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From: [redacted]
Sent: Sunday, August 24, 2014 10:15 AM
To: rulescoordinator
Subject: Gas Utility Docket 10355, Amendment to 16 TAC 3.70

I am writing to comment on Gas Utility Docket 10366, Amendment to 16 TAC 3.70.

The process for authorizing a gas utility company to claim "common carrier" status is a sham and a fraud that cheats Texans out of their land without due process of law and it needs immediate and permanent changes that protect citizens and their property from the use of eminent domain to take their land for the commercial, for-profit benefit of corporations, especially those that are foreign to the United States of America.

Specifically, the following points should be addressed in such a way as to provide much tighter review and verification of applications for eminent domain, including a prohibition to begin construction of any project that is in dispute because it seeks to take a person's land against their will through the use of eminent domain:

1) PROPOSED AMENDMENT TOO VAGUE -- Though we appreciate the Railroad Commissions attempt to more carefully define what entity can be a "common carrier" in Texas, the proposed amendment to Rule 3.70 is inadequate and too vague. The way the amendment reads is difficult to see how this is not the basic status quo the RRC is currently doing in administrating permits.

Examples of the Amendment being too vague per the RRC Memo to the Commission:
• **p. 1, Line 20** indicates that the RRC will ask for **"certain additional information".** There is no delineation of what that "certain additional information" required would be within this amendment. Specificity should be required so that there is no debate as to exactly what is required.

• **p. 1, Line 23** refers to **"any other information"** the Commission may also request. There is no indication within the text of what that additional info is that the RRC may ask for.

• **p. 2, Line 8** indicates the RRC will conduct **"its own review"** of the applicant.
There is no indication of what the RRC means by **"its own review"** of the applicant. Is the RRC staff simply reading the application without verifying its accuracy? There is no indication staff will actually investigate if in fact the applicant is a "pipeline for hire," or "for the public good" as required by law to be a common carrier. Since the agency says it should need no monies for additional staff to review applications, there is no indication that staff will indeed verify the voracity of the applicant by spending staff time talking to FERC, shippers, etc.

There is no specificity whatsoever about what changes may be to the T-4 form for "what additional information" will be asked for. Currently an applicant can just check a few boxes and sign off on a one-page vague application form.

2) NO STANDARDS FOR COMMON CARRIER are indicated in the proposed amendment. Nothing in the amendment indicates specific criteria an applicant has to meet other than the basics of a contact, address, etc.. Nor does the amendment indicate what factors are cause for revocation of a permit.

3) A PROCESS FOR PUBLIC NOTICE for common carrier is not indicated but should be provided for in the proposed amendment. A more "balanced" approach would a similar procedure to what the Public Utility Commission or the TCEQ follow in permits/notice. There should be a 30-day first notice of the application and the applicant should be required to provide a route. All landowners, municipalities,and county officials within a minimum 2-mile distance of the pipeline should receive MAILED notice (not electronic due to lack of good internet service in rural areas) of the application. There should be a 2nd notice with a 30-60 day window

when an application is considered "complete" via newspaper with a mailing to "affected" parties for a public hearing re: the common carrier permit. There should be a mechanism for landowners to gain standing if the common carrier permit is contested.

5) PERMIT REVIEW AND APPROVAL SHOULD NOT BE A CLOSED AGENCY PROCESS

p. 2, Line 19 The RRC states it can "administratively issue pipeline permits." It appears that the RRC is trying to maintain a closed process which indicates no involvement for an "independent" review if a common carrier permit application is challenged. The logical place for an independent review is the State Office of Administrative Hearings or SOAH. The RRC Commissioners receive contributions for their elections by some of the applicants who have applied and will continue to seek a "common carrier" permit. An independent SOAH review gives the public a more balanced process.

Though the local district court process of a common carrier challenge appears to be preserved, this is an expensive process where individual landowners must each hire attorneys in various districts. A contested common carrier permit may be enjoined in a SOAH hearing expediting each individual common carrier challenge into one contested case. Further, all expense of a contested case should be born by the commercial operator rather than by the citizens whose land is being taken from then via eminent domain.

6) APPLICANTS SHOULD BE ASSESSED A FEE to ensure that staff time and resources are compensated to thoroughly review, investigate, and validate applications. A fee should also be assessed upon renewal or the amendment of a common carrier permit to ensure staff time is covered and the state's natural resources and landowners are protected.

Finally, the RRC has stated itself before the legislature that it has no jurisdiction over INTERSTATE pipelines or their construction -- that authority is relegated to PHMSA. Many references are made to RRC staffer Polly McDonald in this memo regarding this amendment. The RRC can and should ask for "expanded jurisdiction" to have the authority to monitor INTERSTATE pipelines as 4 other states currently do to check how a pipeline is built, monitored, etc. to better ensure public safety in collaboration with PHMSA.

This push for expanded authority under PHMSA has been brought to Ms. McDonald's attention with other legislators present this past session, but in the context of what entities qualify a common carrier, construction information (though informative), etc. has no bearing on the required qualifications of a "pipeline for hire" and should not be misconstrued in this amendment as part of those qualifications. The proprietary nature of not revealing what companies a "pipeline for hire" is shipping for should be waived to establish a valid common carrier status.

For too many decades the oil and gas industry has enjoyed a free ride at citizens' expense because the regulatory agencies overseeing them have been staffed by people from the industry they are supposed to regulate resulting in minimal regulations, lax enforcement and almost no reasonable opportunity for appeal by citizens whose properties are being taken away from them for the benefit of for-profit corporations and their shareholders. This is not only unfair, but it is also a direct violation of the Texas Constitution guarantees of protection for one's private property. I urge passage a meaningful rules and regulations that put the burden of proof and associated costs on the corporation claiming "common carrier" status and blocking any and all construction of disputed projects until they are fairly resolved.

Most sincerely yours,

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