Kellie Martinec

From: Debra Medina <[redacted]>
Sent: Monday, August 25, 2014 11:42 AM
To: rulescoordinator
Subject: Gas Utilities Docket number 10366
Attachments: RRC Comments.pdf

Please see attached.

Debra Medina

August 25, 2014

Rules Coordinator
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RE: Gas Utilities Docket No. 10366

I am grateful that the Commission has undertaken to develop additional rules for the granting of pipeline permits. Statements in the proposed amendments indicating that there are no "anticipated significant fiscal implications" strongly suggest, however, that the staff, at least, has yet to grasp the enormity of the task. Further while the proposed amendments would add a "requirement to substantiate the classification as a common carrier...", the proposal provides little assurance that statutes will be strictly adhered to or that landowners can rest secure in their private property.

From its inception, the Commission has been charged with promulgating rules and regulations for the conduct of common carriers [see SB 68, 35th Legislature, 1917 & Texas Natural Resource Code §111.002]. And yet, as has been noted in the recent Texas Supreme Court's Denbury Green opinion, "the Commission's process for granting a T-4 permit undertakes no effort to confirm that the applicant's pipeline will be public rather than private." The Commission's long standing practice, of turning a blind eye to the consequence of their permitting process, claiming even post-Denbury and during the most recent legislative session that they had no authority to determine whether or not a company met the statutory requirements of common carrier pipelines has allowed and encouraged the rampant and inappropriate use of eminent domain by private companies.

The Commission's award of a pipeline permit, in the absence of a substantive review of an operator's classification, whether private or common, has weighed the scale heavily in favor of the operator, in essence conferring the government power of eminent domain and condemnation to private companies.

The willingness of the Commission, as evidenced by their heavy reliance on sworn statements from operators, to assume a strict adherence to statute, when the prize is so great and the risk negligible, is both naïve and careless. If the practice is to be corrected, if statutes are to be followed and if private property rights are to be upheld in Texas, the Commission must substantively alter its current practice. The proposed amendments fall far short.

Requiring the operator provide the factual basis supporting the proposed classification is a commendable first step. Failing, however, to require notice to interested parties primarily so that the "factual" assertions can be tested, virtually guarantees continued controversy, landowner abuse, compromise of private property rights and the torture of protracted litigation.

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It is critical that the proposed rules include notice to affected parties, directly to landowners and publicly to impacted communities. Further, there must be opportunity for affected parties to comment or dispute assertions made by operators. In addition, interest parties must have opportunity to challenge the authority to exercise eminent domain in order that the "overarching constitutional rule controls: no taking of property for private use."

Respectfully Submitted,

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