

**LOCAL NEWS**

# City takes on utility over eminent domain

By **R. ROBIN MCDONALD** THE FULTON COUNTY DAILY REPORT – published Monday, November 19, 2012 **0**  
**comments**

MANSFIELD, Ga. — A tiny Georgia city that is battling a utility co-op's efforts to erect 100-foot poles and string high-voltage power lines through land designated for a nature preserve has asked the Georgia Court of Appeals to decide whether public utilities can use their powers of eminent domain to condemn public land.

Mansfield, a city of 600 people about 40 miles east of Atlanta in Newton County is trying to impose limits on the condemnation powers of the Georgia Transmission Corp. (GTC), which has bulldozers that are already carving out a 100-foot right of way for high-voltage lines slated to pass through 14 acres of woodlands owned by the city and at least one of its historic neighborhoods.

The Court of Appeals issued an emergency stay after a Newton County Superior Court judge sided with GTC and allowed condemnation proceedings to go forward. GTC, in turn, has gone back to the Newton County judge, asking him to order the city to post a \$1 million bond until the case is decided.

"We are going to continue building the line," despite the appeal, GTC attorney William White Smith of Welch, Webb & White in McDonough told the Daily Report. "We need the line to be completed this winter in order to avoid power outages."

Mansfield's attorney, Cartersville lawyer Donald Evans Jr., said Thursday that GTC is "trying to bulldoze the city of Mansfield into dropping its opposition to the condemnation. And they are trying to apply economic pressure to try to prevent a ruling from the Court of Appeals on the legality of what they've done. . I don't think that this latest effort to avoid a ruling on the legality and propriety of their attempt to condemn municipal property is going to work. We will get a ruling."

The dispute has pitted city and county officials and a citizens group led by the pastor of a Mansfield church against GTC, a consortium of 39 electric membership cooperatives that together provide electricity to more than half of Georgia.

Mansfield Mayor Estona Middlebrooks says the power lines will irrevocably

damage the historic, tree-centered character of Mansfield, designated a "Tree City USA" by the Arbor Day Foundation.

A GTC spokeswoman said the new lines are necessary to feed the state's growing demand for electricity and that the power poles and high-voltage lines are "not incompatible" with a nature preserve.

At the heart of the dispute is the electric utility's use of eminent domain and whether it can condemn public property. Evans won the emergency stay on Oct. 19 after telling the Court of Appeals that GTC violated state law when it attempted to condemn undeveloped woodlands donated to the city last spring by Beaver Manufacturing Co., a local maker of yarn. He said that, although broad rights of eminent domain permit the state's utilities to condemn private property, those rights do not extend to the condemnation of public lands.

GTC "has simply claimed for itself the right to condemn public property," Evans said this week. "If the Court of Appeals ultimately blesses it and says they have this power . that would mean that every single city throughout Georgia can spend all they want to beautify their city, build harborscapes and river walks only to see their work thwarted by the electric company when it comes through with its power lines."

GTC attorneys, who have said it has the legal right to condemn public, have argued that the land it wants to condemn wasn't given to the city for a park until after plans for the power lines were announced.

The fight between the city and GTC began in the spring of 2011 when GTC began notifying property owners along a 3.2-mile route that cut through residential neighborhoods inside Mansfield's city limits that it intended to secure a 100-foot-wide strip of right of way for the installation of 100-foot power poles. The planned line included a 3-acre easement across old-growth timberland owned by the Beaver Manufacturing Co. near the local elementary school that a Beaver spokesman said the company had intended to donate to the city as a nature preserve to be named after the wife of the company founder.

GTC said the lines were needed to add reliability and capacity to the power grid without which as many as 6,000 customers could face possible outages this winter.

In contrast, Mansfield has great affection for its trees. They are featured in the city's vision statement, which says it intends to "remain a rural community with an increased tree canopy."

Said Mayor Estona Middlebrooks: "We have a long history of trying to preserve our trees and the look and feel of our city." Construction of the power line already has resulted in the removal of dozens of mature trees, the mayor added.

In an effort to preserve the city's character and its treasured canopy of trees, Middlebrooks said that city officials and a citizen steering committee

led by Todd Hilton, pastor of the Mansfield United Methodist Church, urged GTC to consider an alternate route.

Hilton said the steering committee, using GTC's own criteria, offered an alternate route that he said would have taken the power lines outside the city limits and employed existing utility easements already in use across farmland, although it would have cost more money. Hilton said GTC "was not willing to backtrack or move at all."

Said GTC spokeswoman Jeannine Haynes: "At the end of the day, they did not lead us to change the route."

Meanwhile, GTC began acquiring easements from property owners of the parcels needed for the new power lines, offering cash while warning them that GTC would take them to court to secure the property if they rejected the power consortium's offer.

Under state law, if a landowner rejects a utility's initial offer for the land or a purchase price is arrived at through court-ordered mediation, a utility can go to court to force the sale. If a jury doesn't set the purchase price at least 20 percent higher than the utility's original offer, state law requires the property owner to pay the utility's legal bills.

After GTC approached it for right of way, Beaver Manufacturing donated to the city a 14-acre tract of land that included acreage that GTC had designated for the new transmission lines. When GTC sought a court order to condemn the property last June, the city moved to dismiss the case, saying that the donated land "is already dedicated to public use as a municipal park."

The city also challenged GTC's right to condemn the property, arguing that in 1985 during litigation stemming from efforts by the state Department of Transportation to condemn city parkland designated for the Presidential Parkway in Atlanta, the Supreme Court of Georgia had determined that the DOT's power of eminent domain did not include authority to condemn public property.

Following that decision, according to Mansfield's motion to dismiss the condemnation proceedings, the Georgia General Assembly established the State Commission on Condemnation of Public Property and amended state law to authorize the condemnation of public property—but only by state agencies and only with commission approval.

GTC argues that it can condemn public property "even if the subject property is already being put to a prior public use because Georgia Transmission's easement can coexist with the city of Mansfield's use of the property as a public park."

GTC lawyers also have challenged Beaver Manufacturing's donation of the property to the city, claiming it was "made just prior to the condemnation in an apparent attempt to thwart Georgia Transmission's efforts to construct a power line."

Before Newton County Superior Court Judge John Ott could rule in the case, GTC contractors began clear-cutting the private property easements and along the public right-of-ways adjoining local roads, prompting the city council to impose a 60-day moratorium to stop construction of the lines. In a September hearing before Ott, Evans argued that the city had issued the moratorium because GTC had not complied with city tree-protection ordinances and, by state law, had the right to regulate any public utility's use of its streets and public right of ways.

GTC lawyer White countered that the moratorium was illegal, that city officials "are doing everything they can to stall us" and improperly had prevailed upon the county sheriff to enforce the moratorium and stop the power lines' construction.

According to hearing transcripts, GTC attorney White argued that the city moratorium "was illegal on its face" because it infringed on GTC's right of eminent domain.

White also insisted that GTC was "perfectly willing to work things out with the City of Mansfield" to compensate the city for the park easement "but what we cannot continue to do is have things delayed, delayed, delayed. . . What is happening is there is gamesmanship going on by the city of Mansfield, and we just want it to stop."

White's law partner, A.J. "Buddy" Welch, argued that to halt GTC work on the lines "is punishing a public entity that is out there providing a service to the general public."

Evans countered with a request for a temporary restraining order "to prevent exactly what Mr. Welch contends that they will start doing this afternoon\_to cut a 100-foot-wide strip through the middle of the city for no reason other than to try to punish the citizens of Mansfield."

From the bench, Ott denied the city's motion to dismiss the condemnation and ruled that the city moratorium was unconstitutional. The judge also said the city could appeal his ruling only if it were willing to pay damages associated with GTC's resulting construction delays. And he refused to halt construction on easements GTC had already acquired, even while the city park tract was still in contention.

Eminent domain, the judge said, "trumps the city's rights." He sternly warned the city that, if it appealed and the appellate court found for GTC, "The city of Mansfield will be on the hook for all the damages for delaying the case. That might get into the hundreds of thousands of dollars . . . because I don't think the law is your way at all. . . I think this is an exercise in futility, to be quite candid with you .. The law is against you. Because the state believes in eminent domain. It believes in the power of the utilities to be able to put up these power lines, and it's kind of ironic, because everybody loves to have their own electricity (but) they don't (want) it to come across their property for anybody else's benefit."

The judge concluded the hearing by saying, "You are talking to one dumb

man sitting up here. . I am very frustrated and uncomfortable from trying to become an expert on eminent domain law and home rule law and the convergence of the two in a scant 20 minutes, 25 minutes with a bunch of cases to read. I have done the best I can."

In a subsequent written order, Ott affirmed GTC's authority to condemn the city's property. He also cited testimony by Mansfield's mayor that the property was deeded to the city, at least in part, because city officials believed that "once it became public property GTC would be blocked from condemning the property" and noted that, "Presently, there exists no such park, and there are no landscaping plans or any kind of architectural plans that show the existence or location of the proposed park."

Therefore, the judge ruled, "There is no present public use of the property" by the city and GTC's power easement "does not conflict with any present use of the property."

The judge also agreed with GTC that the 100-foot easement on which the transmission lines would be built "can coexist with any nature walking trail on the property without extinguishing the nature walking trail or rendering the exercise of its use so extremely inconvenient and hazardous as to practically destroy its value."

While the Court of Appeals considers the matter, GTC is insisting it will have to spend \$600,000 to temporarily reroute the power line and that the delay will add \$300,000 in finance charges to the cost of construction. GTC attorneys say the city should be liable for those costs, which is why it is asking for a \$1 million bond.

The city isn't giving up its legal fight. "We may end up losing the war," said Hilton. "But it won't be because we didn't try. They are going to limp away with a broken leg and a black eye. They are going to think twice before going through another municipality."

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