



NC Supreme Court Ruling Safeguards Utilities' Right to Protect Easements from Encroachments, September 2016

In a significant victory for public utilities, the NC Supreme Court has ruled in *Duke Energy v. Gray* that utilities may bring lawsuits to remove encroachments on their easements any time within 20 years of when the encroachment first occurred. The ruling reverses lower courts that had held that utilities forfeit their right to remove an encroachment on a utility easement if a lawsuit is not brought within 6 years. Although the case involved an electric utility easement, the ruling applies equally to encroachments on water, sewer, and stormwater easements.

The case came about because a home was constructed in Mecklenburg County partially within a Duke Energy utility line easement. Six years and 2 months after the house was completed, Duke sued the owner to remove the encroachment from its easement. The primary legal issue in the case was whether the applicable statute of limitations for Duke to file the lawsuit was 6 or 20 years. Duke argued that it is not practical for the company to continuously patrol all of its easements throughout the state every 6 years, and therefore the General Assembly could not have intended for a 6-year statute of limitations to apply to lawsuits to remove easement encroachments. The trial court dismissed Duke's complaint on the grounds that it was filed 2 months after the 6-year statute of limitations expired. The ruling was subsequently upheld by the NC Court of Appeals, which suggested that Duke's only remedy may be to exercise its power of eminent domain – i.e., compensate the homeowner – to remove the encroachment on its easement. Duke then petitioned the NC Supreme Court to hear the case.

The NC Supreme Court reversed the lower courts. It held that the law only limits utilities' right to seek *monetary damages* for injuries to their easement rights to 6 years. However, the law affords them up to 20 years to bring lawsuits to force third parties to remove encroachments on those easements. In reaching this conclusion, the Court observed:

[W]e acknowledge that utility facilities crisscross the state above, on, and beneath the ground. Their accompanying easements are not always readily subject to routine inspection by the owning utility. We do not believe that the [NC General Assembly] intended that a utility's right to maintain such easements could be successfully challenged in a time as short as six years.

The NC Supreme Court's ruling is the best outcome that reasonably could be expected in light of the current law. It effectively extends the time utilities have to police their easements from 6 years to 20 years.

Nevertheless, we continue to believe that it would be preferable that there be *no* statute of limitations on a public utilities' right to enforce their easements. Under current law (NCGS 1-45.1), no statute of limitations applies to lawsuits to remove encroachments from public roads and rights-of-way. The same protections should apply to public utility easements.