Utility Relocation: City of Richardson Prevails at Texas Supreme Court

Last week, the Texas Supreme Court concluded in City of Richardson v. Oncor Electric Delivery Company that a city can require an electric utility to relocate its facilities and pay for that relocation as a result of a city project.

The dispute began in 2010 when, pursuant to franchise terms, the city requested that Oncor relocate its utility poles in 32 alleys for alley reconstruction and widening. Even though the franchise required the relocation of Oncor’s facilities – at Oncor’s cost – Oncor refused to do so.

In 2012, the city filed suit in state district court in Dallas to enforce the franchise provisions and, alternatively, to enforce the common law rule on relocation. The common law rule has come from court opinions over the years concluding that the public’s right to use streets is paramount to a private company’s. In 2014, the trial court ruled in favor of the city.

The appeals court later reversed and rendered judgment in favor of Oncor. Why the reversal? During the period in which the dispute occurred, Oncor had filed a rate case with the Public Utility Commission (PUC) seeking changes in its rates, operations, and services as set forth in its “tariff.” The PUC defines “tariff” as “the schedule of a utility…containing all the rates and charges stated separately by type of service, the rules and regulations of the utility, and any contracts that affect rates, charges, terms or conditions of service.”
In 2011, Oncor and the city reached a settlement on the rate changes, and the city enacted an ordinance accepting a proposed settlement with new tariff rates. There was a dispute at the trial court about whether the tariff documents were properly in evidence. The appeals court concluded that they were, and that the city had agreed to the tariff in the 2011 settlement ordinance. Those issues were the deciding factors in the case because the tariff had a standard term providing that “the entity requesting such removal or relocation, shall pay to Company the total cost of removing or relocating such Delivery System facilities.” According to the appeals court, the case seemed to do away with the common law rule and replace it with a new interpretation of the language in a utility’s tariff. (All investor owned electric utility tariffs have similar language.) Of course, a state statute still mandates that an electric utility pay for relocations for the widening or straightening of a street. But, according to the court, an alley isn’t a street.

The Texas Supreme Court reversed the appeals court, and concluded that the common law, coupled with the city’s franchise agreement, trumps the utility’s tariff. According to the Court:

“As a home-rule city, Richardson has exclusive control over its public rights-of-way and has authority to manage the terms of use of those rights-of-way. Richardson did so in the Franchise Contract, which is consistent both with well-established common law and with the Utilities Code in requiring a utility forced to relocate facilities from a public right-of-way to do so at its own expense. The Tariff, on the other hand, governs Oncor’s relationship with its Retail Customers, and does not address Richardson’s relocations to accommodate the Alley-Relocation Project. For the reasons expressed above, we reverse the judgment of the court of appeals and reinstate the judgment of the trial court.

The result is a good one, and the City of Richardson should be commended for staying the course to the state’s highest court.

**FCC Appears to Respond to Demands for More Local Government Input: Will it Help Cities?**

The Federal Communications Commission recently decided to double the size of its Intergovernmental Advisory Committee (IAC) from 15 to 30 members. Municipal officials still represent four of those positions.

The increase in total members may or may not benefit all cities. The FCC has stated preference for candidates with rural expertise: “The Commission is especially interested in candidates with expertise in communications and information technology, and candidates representing rural and Tribal areas, especially candidates with expertise in the challenges of rural broadband adoption.”

On the one hand, many cities are in underserved rural areas. On the other, the actions of providers haven’t been focused on rural areas. Rather than seeking to expand rural broadband, many providers have gone to the FCC and state legislatures seeking to preempt municipal authority altogether. Texas’ small cell bill from 2017 (S.B. 1004) is an example of those efforts.
More information on the IAC is available on its [website](https://www.iac.state.tx.us), including how to apply for the single vacant municipal position.

**URGENT:**

**Mandatory Hotel Occupancy Tax Reporting**

The 50-day window for reporting local hotel occupancy tax information is now open. The reporting period began on January 1 and closes on February 20.

During the 2017 regular session, the legislature passed **S.B. 1221**, which aims to improve transparency about the hotel occupancy tax by requiring cities to file an annual report with the comptroller that includes the city’s hotel occupancy tax rate, the amount of revenue generated by the tax, and the amount and percentage of the revenue spent for each of the following purposes:

- Convention or information centers.
- Convention delegates registration.
- Advertising to attract tourists.
- Arts promotion and improvement.
- Historical restoration and preservation projects.
- Signage directing the public to sights and attractions.

Cities have two reporting options: (1) use the comptroller’s online reporting form to submit all required information; or (2) clearly post and maintain all required information on the city’s website and provide the comptroller’s office with a link to the information. For cities selecting the second option, the comptroller provides an optional format template to post on the city’s website.

For more information and access to the online reporting form, see the comptroller’s hotel occupancy tax reporting [webpage](https://www.tre.state.tx.us/tax/600). City officials with questions about the new requirements can also contact the comptroller’s transparency team by email at transparency@cpa.texas.gov or (844) 519-5676.

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