



IN THE PIPELINE

TEXAS PIPELINE ASSOCIATION NEWSLETTER

SUMMER 2017



FROM THE CHAIRMAN

Welcome to the summer 2017 issue of *In the Pipeline*, the Texas Pipeline Association's e-newsletter. In this issue, we focus on the regular (and the special) 85th legislative session, Sunset Review for the Railroad Commission of Texas and a case analysis on the most recent Denbury Supreme Court decision. Lastly, don't miss the highlights of Texas Energy Day.

Prior to the beginning of this Texas legislative session, we knew that we would be faced with proposed changes to eminent domain laws. Numerous bills were filed that could have impacted pipelines by changing the process. While we all believe in the importance of property rights, many of these bills as drafted would have significantly frustrated – and possibly stopped – infrastructure projects that are essential to Texas' continuing economic growth and development. Thank you to those members who helped our messaging by completing our right-of-way questionnaire. The survey was completed by 31 of our 48 members, covered approximately 16,000 miles of pipeline and nearly 35,000 tracts acquired in Texas since 2011. This sampling showed that condemnations were filed on less than four percent of the tracts acquired, with less than one percent of those 35,000 tracts going to a special commissioners' hearing. Most importantly, our survey illustrates that the Texas pipeline industry perseveres to acquire rights-of-way through negotiations driven by fair market property prices and uses its eminent domain authority only as a last resort.

TPA was very well represented in our negotiations with legislators and the landowners' groups. The *Coalition for Critical Infrastructure* used our most experienced right-of-way lawyers to ensure that the issues and the potential consequences of each provision of these proposed bills were fairly vetted. We were committed to working with the legislature and property owner groups to strike the proper balance in protecting landowners, while continuing to build the state's critical infrastructure.

As always, we thank all of our contributing authors and hope you benefit from the topics covered in this issue.

Jim Cisarik,
Chairman
Texas Pipeline Association

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IN THIS ISSUE

End-of-Session Report (President's Message)	2
Sunset Review Bill Passed	3
Denbury Decision	3
News Briefs	4
TPA Calendar	4



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MESSAGE FROM THE PRESIDENT



Friends,

Welcome to the post 85th Regular Legislature and summertime edition of *In the Pipeline*. We hope you will find this edition informative. We will do our best to give a brief recap of what happened during the session and a brief description of what the Special Session will hold. Overall, the pipeline and midstream industry fared well. Lawmakers recognized the importance of a strong regulatory agency for oil and gas and deferred on any changes to eminent domain law that could have negatively affected Texas' oil and gas economy. While the issue of eminent domain is certain to be resurrected in future legislative sessions, TPA, its member companies and a broad-based infrastructure coalition were successful in maintaining the status quo for the present time.

The 85th Texas legislative session saw the filing of more than 6,000 bills that related to the myriad of issues affecting Texans – more than 4,000 in the Texas House and more than 2,000 in the Texas Senate. Out of these bills, the Texas Pipeline Association tracked more than 150 bills that were of importance to the pipeline and midstream industry. In the end, the Legislature passed more than 1,200 bills, with Gov. Abbott vetoing 50 of them.

Two of the most important bills to pass were the state budget and the reauthorization of the Railroad Commission of Texas (RCT). The Legislature passed, and the Governor signed, the state's \$216 billion biennial budget, which included funding for the RCT and the Texas Commission of Environmental Quality, the state agencies that regulate the pipeline industry. Furthermore, the Legislature passed, and the Governor signed, House Bill 1818, which reauthorized the Railroad Commission for another 12 years and established new provisions that will enhance pipeline and environmental safety. This legislation is imperative to ensuring regulatory certainty for our industry and fortifying the continuing development of our state's natural resources.

Regarding the issue of eminent domain during the 85th Legislature, TPA was a leader in a broad-based coalition of infrastructure builders that included cities, counties and water and electric infrastructure providers. TPA was a principal member of the **Coalition for Critical Infrastructure**, which negotiated with legislators and landowner groups in an effort to determine if there were any mutual areas in which we could all agree concerning condemnation law. After months of good-faith negotiations, the landowner group, Texans for Property Rights, sent a letter to the Legislature that inferred that the bills and concepts being considered in the negotiations were not sufficient. They withdrew their support. Moving forward, TPA will maintain its open line of communication with all constituencies on the issue of eminent domain reform and will always be open to finding areas of agreement for improvement of property rights, while being able to build the pipeline infrastructure Texas and our state economy needs to flourish.

On June 6, Gov. Abbott announced that he will call the Legislature into Special Legislative Session to begin on July 18 to address unfinished business relating to Sunset legislation that failed to pass during the Regular Session. However, the governor stated that he will add 19 additional items to the call after the Sunset Legislation passes ([see list here](#)). At the current time, issues affecting the pipeline and midstream industry are minimal on the call, but we will remain watchful for any issues that will have a detrimental effect on our industry.

Some very special thanks go out to our member companies and their employees, who contributed to a successful Regular Legislative Session. This includes Chairman Jim Cisarik, who made many trips to Austin to assist with the Coalition. TPA remains the leader in advocating for pipeline and midstream issues in Texas and it is only possible through your generous participation. We hope you enjoy this issue of *In the Pipeline*. As always, please feel free to contact me directly if I may be of any assistance.

All my best,
Thure Cannon



RAILROAD COMMISSION SUNSET BILL PASSES LEGISLATURE AND RECEIVES BUDGET UPGRADES

By Phil Gamble, The Law Office of Phil Gamble

The Railroad Commission of Texas (RRC) Sunset Bill (HB 1818) passed the House and Senate and was signed by Gov. Abbott on June 12, 2017. HB 1818 continues the RRC through Sept. 1, 2029. The efforts and leadership of Sunset Committee Chairman Larry Gonzales and RRC Chairman Christi Craddick were instrumental in passage of the bill.

The RRC budget for the FY 2018-19 budget was increased by 46% to \$256.1 million dollars. The funding includes, among other items: \$5.9 million increase for pipeline safety inspection, \$3 million and 7 FTEs for IT modernization projects related to inspection and enforcement tracking and reporting and \$39.6 million for operational stability.

In addition to extending the RRC through 2029, items of interest to the pipeline industry include a requirement for the RRC to develop and implement alternative dispute resolution; establish a pipeline permit fee for new permits, permit amendments and permit renewals in an amount sufficient to support all pipeline safety and regulatory programs costs; and adopt rules and safety standards related to the prevention of damage to interstate and intrastate gas pipelines, hazardous liquids or carbon dioxide pipeline facilities.

Equally important, HB 1818 did not include transfer of RRC hearings to the State Office of Administrative Hearings, transfer of gas utility regulation to the Public Utility Commission or recommend a name change.

HB 1818 was referred to the House Energy Resources Committee and was heard by the committee on March 6. Chairman Gonzales laid out the bill and received a significant amount of well-deserved praise for the way he has handled the RRC Sunset Review. The committee heard testimony from approximately 15 witnesses during the hour-and-a-half hearing. The testimony in support of the bill was very favorable. Two witnesses representing environmental groups

Please continue [here](#).

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COURT DECIDES THE DENBURY DECISION

By Marnie A. McCormick, Duggins Wren Mann & Romero, LLP

On April 7, the Supreme Court of Texas issued its final opinion in *Denbury Green Pipeline-Texas, LLC v. Texas Rice Land Partners, Ltd.* This is the second time this case has made its way to the Texas Supreme Court. The opinion in this phase was authored by Justice Green (not the same justice who authored the first decision). The case has finally been resolved in the pipeline's favor.

THE FIRST DENBURY CASE

In *Denbury I*, the Texas Supreme Court decided that to establish common-carrier status under the Common Carrier Act it is not enough for a pipeline to obtain a T-4 permit from the

Railroad Commission of Texas. The Court said that to exercise the condemnation authority of a common carrier under the Act, a pipeline must produce "reasonable proof of a future customer, thus demonstrating that [it] will indeed transport to or for the public for hire and is not limited in [its] use to the wells, stations, plants, and refineries of the owner." *Texas Rice Land Partners, Ltd. v. Denbury Green Pipeline-Tex., LLC*, 296 S.W.3d 877 (Tex. App. – Beaumont 2009), rev'd, 363 S.W.3d 192, 204 (Tex. 2012).

On remand from that decision, the pipeline presented new evidence that it had agreements with unaffiliated entities to transport CO₂ over the pipeline. Some of these agreements were developed after the pipeline had been constructed. The trial court granted the pipeline summary judgment that it met the Texas Supreme Court's standard, but the Beaumont Court of Appeals reversed. See *Texas Rice Land Partners, Ltd. v. Denbury Green Pipeline-Tex., LLC*, 457 S.W.3d 115 (Tex. App. – Beaumont 2015), rev'd, 510 S.W.3d 909 (Tex. 2017).

Please continue [here](#).

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FIRST-EVER TEXAS ENERGY DAY



TPA was well-represented in the goodie bags that were distributed to legislative members on Texas Energy Day, including TPA's informative one-pagers and a branded novelty item.

The oil and gas industry came out in force on March 22 for the first ever Texas Energy Day at the Capitol in Austin. Texas Oil and Gas Association (TXOGA) led a coalition of trade associations, including the Texas Pipeline Association, in sponsoring the event, which highlighted to legislators, regulators and other key stakeholders the energy industry's economic contributions to the state's economy.

TPA member companies sent representatives to the event to meet with Texas state senators and representatives to deliver the message that the pipeline industry will contribute more than \$374 billion in total economic output in the next 10 years.

Visitors also heard remarks by such elected officials as RCT Chairman Christi Craddick, Rep. Larry Gonzales, Rep. Drew Darby, Sen. Craig Estes and others.

In addition, the industry brought a variety of displays to the event. Chevron brought virtual reality goggles for attendees to experience an offshore rig, Hess brought giant drill bits for people to see and feel industry equipment, and Energy Transfer had an R3 pipe truck with a "pig" that allows operators to see inside miles of pipeline. Cheniere had an LNG display where attendees watched natural gas become liquefied and Pioneer brought a frack truck and data van that is a mobile command center gathering real-time data to control critical well site equipment. Apache had a frack pump tractor/trailer, Enterprise Products brought a Call Before You Dig 811 truck and Shell brought in a NASCAR.



A special thanks to Enterprise Products Holdings for sponsoring the snow cones, a very popular stop for the event's more than 500 visitors. Texas Energy Day will be back in March 2019.



Thure Cannon Video

Please [click here](#) for video of TPA President Thure Cannon discussing the importance of the pipeline industry to Texas homes and businesses. Also, don't miss this [Austin American-Statesman](#) op ed by TXOGA President Todd Staples on all that's made possible because of oil and natural gas.



Cheniere ran an interactive display with graham crackers showing how liquefied gas is created. Bill Ward (left), Superior Pipeline, was on hand to assist Thure Cannon in meeting with legislators in their offices, and on the Capitol lawn, where oil and gas companies displayed their products and services. Pictured (right) is Rep. DeWayne Burns.

IMPORTANT DATES

2017

- July 14: TPA Board Meeting, Bastrop
- July 18: Texas Legislature Special Session Begins, Austin
- Oct. 5: TPA Board Meeting, Plano

2018

- Jan. 12: TPA Annual Meeting, Houston

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