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SENATOR WENDY R DAVIS  
District 10

## The Senate of The State of Texas

COMMITTEES  
Economic Development  
Open Government, Vice-Chair  
Transportation  
Veteran Affairs & Military Installations

August 25, 2014

Railroad Commission of Texas  
P.O. Box 12967  
Austin, Texas 78711  
Via electronic mail ([Stacie.Fowler@rrc.state.tx.us](mailto:Stacie.Fowler@rrc.state.tx.us))

Re: Comments on Proposed Amendments to 16 TAC § 3.70, relating to Pipeline Permits Required; Gas Utilities Docket No. 10366.

To Whom It May Concern:

I am writing today to provide formal comments on the proposed amendments related to Pipeline Permits Required. I believe that the amendments as proposed generally take a step in the right direction in an attempt to satisfy requirements for "common carrier status" and the accompanying privilege of eminent domain powers, as laid out by the Supreme Court of Texas (SCOT) decision in *Texas Rice Land Partners, Ltd. v. Denbury Green Pipeline-Texas, LLC*, which affirmed "merely registering as a common carrier does not conclusively convey the extraordinary power of eminent domain." The SCOT further stated this registration does not "bar landowners from contesting in court whether a planned pipeline meets statutory common-carrier requirements." Since this decision, the court reinforced their original ruling and denied a request to hear the case again.

The court made it clear that the permitting process for common carrier pipelines needed reformation. These proposed amendments begin that process by adding substance such as requiring annual renewals and additional information from pipeline operators. With that being stated, there are two crucial elements absent in this proposal that must be included to ensure a meaningful permitting process.

One notable absence is an affirmative statement ensuring the classification decision made by the Railroad Commission does not preempt nor preclude any court from making its own determination on the classification of the pipeline or the operator's right to exercise eminent domain powers. Given that the proposed rules do not include a public review element at any stage of the process, it is vital that the Commission's classification decision not be deemed a conclusive determination for the purposes of a judicial proceeding. As I stated above, the *Denbury* case included the SCOT's ruling that "merely registering as a common carrier does not conclusively convey the extraordinary

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power of eminent domain or bar landowners from contesting in court whether a planned pipeline meets statutory common-carrier requirements." Despite the Commission's current efforts to enhance and improve the classification process for pipeline operators, both the public and pipeline operators deserve access to the judicial system and should not be bound from appealing or protesting the Commission's classification determination in court.

Another significant absence from the proposed rules is a meaningful definition of "common carrier" that either excludes or limits the inclusion of "affiliates" to satisfy that classification. The Texas Constitution safeguards private property rights by clearly stating that eminent domain can only be implemented for public use. In *Denbury*, the SCOT notes that a pipeline owner does not satisfy the "public use" requirement needed for eminent domain authority if the pipeline's only end user is the owner itself or an affiliate. I would ask that the Commission look to legislative examples from the 83rd Session, such as my bill, SB 1625 for addressing this issue.

Taking these additional actions will ensure a fair balance between land owners and pipeline operators. In light of the *Denbury* decision, we must take every necessary step to ensure that Texas landowners are fully protected under the State's constitution and laws.

Please feel free to contact my office if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Wendy R. Davis". The signature is written in a cursive, slightly slanted style.

Wendy R Davis – Senate District 10