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Subject: Comment Form for Proposed Rulemakings



Comments Form for Proposed Rulemakings

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§3.70: Amend T-4 pipeline permit procedures

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Comments re: T4 Pipeline Permit Procedures

Submitted by: Terri Hall, Founder - Texans Uniting for Reform and Freedom (TURF), PO Box 29254, San Antonio, Texas 78229-0254 • 210-275-0640 • www.TexasTURF.org

The Texas Railroad Commission's proposed rule to close the so-called 'T-4' loophole is a good step in the right direction, but the rule doesn't quite get us there. The T4 loophole has long allowed private pipeline companies to self-identify as a common carrier by simply checking a box on a one-page form and start exercising eminent domain authority.

The rule falls short in the following ways:

Too vague - The rule does not specify what proof pipeline companies would need to produce for the Commission to prove it meets the statutory requirements of a common carrier.

Landowners shut out of the process - Landowners must be notified of a pending permit and given the opportunity to challenge a pipeline that affects their property, including but not limited to challenging the evidence produced by the pipeline companies in a formal hearing.

What landowners deserve

In 2011, the Texas Supreme Court said in its *Texas Rice Land Farmers v. Denbury Green Pipeline Company* decision that companies need to prove they're truly a public use pipeline, known as a common carrier, before they obtain or exercise eminent domain powers. The illegitimate use of eminent domain by private pipeline companies continues to be a problem for landowners despite the Supreme Court's decision, and still no oversight or enforcement mechanism is in place to determine if companies are legitimately common carriers. Therefore, there is nothing in place to protect property owners from the misuse of eminent domain. As written, the rule dictates solely the Commission determines common carrier status without public comment or a hearing process that includes landowners. So we do not support the rule as proposed.

Property owners **MUST** be given a meaningful opportunity to challenge the veracity of common carriers at the Commission level without having to resort to expensive court battles. It's the state's job to ensure pipelines are operating legally, and currently that burden is being placed wrongfully on landowners. However, landowners must retain their ability to seek redress in the courts if they feel the Commission's ruling is in error.

What we like

The proposed rule would give the Commission the ability to revoke a permit if a company violates the law, giving the Commission enforcement powers that it currently doesn't have. It would also mandate permits must be renewed on an annual basis. The rule would apply to new permits, amendments, renewals, and cancellations of existing permits. So, if we're reading this correctly, existing permit holders would eventually be required to submit to the new renewal process and would eventually be subject to the requirements to prove its a common carrier. These are important powers that should be contained in any final rule.

The Railroad Commission has a reputation of being too cozy with the industry its supposed to regulate. Commissioners rely heavily on the industry to fund their campaigns. So the process to establish and police common carrier permits and the subsequent use of eminent domain must be governed with the highest integrity as the Texas Constitution and the Texas Supreme Court demand.

Ultimately, it's crucial that the state has some mechanism in place to review whether or not private pipeline companies meet the legal requirements as a common carrier public use pipeline prior to eminent domain authority being conferred. Needless to say, it's not working for landowners or for the companies since it creates an unnecessarily cumbersome and expensive process that protracts the final decision months and even years.