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From:
Sent: Sunday, August 24, 2014 4:15 PM
To: rulescoordinator
Subject: RE 3.70 Ammend T-4 pipeline permit proceedures

My Comments

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Railroad Commission
The rules for this document need to be changed to protect individual property rights in this great State of Texas in ONE main and crucial way . That is deletion of the ability of solely owned private pipeline operators to have the right of eminent domain over privately held property. This addition to the rules that prior only allowed this right to Public Utilities and Common Carriers was correct. The relatively new (since 2011) addition of private pipeline operators or gas operators have reeked havoc in many Barnett Shale area communities. It has devalued properties in densely populated areas and has allowed a foreign Oil company to put a gun to private property owners heads to protect their property or negotiate fair valuation and access to their property for the XL tar sands pipeline. Texas should stand for Texans Private Property Rights.. Although it appears that our leaders paid by lobbyist and special interests are willing to sell out long held Texas rights to even foreign solely owned and operated pipeline operators. IT should be clear that " Private Pipeline Operators do NOT have right of Eminent Domain under these rule changes.

DELETE this right to private Pipeline operators

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.
• 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.

Application should include:

pipeline companies should make intentional efforts to document that the pipeline will, in fact, be used by third-party customers transporting third-party gas. To accomplish this, companies should first consider drafting non-confidential contracts with third-parties. These contracts can provide clear evidence that parties unrelated to the pipeline company intend to transport gas through the pipeline or purchase gas from the carrier.

Second, companies should consider publishing statements emphasizing the pipeline's availability to carry third-party gas. If the pipeline can show it has capacity to carry customers' gas, then it will be easier to prove that the pipeline will be used for transporting more than only the company's product.

Another simple, but often overlooked, method to prove common-carrier bona fides is by identifying potential third-party customers by company name in publications related to the pipeline - even if no formal contract is in place. This provides obvious proof that third-parties are, in fact, intended to use the pipeline.

Finally, and perhaps most importantly, companies should carefully prepare all documentation regarding the pipeline project - whether on a website, brochure, news release, affidavit, project materials, advertising materials, etc. - with an intent to demonstrate the company's desire that the pipeline carry third-party gas. Companies should be mindful that all statements on their websites, brochures, news releases and the like will be examined by the courts when determining whether there existed any real intent to transport third-party gas through the planned pipeline or purchase.

Four main salient points should be taken from the Denbury case. First, the test for common-carrier status is that a reasonable probability must exist, at or before the time common-carrier status is challenged, that the pipeline will serve the public by transporting gas for third-party customers.

Second, persons or entities who have an affiliation with the pipeline company seeking common-carrier status are not considered third-party customers.

Third, getting a T-4 permit is merely prima facie evidence of common-carrier status, and, once challenged, the pipeline company has the burden to prove it is actually a common carrier.

And fourth, pipeline companies should be careful to clearly articulate in all documents and official statements that unaffiliated third-parties will utilize the planned pipeline.

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.

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.

Ms McDonald just on her word has decided there are no local impacts on private citizens property values, impacts to their community economy interests or the environment.

As I stated those issues require particular environmental impact studies before any transportation project moves forward . Yet without any study to back up her decision she declares their are no impacts from potentially dangerous gas and oil pipelines ? Without knowing Any particular pipeline route ?