

NO. 09-0901

IN THE
SUPREME COURT OF TEXAS

TEXAS RICE LAND PARTNERS, LTD. AND MIKE LATTA,
Petitioners

v.

DENBURY GREEN PIPELINE-TEXAS, LLC,
Respondent

AMICI CURIAE BRIEF IN SUPPORT OF MOTION FOR REHEARING

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IDENTITY OF AMICI

This brief is tendered on behalf of the following entities:

Texas Pipeline Association

The Texas Pipeline Association (TPA) consists of 39 members who, collectively, engage in gathering, processing, and transmission of natural gas and liquid hydrocarbons through pipelines in the State of Texas. Some of the members also conduct CO₂-enhanced recovery operations in the state. TPA's members are the only source of income for the association; therefore, members are paying the fee for the preparation of this amicus curiae brief.

Gas Processors Association

The Gas Processors Association (GPA) is a non-profit trade organization made up of 130 corporate members, all of whom are engaged in the processing of natural gas into merchantable pipeline gas, or in the manufacture, transportation, or further processing of liquid products from natural gas. GPA's membership accounts for approximately 92% of all natural gas liquids produced by the midstream energy sector in the United States. GPA members also produce, gather, transmit, and market natural gas and natural gas liquids, and include a number of Canadian and international companies that produce natural gas liquids on a global scale.

Atmos Energy Corporation

Atmos Energy Corporation is a Texas corporation engaged in the local distribution and transmission of natural gas through pipelines. Atmos Energy Corporation is the largest distributor of natural gas in the State of Texas serving 439 incorporated cities and numerous unincorporated communities. It also owns and operates one of the largest intrastate pipelines in Texas serving local distribution companies, electric generators, industrial companies, producers and other shippers. Atmos Energy Corporation is a member of TPA and is paying a portion of the costs of this brief.

Texas Association of Business

The Texas Association of Business (TAB) is a broad-based, bipartisan organization representing more than 3,000 businesses and 200 local chambers of commerce in Texas. TAB has no parent company, and no publicly-held company has a 10% or greater ownership in TAB. The mission of TAB is to improve the climate for business in Texas and ensure the strength and viability of the Texas economy.

Natural Gas Supply Association

The Natural Gas Supply Association (NGSA) represents integrated and independent companies that produce and market domestic natural gas. Established in 1965, NGSA encourages the use of natural gas within a balanced national energy policy, and promotes the benefits of competitive markets to ensure reliable and efficient transportation and delivery of natural gas and to increase the supply of natural gas to U.S. consumers.

Association of Oil Pipelines

The Association of Oil Pipe Lines (AOPL) is a national trade association that represents the interests of 49 pipeline companies engaged in the transportation of crude oil, refined petroleum products, such as gasoline, diesel, jet fuel, home heating oil, kerosene, propane, and biofuels, as well as carbon dioxide. AOPL members transport almost 85% of the crude oil and refined petroleum products shipped through pipelines in the U.S.

Independent Petroleum Association of America

The Independent Petroleum Association of America (IPAA) represents thousands of American independent oil and natural gas producers and associated service companies. Independent producers develop 95 percent of domestic oil and gas wells, produce 68 percent of domestic oil and produce 82 percent of domestic natural gas.

Texas Oil & Gas Association

The Texas Oil & Gas Association was formed in 1919 and is the only association that represents all segments of the oil and gas industry operating in Texas. Among other activities, its more than 4,500 members account for approximately 92% of all the oil and natural gas produced in Texas, 100% of the state's refining capacity, and they operate a vast majority of the pipeline mileage in Texas.

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TO THE HONORABLE SUPREME COURT OF TEXAS:

Amici Curiae respectfully urge this Court to reconsider its August 26, 2011, decision in this case for the following reasons:

I. The opinion adversely affects the entire oil and gas industry, not just CO₂ pipelines.

The oil and gas industry in this state supplies the public with necessary and useful products including residential gas service, gasoline and diesel fuel for motor vehicles, and the fuel and feedstocks necessary for the industrial sector. Most of it moves by pipeline, both gas utility lines and common carrier lines.

The prior cases have recognized that the Railroad Commission's enabling statutes evidence a legislative determination that moving natural gas or petroleum products from producing areas to areas where they can be used is a *per se* public use.¹ Evidence that a company is required to comply with the regulatory requirements of the Commission's enabling statutes has, until now, been enough to establish public use and common carrier status as a matter of law.²

The *Denbury* opinion is so broad that it will damage the ability of the entire oil and gas industry to construct facilities necessary to develop the natural resources of this state because it appears to have discarded the Railroad Commission's process.

A. *Denbury* destroyed the certainty necessary to build pipelines.

The oil and gas industry depends on the predictability of the law. Long-standing precedent has created a process whereby a pipeline's obligation to serve the public (and

¹ *Vardeman v. Mustang Pipeline Co.*, 51 S.W.3d 308 (Tex. App.—Tyler 2001, pet. denied); *Loesch v. Oasis Pipe Line Co.*, 665 S.W.2d 595 (Tex. App.—Austin 1984, writ ref'd n.r.e.).

² *Vardeman*, 51 S.W.3d at 313-14; *Anderson v. Teco Pipeline Co.*, 985 S.W.2d 449 (Tex. App.—San Antonio 1998, pet. denied); *Loesch*, 665 S.W.2d at 598-99.

the associated power to condemn) may be established at the Railroad Commission prior to surveying the route of a proposed line or acquiring any right-of-way. The fact that the pipeline accepts a public obligation when it subjects itself to the Commission's jurisdiction as either a common carrier or a gas utility has heretofore satisfied the public use test in survey access or condemnation proceedings.³ The Court has apparently summarily eliminated this process, ignoring over 25 years of precedent without even discussing it and has ignored the most recent constitutional amendment and statutory reform of the condemnation process.

Prior to the Court's opinion there was some certainty in the condemnation process that could be relied upon in constructing pipeline facilities. The Court has destroyed that certainty, and at the same time failed to set forth a test that can be used to establish the power to condemn prior to beginning construction. It is no longer enough to be regulated as a common carrier by the state and be subject to all common-carrier obligations. Apparently, the pipeline must now have unaffiliated shippers hold title to the product while in the line and have unaffiliated receipt and delivery points, or the pipeline no longer has the power to condemn. No longer are the legal obligations of a common carrier enough; there is now a fact issue that must be tried *ad hoc* in every case along the route with no workable test for establishing the power to condemn prior to acquiring right of way and no certainty of consistent outcomes along each route.

The opinion is silent as to what test other types of pipelines such as gas utilities, natural gas liquids lines, or crude oil lines must now use since the public obligation of

³ *E.g., Vardeman*, 51 S.W.3d 308; *Anderson*, 985 S.W.2d 559; *Loesch*, 665 S.W.2d 595.

those lines may no longer be enough to be considered a “public use.” Is a gas distribution system, for example, a “public use” when it owns all the gas in its system and takes that gas to the meters it owns where the gas is first sold to the public? While the prior method used by gas utilities and common carriers appears to be discarded, it is not clear what the Court’s new test will be for pipelines other than CO₂ common carriers. If the *Denbury* decision is left to stand, oil and gas and pipeline companies (and others) will lose much of their ability to engage in long-term planning for the production, transportation, processing, refining, sale, and use of oil and gas and their by-products to the detriment of the state and its revenues, royalty owners, shareholders and ultimately the public.

B. The legislature empowered the Railroad Commission to determine whether a pipeline satisfies a statutory definition in either the Natural Resources Code or the Utilities Code.

The legislature has given the Commission the responsibility to regulate pipelines in Texas. The legislature has in the Natural Resources and Utilities Codes defined the various types of pipelines over which the Railroad Commission has jurisdiction, and impose specified obligations on them.

The Commission must determine the statutory status of each pipeline so that it can require compliance with these statutory obligations. Upon complaint or its own motion, the Commission can hold a hearing and determine whether a pipeline is satisfying its public obligations as set out in the statutory scheme. On its own motion or in the event of a complaint about a pipeline’s status, the Commission can hold a hearing and determine if the information furnished to the Commission in a permit application is erroneous and whether the pipeline meets the statutory definition for which it is permitted. The Court’s

opinion takes that determination away from the Railroad Commission and turns it over to multiple courts along a pipeline's route.

Texas courts have consistently held that in deciding the issue of whether a pipeline is a common carrier or a gas utility, the courts must give great weight to the Railroad Commission's determination. The court in *Vardeman* stated the following with respect to establishing common carrier status:

... when determining whether Mustang is a common carrier under section 111.002(6) of the Texas Natural Resources Code, we have been instructed by the supreme court to give great weight to the TRC's determination of that issue. *See State v. Public Utility Comm'n of Tex.*, 883 S.W.2d 190, 196 (Texas 1994) ... When the evidence before the court indicates that a pipeline carrying oil products (such as ethylene) has subjected itself to the authority of the TRC to regulate its activities, then it is a common carrier. *See Anderson v. Teco Pipeline Co.*, 985 S.W.2d 559, 565 (Tex. App.—San Antonio 1998, pet. denied).⁴

In the *Vardeman* case, the Railroad Commission filed a letter explaining how it had determined that the Mustang pipeline was a common carrier. The letter stated:

A review of Commission records indicates that Mustang has met the requirements of § 111.002(6) of the Texas Natural Resources Code for common carrier status. First, Mustang has subjected itself to the jurisdiction of the Commission by declaring on its T-4 application for permit to operate a pipeline that it is a common carrier. Second, Mustang has held itself out to the public for hire as evidenced by its Texas Local Tariff No. M-3 on file with the Commission. Therefore, Mustang is a common carrier subject to the jurisdiction of the Commission.⁵

The Railroad Commission clearly stated that the pipeline was a common carrier under Texas Natural Resources Code section 111.002(6) because it had (1) submitted to regulation as a common carrier when it filed to obtain a pipeline permit and (2) held itself

⁴ *E.g.*, *Vardeman*, 51 S.W.3d at 312; *see also Anderson*, 985 S.W.2d at 565.

⁵ *Vardeman*, 51 S.W.3d at 313.

out to the public as being available for use by the public in accordance with the terms of its common carrier tariff on file with the Commission. Once a pipeline does those two things, it has assumed a public obligation and specified the terms under which any members of the public may subscribe to its services. Certainly any common carrier pipeline that is subject to an enforceable process whereby the public can use its line should be considered a “public use.”

Furthermore, the ability of a pipeline to attract actual third-party business has not been, and should not become, the determinative factor in a public-use test. In its raw form, there may be no immediate public use of oil and gas. However, the public will universally benefit after such resources are processed into final end-user products. To change the public use test to one of the immediate public use versus downstream public use elevates form over substance. It will also harm the public at large through higher prices and higher taxes as state severance tax revenues shrink because of this new policy.

C. The process set out in *Denbury* does not work with existing condemnation statutes.

The Court has replaced a condemnation process that created predictability with a doctrine that, as a practical matter, cannot successfully work within the framework of the condemnation statutes or the realities of pipeline construction by the oil and gas industry. The condemnation process in Texas is designed to allow the condemning authority to construct necessary facilities before the conclusion of all proceedings. After the condemnation petition is filed, the court appoints three special commissioners to assess

the damages to be paid the landowner.⁶ The commissioners are required to “promptly” schedule a hearing at the “earliest practical time.”⁷ The condemnor can take possession of the property if it deposits the commissioners’ award and posts a bond to cover any additional court costs.⁸ If either party objects to the damages, the court tries the case just like any other civil case. The statutory process allows pipelines to have the necessary certainty as to their capital risk and to commence and continue construction prior to acquiring all right-of-way along the route.

Under the *Denbury* opinion, there is no forum in which the pipeline can establish its status as a common carrier prior to beginning the acquisition of right-of-way. A pipeline cannot take possession after the special commissioners’ award and continue construction because the pipeline will not know whether the next court along the route will decide that “it is more probable than not” that a third party will hold title to the product while it is in the line. The pipeline now has to win 100% of the “public use” fact findings in every condemnation case or the route will have a gap that cannot be filled. The problem is even more difficult for those types of pipelines for which no new standard is enunciated to take the place of the Railroad Commission process, which has apparently been discarded by the opinion.

II. The opinion ignores new eminent domain legislation and a new constitutional amendment.

The Court notes in its opinion that the legislature is presumed to have knowledge of the law when it acts. The existing case law consistently held that the fact that the

⁶ Tex. Prop. Code Ann. § 21.014.

⁷ Tex. Prop. Code Ann. § 21.015.

⁸ Tex. Prop. Code Ann. § 21.021.

Railroad Commission requires a pipeline to serve the public establishes the power to condemn.⁹ Yet when the Legislature recently enacted a sweeping reform of the condemnation laws to include a “public use” test,¹⁰ it carefully provided that the changes would not affect the power of common carriers or utilities to condemn.

There was some concern that the statutory amendment would inadvertently take away the power of eminent domain from traditional uses such as the construction of utility or common carrier facilities. The legislature expressly clarified the changes that required a “public use” would not affect enumerated categories of entities:

- (c) This section does not affect the authority of an entity authorized by law to take private property through the use of eminent domain for:

- (A) a common carrier pipeline; or
- (B) an energy transporter, as that term is defined by Section 186.051, Utilities Code;

- (8) a purpose authorized by Chapter 181, Utilities Code;
- (9) underground storage operations subject to Chapter 91, Natural Resources Code;¹¹

While the use of eminent domain to obtain a private benefit for a private party is generally not allowed, the new statute makes clear that private entities like common carriers and utilities still have eminent domain power. The Legislature unequivocally and unambiguously provided that common carriers and utilities should have the power of eminent domain as established under the then-effective case law.

⁹ *Vardeman, Anderson, Loesch.*

¹⁰ S.B. 18.

¹¹ Tex. Gov't Code Ann. § 2206.001(c).

Similarly, the Legislature recently proposed, and the public adopted, a new constitutional amendment dealing with the power to condemn. It specifically recognizes that the taking is allowed if it is for the use of the public or for the use of “an entity granted the power of eminent domain under law”.¹² The Court’s opinion simply eliminates the quoted language from the amendment without legislative action and without submitting the change to the voters.

These amendments surely were adopted with knowledge of the existing law, which held that Railroad Commission regulation of a pipeline in accordance with the statutory requirements established its public use. The Constitution does not require the public’s actual participation in transportation on the pipeline. The amendment unambiguously says that the taking must be for a use by the public at large or by an entity granted the power of eminent domain. It is enough that a publicly-regulated facility is used by an entity granted the right of eminent domain by the legislature because of its public obligations. The Court’s opinion simply ignores the new constitutional provision as well as the new statute.

III. The new “public use” test is unworkable and adverse to the public interest.

The Court’s broad language regarding the public use standard threatens the eminent domain powers of many utilities other than just CO₂ common carriers. The Court appears to be establishing a rule of law that a pipeline that carries only the gas of the pipeline owner or its affiliates can never be a public use. That rule would be unwise, bad public policy, contrary to the legislative determinations of what is a public use, and

¹² Tex. Const. art. I, § 17 (amended Nov. 3, 2009).

contrary to the previous jurisprudence interpreting “public use.” A rule that is inherently unworkable and adversely affects a fundamental section of this State’s economy was certainly not contemplated by the legislature either in the recent statutory or constitutional amendments.

Before the *Denbury* opinion, the courts held the public use requirement was satisfied by the fact that the facilities were regulated by the Railroad Commission and had an enforceable obligation to serve the public. That system worked because there was a central authority – the Railroad Commission - that determined a pipeline’s status and enforced its resulting public obligations. The Court has replaced that doctrine with a new one – the public use test – which now appears to require that unaffiliated third parties hold title to the product while it is in the pipeline and requires the pipeline to defend its status in every condemnation case along the route. Certainly the public interest was better served by the prior test, which enabled necessary pipelines to be built while requiring those pipelines to serve the public interest.

For example, in *Roadrunner Investments, Inc. v. Texas Utils. Fuel Co.*, the landowner made an attack similar to that made by the landowner in this case.¹³ TUFACO, the condemnor, was a wholly-owned subsidiary of Texas Utilities Company. TUFACO built and operated a pipeline system that carried only TUFACO’s gas. TUFACO then sold its gas only to three other wholly-owned subsidiaries of Texas Utilities, which used it as fuel in electric generating plants. The landowner claimed that because TUFACO’s pipeline

¹³ *Roadrunner Investments, Inc. v. Texas Utils. Fuel Co.*, 578 S.W.2d 151 (Tex. Civ. App.—Fort Worth 1979, writ ref’d n.r.e.).

carried its own gas, and was sold only to its affiliated companies, the condemnation was not for a public use. The court explained that in order for a gas pipeline company to have the power of eminent domain it “must devote its private property and resources to public service and allow itself to be publicly regulated through various agencies and commissions.”¹⁴ This principle provided a workable process. The new process is simply not workable in the oil and gas industry.

It is not uncommon, for example, that no third parties will make a commitment to ship on a pipeline before it is constructed. In those instances the pipeline, in the past, could develop shipper commitments after the pipeline was under construction. Alternatively, the pipeline could obtain a commitment from an affiliate or joint venture partners with a known quantity of production and start construction. It is unclear whether either of those common fact situations could satisfy the new fact issue created by the Court and improbable that a pipeline of any appreciable length can win every single dispute involving the new “public use” test in every condemnation case along the route. And, if no third-party shippers ever come forward to ship product on a pipeline, it is bad public policy to decide that vital natural resources should not be produced for the benefit

¹⁴ *Id.* at 154; *see also Housing Authority of City of Dallas v. Higginbotham*, 143 S.W.2d 79, 84 (Tex. 1940) (critical factor is the right of the public to use the line and not the number or identity of people who use it, and the fact that the advantage of use inures to a particular individual or enterprise does not deprive it of its public character). Texas courts have held that when a common carrier or gas utility has submitted to Railroad Commission regulation as an open access line, that pipeline is for public use even if it currently transports gas or other substances only for the owner of the line or its shareholders or affiliates. *See, e.g., Vardeman*, 51 S.W.3d at 312-13 (petroleum products pipeline which transported products owned by the pipeline company’s parent was a common carrier because it was regulated by the Railroad Commission as a common carrier line); *Phillips Pipeline Co. v. Woods*, 610 S.W.2d 204, 206-07 (Tex. Civ. App.—Houston [14th Dist.] 1980, writ ref’d n.r.e.) (pipeline carrying oil products was common carrier with the power of eminent domain despite the contention by the landowner that the pipeline’s usage was limited to the products and facilities of the owner); *Loesch*, 665 S.W.2d at 596 (pipeline transporting gas for only its shareholders was vested with the power of eminent domain since it subjected itself to regulation by the Railroad Commission); *Tennasco Gas Gathering Co. v. Fisher*, 653 S.W.2d 469, 475 (Tex. App.—Corpus Christi 1983, writ ref’d n.r.e.) (pipeline company which transported only its own gas had the power of eminent domain).

of the public because the courts deny a pipeline the use of condemnation under the new “public use” test.

The “public use” of a pipeline is much broader than merely having third parties retain title to product in the pipeline and having unaffiliated receipt and delivery points. The courts have and should continue to recognize that there is a “public use” when links in the transportation chain provide the public with the fuels and products the public must have. Is there any difference in the “public use” when a buyer buys a product from a pipeline at the end of the pipeline instead of buying at the front of the pipeline and acting as a shipper on that very same pipeline? Does it make any difference to the “public use” when a gas utility pipeline (or an affiliate) buys gas from a producer and ships the gas to a point where the public can use it instead of the producer shipping it to that same point? No. The public will be the loser under the Court’s opinion because the customers will no longer be able to choose at which end of the pipeline they want to take title. The Court is essentially mandating how commercial transactions must be structured and limiting the pipeline customer’s options for allocating commercial risks.

For example, historical practice is that a CO₂ pipeline is developed to serve a producing field or fields whether or not agreements with multiple shippers have been secured prior to commencement of routing. The field to which the pipeline is routed typically has multiple owners, sometimes including the pipeline owner and sometimes not. The public use of a CO₂ pipeline occurs in the field; *i.e.*, the enabling of enhanced oil recovery operations, by the owners of a field which decreases American dependence on foreign energy supplies.

The Court's opinion seems to hold that a pipeline cannot serve a public purpose unless there are multiple unaffiliated shippers and unaffiliated receipt and delivery points. Thus, under the Court's opinion the pipeline owner must dictate to the owners of a field or unit that they must obtain their CO₂ from multiple shippers (or become shippers themselves) in order to assure the pipeline common carrier status and thus condemnation authority so that the pipeline can be built.

If there were a prerequisite of multiple shipper agreements prior to routing a pipeline, it is doubtful the current West Texas infrastructure for CO₂ transportation would have been developed. Lack of infrastructure leads to the shutting in of wells that are otherwise capable of production with the assistance of enhanced oil recovery. At present the demand for CO₂ is growing. In order to supply the needs of oil and gas producers, additional pipeline capacity will be necessary. The *Denbury* decision, however, creates a very large hurdle in the path of such development.

IV. The relevant statutes do not require a third party to hold title to the product while in the pipeline.

The Natural Resources Code defines a number of different types of common carriers. A crude oil pipeline, for example, is a common carrier if that pipeline is used for the “transportation of crude petroleum **to or for the public for hire or engages in the business of transporting crude petroleum by pipeline.**”¹⁵ Moreover, the pipeline is a common carrier if it operates a pipeline for “**the transportation of crude petroleum, bought of others, from an oil field or place of production within this state to any**

¹⁵ Nat. Res. Code Ann. § 111.002(1) (emphasis added).

distributing, refining, or marketing center or reshipping point within this state.”¹⁶

The Legislature did not require crude oil common carriers to have third-party shippers in the line. It is enough that the crude oil is transported to the public, not just for the public. Moreover, it is clear that crude oil pipelines need have no third-party shippers at all if the crude oil is purchased from others and transported into a refinery or a point of commerce. The “non-affiliated shipper must have title” rule does not apply to crude oil common carriers by statute and has never been applied to any pipeline as a constitutional test before the Court’s decision in *Denbury*.

Moreover, Natural Resources Code section 111.013 makes it clear that pipelines that are used “in connection with the business of purchasing or purchasing and selling crude petroleum, or in the business of transporting coal, carbon dioxide, hydrogen, feedstock for carbon gasification or the derivative products of carbon gasification in whatever form by pipeline for hire” shall be common carriers. Clearly, the Legislature did not require that these types of pipelines transport for third parties; it is enough that the pipelines are “connected” to the business of “buying or selling crude oil.” It is enough that the other types of pipelines transport “for hire in Texas” without any limitation or requirement that “for hire” transportation be for third-party shippers who have title to the product in the line. There has been no legislative requirement that title to any product be held by unaffiliated third parties in order to be a common carrier as variously defined by the Natural Resources Code.

In addition to the type of pipelines specifically mentioned in the Natural Resources

¹⁶ Nat. Res. Code Ann. § 111.002(4).

Code, other statutes allow different types of pipelines to become common carriers and obtain the power of eminent domain. Pipelines carrying oil or gas or products such as natural gas liquids or gasoline can become common carriers under Chapter 111 of the Natural Resources Code and thereby acquire eminent domain powers whether or not specifically listed in Chapter 111.¹⁷ Section 2.105 of the Texas Business Organizations Code specifically allows corporations engaged in the business of operating pipelines for the transportation of “[o]il, oil products, gas, carbon dioxide, salt brine, fuller’s earth, sand, clay, liquefied minerals or other mineral solutions” to have the rights and powers conferred by Natural Resources Code sections 111.019-111.022. The Texas Revised Limited Partnership Act, article 6132a-1, section 1.09(c), Texas Uniform Partnership Act, article 6132b-3.01(16), and the Texas Limited Liability Company Act, article 1528n, article 2.02 D, gives limited partnerships, partnerships and limited liability companies engaged in the common carrier pipeline business the same authority given to corporations by section 2.105 of the Texas Business Organizations Code. None of the statutes require that the pipeline have third-party shippers. No matter which statutory route the company takes to become a common carrier, it ends up with a common carrier pipeline permit from the Railroad Commission and has a public common carrier obligation. Heretofore, it also had the power to condemn.¹⁸

V. Prayer

Consistent with established precedent, and for the other reasons discussed herein, the test for deciding whether a pipeline serves a public use should continue to be based on

¹⁷ See *Exxon Mobile Pipeline Co. v. Bell*, 84 S.W.3d 800 (Tex. App -- Houston [1st Dist.] 2002, pet. denied).

¹⁸ *Vardeman, Anderson*.

whether or not that pipeline has an enforceable obligation to serve the public pursuant to the statutory requirements. The fact that the Railroad Commission requires a pipeline to comply with the requirements of the applicable statutes should establish that public use unless it can be shown that there is no reasonable possibility that the pipeline can be used to serve the public. No other test will allow the oil and gas industry in this state to establish its status prior to pipeline construction, as is necessary to build the required infrastructure to provide members of the public with the oil and gas products used in their daily lives. Accordingly, Amici Curiae respectfully request this Court grant the Motion for Rehearing of Respondent Denbury Green Pipeline-Texas, LLC and hold that a pipeline serves a “public use” when it has an enforceable public obligation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

By my signature below, I hereby certify that a true and correct copy of the foregoing was served on all parties listed below by e-mail and 1st Class Mail, on this the 17th day of October, 2011.

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