

Kellie Martinec

From: Jason Skaggs [REDACTED]
Sent: Monday, August 25, 2014 11:16 AM
To: rulescoordinator
Subject: Gas Utilities Docket No. 10366
Attachments: Comments to Proposed Amendment to 16 TAC § 3 70.pdf

RRC Rules Coordinator:

Please find the attached comments regarding Gas Utilities Docket No. 10366.

Thanks,
Jason Skaggs

Jason Skaggs
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August 25, 2014

Rules Coordinator
Office of General Counsel
Railroad Commission of Texas
PO Box 12967
Austin, Texas 78711-2967

Dear Railroad Commission of Texas:

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

The undersigned respectfully submit the following comments on the above-referenced rule proposed by the Commission.

The fundamental shortcoming with the T-4 permit process pointed out by the Texas Supreme Court in its *Denbury* decision remains with this proposal. Put simply, while each organization signing this letter appreciates the efforts of the Commission, the result of the proposed rule is still a process of "registration, not adjudication." There is no meaningful review of a pipeline's eminent domain authority under the proposed rule.

Therefore, in order to clarify the Commission's intent under this proposal, the revised T-4 application form should at a minimum contain the following acknowledgment from the applicant:

"Applicant understands and agrees that this permit is not determinative of Applicant's authority to utilize the power of eminent domain to acquire right of way for the pipeline referenced herein."

And, the final permit form should provide:

"The RRC is not, by the granting of this permit, making any determination regarding Applicant's authority to utilize the power of eminent domain to acquire right of way for the pipeline referenced herein."

This language is appropriate because the revised process will still lack the 'adversarial testing' pointed out as being lacking by the Supreme Court in *Denbury*. There, the Court held:

Unadorned assertions of public use are constitutionally insufficient. Merely registering as a common carrier does not conclusively convey the extraordinary power of eminent domain or bar landowners from contesting in court whether a planned pipeline meets statutory common-carrier requirements. Nothing in Texas law leaves landowners so vulnerable to unconstitutional private takings . . . the right to condemn property is constitutionally limited and turns in part on whether the use of the property is public or private. We have long held

that “the ultimate question of whether a particular use is a public use is a judicial question to be decided by the courts.” We have also held in numerous contexts that the Commission does not have authority to determine property rights.

Texas Rice Land Partners, Ltd. v. Denbury Green Pipeline-Texas, LLC; 363 S.W.3d 192, 196-200

Further, the proposed rule should include provisions regarding the following important subjects:

Notice. The applicant for a new T-4 permit must give potentially affected landowners *actual notice* by United States first class mail of the filing of a T-4 permit application no later than 10 (ten) days after the application is filed. The notice must clearly describe how the existing or proposed pipeline could affect the landowner’s property. “Notice to the world” or “notice to the county” through websites or courthouse postings are effectively no notice at all.

Routing. For new pipelines, landowners should have input into the path a pipeline takes across their property, and protection in the form of routing standards pipeline companies should follow. The commission should adopt objective routing standards, similar to those in place at the PUC for power lines, for pipeline companies to adhere to when routing pipelines.

Registrant. The proposed rules still require each “operator of a pipeline or gathering system” to obtain a pipeline permit. In order for the proposed rule to provide meaningful information, the operator should be required to obtain a pipeline permit for each distinct pipeline or gathering system. It should also be clear that an individual T-4 permit can apply to only one distinct pipeline or gathering system and that a pipeline’s common carrier status does not necessarily mean that (i) a connected gathering system or (ii) another pipeline owned by the same operator, would also have common carrier status. Additionally, if only a portion of a pipeline or a gathering system is a common carrier/for-hire operation, then there should be a separate T-4 form filled out for the for-hire portion of the system and the private portion of the system. Furthermore, each registration should include information sufficient to tie the entity claiming common carrier status to the eminent domain registry maintained at the Comptroller’s office.

Thank you for your consideration of these comments. Please contact us if we can provide further information.

Sincerely,

Rusty Kelley/Blackridge
Texas Cattle Feeders Association
Texas Forestry Association
Texas Land and Mineral Owners Association
Texas and Southwestern Cattle Raisers Association
Texas Wildlife Association