In the end, the problem for the dissent was that the fee was charged to all individuals no matter the disposition of their case, resulting in punishment before adjudication.

http://legaltimes.typepad.com/files/usca7-booking-fees.pdf (Last Accessed January 23, 2014)

Eminent Domain: Idaho Law Does Not Grant Cities Extraterritorial Eminent Domain Powers Unless Specifically Enumerated

Alliance for Property Rights v. City of Idaho Falls, No. 12-35800 (9th Cir. Dec. 31, 2013).

The City of Idaho Falls, Idaho owns Idaho Falls Power, which supplies electricity to thousands of commercial and residential customers in the City. The power lines and distribution systems for the electricity are both inside and outside the City's borders. With growing needs, the City embarked on an expansion, first put in place in the 70s and re-affirmed in 2007, which included plans to build transmission lines outside the City's borders to connect to existing substations. To execute the plans, easements for private property were needed. The City initially sought to buy the necessary properties, but when some owners refused to sell, the City sought to condemn the properties. In response the property owners joined together as the Alliance for Property Rights and sought injunctive and declaratory relief, contending 1) Idaho Falls could not condemn extraterritorial property in order to build transmission lines and 2) that without that authority, the condemnation would violate the Due Process Clause of the Fourteenth Amendment.

The City removed the case to federal district court which entered summary judgment for the Alliance, holding Idaho law did not give Idaho cities the power to condemn extraterritorial property for the purpose of building transmission lines. The City appealed.

HELD: The Ninth Circuit affirmed the district court, holding that Idaho law does not grant cities the express or implied authority to exercise the right of eminent domain over extraterritorial property for the purpose of constructing transmission lines.

DISCUSSION: The issue on appeal was whether Idaho law granted Idaho cities the power of eminent domain over easements that lie outside the borders of the City for the specific purpose of building electric transmission lines. Under Idaho Supreme Court precedent municipalities have three sources of power: "(1)] [p]owers granted in express words; [(2)] [p]owers fairly implied in or incident to those powers expressly granted; and [(3)] [p]owers essential to the accomplishment of the declared objects and purposes of the corporation."

Idaho Falls first argued that two statutes, the general eminent domain statutes in the Idaho Code and the Revenue Bond Act, gave express authority for exercising the right in question. The Court rejected both arguments. As to the general statutes, the Court held it did not grant cities the power of eminent domain extraterritorially for any purpose, but rather *only for those enumerated*, thereafter noting that transmission line construction was not enumerated. The City countered that the legislature's silence on the issue permitted the court to find that transmission lines were included. This position did not resonate with the court, which took the position that, because the legislature had expressly granted cities the power of eminent domain extraterritorially for other things, leaving out transmission lines was a clear indication that no such power was granted.

The Revenue Bond Act (RBA) authorizes Idaho cities to "acquire land" to construct transmission lines outside their borders and that cities may use eminent domain "for any of the works, purposes or uses provided by this act." While this seems persuasive, the court rejected it as well given that the statute also only permits the exercise of eminent domain "to the same extent" as the general eminent domain statutes. Since the court had already determined those statutes did not grant cities such authority, it easily found that the RBA was not intended to augment the scope of the power general granted by the eminent domain statutes.

Next, Idaho Falls argued its extraterritorial eminent domain power arose by implication from "(1) its general power to own property outside City limits and (2) the powers expressly granted to it under the [RBA] to acquire property rights for the purpose of constructing electric utilities outside City limits." The first argument was dismissed in one sentence by the Court, wherein it simply stated that the power to buy land outside the City in no way allowed the City to obtain such land by eminent domain. Idaho Falls' second argument, more specifically, was that the RBA's language giving Idaho cities the ability to obtain "by gift or purchase lands or rights in lands" outside its boundaries "in connection with" constructing transmission lines, fairly implied the extraterritorial power of eminent domain. The court also quickly dispatched with this argument, calling it an "end-run around the statutory text" of the RBA since it *expressly* limits the eminent domain power to those granted in the general eminent domain statute - a point the Court thoroughly covered in the previous sections of the opinion.

Finally, the court looked to whether the power at issue could be implied because it is "essential to the accomplishment of the declared objects and purposes of the [City]." The City contended this was the case because the power to condemn the easements in question was essential to accomplishing the statutory mandate it is given by the state to provide electric power to residents at the "lowest possible cost." But the court rejected this argument as well, holding instead that the term "lowest" means the City must do all it can within the powers it has to accomplish the statutory objective, not that the City can exceed its powers or that "new powers be generated in pursuit of the objective."

http://cdn.ca9.uscourts.gov/datastore/opinions/2013/12/31/12-35800.pdf (last accessed Jan. 23, 2014)