



TRANSOURCE OKLAHOMA v. AHRBERG FAMILY TRUST

2025 OK CIV APP 6

Case Number: 120537; Cons. w/120538

Decided: 01/25/2024

Mandate Issued: 03/06/2025

THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA, DIVISION III



Cite as: 2025 OK CIV APP 6, __ P.3d __

TRANSOURCE OKLAHOMA, LLC, a foreign limited liability company, Plaintiff/Appellee,

v.

AHRBERG FAMILY TRUST dated April 14, 2014, Defendant/Appellant,

And

TRAVIS L. HOLLOWAY, Defendant/Appellant.

APPEAL FROM THE DISTRICT COURT OF
PAYNE COUNTY, OKLAHOMA

HONORABLE STEPHEN R. KISTLER, TRIAL JUDGE

AFFIRMED

Eric R. King, Bryan N.B. King, Dane H. Miller, FELLERS, SNIDER, BLANKENSHIP, BAILEY & TIPPENS, P.C., Oklahoma City, Oklahoma, for Defendant/Appellant,

Jacob Daniel, Mark H. Ramsey, Clint Russell, Stratton Taylor, TAYLOR, FOSTER, MALLET, DOWN, RAMSEY, & RUSSELL, Claremore, Oklahoma, for Plaintiff/Appellee,

B.J. Goree, Judge:

¶1 The predominant issue before the court is application of 27 O.S. §7(A) which extends the right of eminent domain to entities that "furnish" electrical power. Transource Oklahoma, LLC, constructs electrical transmission lines and argues it is engaged in furnishing electricity within the meaning of §7(A). Landowners contend Transource does not furnish electrical power but merely transmits it, a distinction they say the Legislature has acknowledged. Section 7(A) provides:

Except as otherwise provided in this section, any person, firm or corporation organized under the laws of this state, or authorized to do business in this state, to *furnish* light, heat or power by electricity or gas, or any other person, association or firm engaged in *furnishing* lights, heat or power by electricity or gas shall have and exercise the right of eminent domain in the same manner and by like proceedings as provided for railroad corporations by laws of this state. (emphasis added).

The district court found Transource is endowed with the right of eminent domain because it *provides* electricity, and we review that interpretation *de novo*. *Cole v. Josey*, 2019 OK 39, ¶3, 457 P.3d 1007, 1009. It is a question of first impression.

¶2 The conflict began when Transource contacted the Ahrberg Family Trust and Travis L. Holloway requesting permission to survey for a right-of-way easement to support an electric transmission line. When they refused, it sued in Payne County and succeeded in obtaining a temporary injunction preventing Landowners from interfering with its asserted right to enter their properties. ¹ An order granting a temporary injunction after an adversarial hearing is an appealable order. 12 O.S. §993(A) (2).

¶3 The proposed transmission line in Payne County is part of a larger project. The Federal Energy Regulatory Commission supervises a regional transmission organization which determined there is a need for an electric transmission line to be built across five counties in Oklahoma. The line is to commence at the OG&E Sooner Generating Station in Noble County and extend to the PSO Wekiwa Substation in Tulsa County. Transource was selected to build the line which will take energy from the source of generation and pass it along to the substation where it will be distributed to the public. According to Transource, its activity constitutes "furnishing . . . power by electricity" as intended by the Legislature under 27 O.S. §7(A) and therefore it may attempt to acquire the land by eminent domain.

¶4 But if Landowners are correct that eminent domain is not available to Transource under Section 7, then Transource has no legal right to enter upon their property and the district court's grant of the temporary injunction must be vacated. ² The case turns on interpretation of the word "furnish," and the statute must be strictly construed in favor of Landowners and against Transource, the party seeking condemnation. *Public Service Company v. B. Willis, C.P.A.*, 1977 OK 78, ¶16, 941 P.2d 995, 999.

¶5 The general provisions of eminent domain are set out at 27 O.S. §§1-19 and there is no definition of "furnish." However, there is another section of law within the same general provisions that is related to Section 7. Appellate courts should avoid isolating a single word in one statute if there are related provisions in the same act that may enlighten legislative intent. *Hill v. Board of Education*, 1997 OK 107, ¶5, 944 P.2d 930, 932. At the time the Legislature enacted Section 7, it had previously authorized water power companies to exercise eminent domain to secure rights-of-way for transmitting electricity. 27 O.S. §4. Section 4 provides:

Any water power company, organized under the laws of this state, shall have power to exercise the right of eminent domain in like manner as railroad companies, for the purpose of securing sites for the erection of water power plants, together with the necessary dams over any nonnavigable stream and sites for the storage of water, and of securing rights-of-way for the necessary flumes and conduits for the purpose of conducting water for public or private consumption, and generating power, and for the purpose of securing rights-of-way for poles, wire and cables for transferring and transmitting electricity generated by water.

It is appropriate to consider Section 4 and Section 7 together because both grant eminent domain to entities that supply electrical power.

¶6 According to Section 4, water power companies may exercise eminent domain for securing rights-of-way for poles, wire and cables for transferring and transmitting electricity generated by water. Section 7 authorizes eminent domain to those who furnish light, heat or power by electricity. Interpreting the general provisions of eminent domain as a whole, it is a legitimate assumption that the Legislature intended "furnishing light, heat or power by electricity" per Section 7 to be consistent with "transferring and transmitting" electricity according to Section 4. It is reasonable to conclude that furnishing electricity pursuant to Section 7 can include "transferring and transmitting" electricity.

¶7 Near the time Section 7 was enacted, "furnish" meant: "1. To supply with anything wanted or necessary; as, to *furnish* a family with provisions; to *furnish* arms for defense." Webster, Noah, LL.D., (1904). *Webster's Twentieth-Century Dictionary of the English Language*, Publishers Guild, Inc. Transource proposes to construct transmission lines to supply electricity to another entity for distribution. Its activity is a necessary segment of furnishing electricity.

¶8 Landowners propose "furnish" in Section 7 should be considered from the perspective of a statute dealing with the Corporation Commission's supervisory powers over public utilities. ³ Title 17 defines "public utility" to include companies that "supply any commodity to be furnished to the public" such as "for the production, transmission, delivery or furnishing electric current for light, heat or power." 17 O.S. §151(c). ⁴ Landowners argue "transmission" and "furnishing" are terms with different meanings because the Legislature used them in the disjunctive in the same sentence. We are persuaded that transmission of electrical power describes one activity among several that is encompassed by the broader phrase, "furnishing electricity." ⁵

¶9 In 1923, the Oklahoma Supreme Court agreed that a generating plant was "furnishing electric current" even though it sold its entire output to a public utility that was engaged in the business of transmitting and distributing current to towns and cities. *Southern Oklahoma Power Co. v. Corporation Commission*, 1923 OK 939, 220 P. 370. The rationale of the opinion suggests

that a generating company and a transmission and distribution company are participants in a supply chain that furnishes electricity beginning at the generation plant and culminating at the point of consumption.

It is our opinion that the statutory definition of a public utility is sufficiently broad to include a plant . . . where it generates electricity and furnishes same under a contract to a public utility for distribution to the public. This corporation operates a plant which furnishes and supplies a commodity (electric energy) to be furnished to the public for the production of electric current for light, heat, and power.

Southern Oklahoma Power, ¶5. ⁶

¶10 In conclusion, we hold that transmitting electricity is a part of furnishing electricity pursuant to of 27 O.S. §7(A). This interpretation accords with the plain language of the statute strictly construed, harmonizes with a related statute within the same act, is consistent with similar terms involving public utilities, and is a logical construction in view of a highly regulated system involving multiple entities performing technically different functions in the transfer of electrical power. Transource Oklahoma, LLC is engaged in furnishing power by electricity within the meaning of 27 O.S. §7(A), and therefore it is authorized to exercise the right of eminent domain. The district court's order concluding Transource is likely to succeed on the merits in an action for eminent domain was not an abuse of discretion. ⁷ The order for a temporary injunction is affirmed.

MITCHELL, P.J., and DOWNING, J. concur.

FOOTNOTES

B.J. Goree, Judge:

¹ Transource sued defendant Ahrberg Family Trust, case No. CJ-22-91, and defendant Travis L. Holloway, case No. CJ-22-94. The district court granted Transource temporary injunctions and both defendants appealed (Ahrberg, case no. 120,537 and Holloway, case no. 120,538). The Oklahoma Supreme Court consolidated and we refer to appellants as Landowners.

² One who has a legislatively granted power of eminent domain may enter onto property to conduct a pre-condemnation survey. *Root v. KAMO Electric Cooperative, Inc.*, 1985 OK 8, ¶34, 699 P.2d 1083, 1091. Transource relies on *Root* for its allegation that it has a legal right to enter upon Landowners' property.

³ The parties agree Transource is a "Transmission Only Utility" as defined by Oklahoma Administrative Code 165:35-43-2. They disagree about whether Transource is a Title 17 public utility.

⁴ Title 17 O.S. §151(c) provides: "The term 'public utility' as used in Sections 151 through 155 of this title, shall be taken to mean and include every corporation, association, company, individuals, their trustees, lessees, or receivers, successors or assigns, except as hereinafter provided, and except cities, towns, or other bodies politic, that now or hereafter may own, operate, or manage any plant or equipment, or any part thereof, directly or indirectly, for public use, or may supply any commodity to be furnished to the public . . . (c) For the production, transmission, delivery or furnishing electric current for light, heat or power.

⁵ In *Hawkeye Land Company v. Iowa Utilities Board*, 847 N.W.2d 199 (Iowa 2014), the Supreme Court of Iowa determined an independent transmission company was not entitled to exercise eminent domain under the relevant statute because it did not "furnish . . . electricity to the public for compensation." The court disregarded an argument that "furnish" is a broad word including functions like generate, transmit, and distribute. Instead, the court ruled the transmission company could not exercise eminent domain because it did not furnish electricity "to the public." It only furnished electricity to a public utility which in turn furnished that electricity to the public. *Hawkeye*, 847 N.W.2d at 216. Unlike the Iowa statute, Title 27 O.S. §7(A) does not restrict eminent domain to entities that furnish electrical power "to the public."

⁶ *Southern Oklahoma Power Co. v. Corporation Commission*, 1923 OK 939, 220 P. 370, interprets the predecessor statute to 17 O.S. §151(c), which means the holding of that case pertains to the regulation of a public utility by the Corporation Commission, not whether it was an entity entitled to exercise the right of eminent domain.

⁷ Appellate courts review the issuance of a temporary injunction for an abuse of discretion. *Ritter v. State of Oklahoma*, 2022 OK 73, ¶11, 520 P.3d 370, 378. The district court found that Landowners' interference with Transource's right to perform necessary pre-condemnation surveying activities would harm Transource, and entry upon the land would cause no harm to Landowners. The trial court's conclusion of law that all elements of temporary injunction have been satisfied was not an abuse of discretion.

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<u>1997 OK 107</u> , <u>944 P.2d 930</u> , <u>68 OBJ 2775</u> ,	<u>HILL v. BOARD OF EDUCATION</u> Cited
<u>1923 OK 939</u> , <u>220 P. 370</u> , <u>96 Okla. 53</u> ,	<u>SOUTHERN OKLAHOMA POWER CO. v. CORPORATION COMM'N</u> Discussed at Length
<u>1977 OK 78</u> , <u>564 P.2d 218</u> ,	<u>WAUGH v. HEIDLER</u> Cited
<u>2019 OK 39</u> , <u>457 P.3d 1007</u> ,	<u>COLE v. JOSEY</u> Discussed
<u>2022 OK 73</u> , <u>520 P.3d 370</u> ,	<u>RITTER v. STATE</u> Discussed
<u>1985 OK 8</u> , <u>699 P.2d 1083</u> ,	<u>Root v. Kamo Elec. Co-op., Inc.</u> Discussed
Title 12. Civil Procedure	
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<u>12 O.S. 993</u> ,	<u>Appeals from Certain Interlocutory Orders - Undertaking</u> Cited
Title 17. Corporation Commission	
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<u>17 O.S. 151</u> ,	<u>Public Utility Defined - Exemption of Nonprofit Water and Sewer Corporations - Washington County - Authority of Certain Beneficiaries to Condemn Property</u> Discussed at Length
Title 27. Eminent Domain	
Cite	NameLevel
<u>27 O.S. 4</u> ,	<u>Right of Water Power Companies to Exercise Eminent Domain</u> Cited
<u>27 O.S. 7</u> ,	<u>Rights - Same as Railroads</u> Discussed at Length

