramifications include the delaying or halting of necessary infrastructure that has been approved by ERCOT, the Federal Regulatory Commission and the PUC. Make no mistake, if it were passed, CSSB 421 could impact the availability and reliability of the Texas electric grid.

We have continued to work in good faith with landowners and Rep. Dwayne Burns, who is carrying the House companion to SB 421. We've made significant compromises to protect landowners while ensuring Texas has the power lines needed to grow economic development in the state. CSSB 421 is a blindside attack on the electric industry with substantial unintended consequences, undermining our good faith negotiations and our established processes to site transmission assets.

Sincerely,



Julia Rathgeber
President & CEO

cc: Members, Texas Senate