



June 14, 2013

Hon. Blake A. Hawthorne
Clerk, Supreme Court of Texas
Supreme Court Building
201 West 14th Street, Room 104
Austin, Texas 78701

RE: No. 11-0226, *LaSalle Pipeline, LP v. Donnell Lands, L.P.*

Dear Mr. Hawthorne:

In connection with the above-referenced matter, I represent the Interstate Natural Gas Association of America, which submits this *amicus curiae* letter brief in support of “LaSalle Pipeline, LP’s Motion for Rehearing of Denial of Petition for Review” (“Petitioner’s Motion for Rehearing”). Please receive this letter brief and distribute it to the members of the Court. By copy of this letter, the Parties are being served via electronic service. Thank you for your assistance in this matter.

TO THE HONORABLE SUPREME COURT OF TEXAS:

In cases involving the condemnation of easements through the use of eminent domain, compensation for remainder damages must rest on competent, sufficient evidence demonstrating that the easement will, in fact, damage the remainder property. For over 50 years Texas courts have consistently declined to award remainder damages, expressing appropriate skepticism that a pipeline buried two feet underground would reduce the value of land outside the condemned

easement. This case has drawn the attention of so many *amici* because the opinion of the Fourth District Court of Appeals, *LaSalle Pipeline, LP v. Donnell Lands, L.P.*, 336 S.W.3d 306 (Tex. Civ. App.—San Antonio 2010), has been characterized as fundamentally disturbing this principle, allowing claimants to establish causation through sales comparisons without showing that the easement affected the remainder property, let alone damaged it.

I represent the Interstate Natural Gas Association of America (“INGAA”) and present this *amicus curiae* letter brief for consideration by the Court in connection with the above referenced matter. INGAA files in support of LaSalle Pipeline, and urges the Court to consider the impact of the Court of Appeals decision on the assessment of remainder damages across Texas and beyond, and the affect of such assessments on future pipeline construction.

INGAA is paying all costs associated with this *amicus curiae* letter brief. As noted in the attached Certificate of Service, a copy of this letter brief is being served on all parties concurrent with its delivery to you.

Identity of Amicus Curiae

INGAA is a non-profit trade association whose members represent the vast majority of the interstate natural gas transmission pipeline companies in the U.S. and comparable companies in Canada. INGAA’s members operate approximately

200,000 miles of pipelines, and serve as an indispensable link between natural gas producers and consumers.

Interest of Amicus Curiae

According to the Energy Information Administration (“EIA”), an arm of the United States Department of Energy, as of 2008 (the last year for which data is available) Texas contains approximately 58,600 miles of natural gas transmission pipeline, and approximately 13,600 miles, nearly one-fourth of the total, are interstate pipelines. About U.S. Natural Gas Pipelines — Transporting Natural Gas: Intrastate Natural Gas Pipeline Segment, available at: http://www.eia.doe.gov/pub/oil_gas/natural_gas/analysis_publications/ngpipeline/intrastate.html (last accessed Apr. 1, 2011)(“ Intrastate pipelines in Texas account for 45,000 of the 58,600 miles of natural gas pipelines in the State.”). It is reasonable to say that facilities owned by INGAA members cross through thousands if not tens of thousands of Texas properties.

And the natural gas pipeline network is expanding. FERC’s Office of Energy Projects reports that from 2000 to 2012 the amount of natural gas pipeline placed in service has increased an average of 1,300 miles per year. As recently reported by the Energy Information Administration, the rate of increase is likely to increase going forward:

Relatively low natural gas prices, facilitated by growing shale gas production, spur increased use in the industrial and electric power sectors, particularly over the next 15 years. Natural gas use (excluding lease and plant fuel) in the industrial sector increases by 16 percent, from 6.8 trillion cubic feet per year in 2011 to 7.8 trillion cubic feet per year in 2025. * * * After accounting for 16 percent of total generation in 2000, the natural gas share of generation rose to 24 percent in 2010 and is expected to continue increasing, to 27 percent in 2020 and 30 percent in 2040.

Energy Information Administration, *AEO2013 Early Release Overview* (Dec. 5, 2012), available at: http://www.eia.gov/forecasts/aeo/er/executive_summary.cfm.

Framing anticipated pipeline additions in miles, a study commissioned by The INGAA Foundation, Inc. (an INGAA affiliate) projects that between 2011 and 2035 the demand for additional natural gas infrastructure, driven by enhancements in domestic production and demand for using natural gas to run electric power plants, will require the annual addition of 1,400 miles of new transmission mainline and the annual addition of 600 miles of new laterals connecting transmission mainlines to power plants, natural gas processing facilities, and storage fields. The INGAA Foundation, Inc., *North American Natural Gas Midstream Infrastructure Through 2035: A secure Energy Future* at 13 (June 28, 2011), available at: <http://www.ingaa.org/File.aspx?id=14911>. These additional miles will require easements through hundreds of municipalities and thousands of individual properties. Given that some of the most prolific shale plays – like the Eagle Ford and Barnett – are located in Texas, it is reasonable to conclude that a

considerable amount of this new infrastructure will be sited in Texas and will be affected by the court of appeals decision.

Similar to the way public utilities are regulated at the state level, interstate pipelines are subject to extensive economic regulation at the federal level pursuant to the Natural Gas Act (NGA). NGA section 7(h), 15 U.S.C. § 717f(h), vests interstate pipelines with the right to condemn property by eminent domain, and INGAA's members exert their eminent domain authority as circumstances require. In condemnation cases brought under NGA section 7(h), compensation is determined according to the law of the state where the property is located, *Columbia Gas Transmission Corp. v. An Exclusive Natural Gas Storage Easement in the Clinton Subterranean Geological Formation beneath a 264.12 Acre Parcel in Plain Township, Wayne county, Ohio*, 962 F.2d 1192 (6th Cir. 1992). At a minimum, INGAA members' section 7(h) cases involving Texas property will be subject to the court of appeals decision.

Argument

For decades Texas courts have consistently declined to award remainder damages in eminent domain cases involving interstate natural gas pipelines, *e.g.*, *Tennessee Gas Transmission Co. v. Zirjacks*, 244 S.W.2d 837, 838 (Tex. Civ. App.—San Antonio 1951, writ dism'd); *Natural Gas Pipeline Co. of Amer. v. Mitchell*, 440 S.W.2d 415 (Tex. Civ. App.—Beaumont 1969, writ ref'd n.r.e.).

These decisions are rooted in a skepticism born of common sense. Absent evidence specifically demonstrating a partitioning or other change to the remainder that diminishes its value, it simply is not reasonable to expect that an underground pipeline reduces the value of land outside the condemned easement. Such skepticism is well placed. If an easement causes no discernible change to the remainder of a tract, as is true in very nearly all cases, there are no remainder damages and none should be awarded.

In *LaSalle Pipeline*, the Court of Appeals allowed remainder damages to be awarded without any demonstration that Donnell Lands' tracts were affected, let alone damaged, by LaSalle Pipeline's easement. Damages were grounded on opinions based on a comparable sales methodology that did not establish that the remainders of the tracts traversed by LaSalle Pipeline's easement were affected by those easements in any way.

At a minimum, the court of appeals decision injects significant confusion into the Texas jurisprudence governing remainder awards in easement condemnation cases. The court should grant LaSalle's motion and hear its appeal to provide clarity and certainty on the evidence required to support remainder damages in Texas condemnation cases so needed expansions of the natural gas pipeline infrastructure — both intrastate and interstate — can proceed on their economic merits to serve the Nation's energy needs.

Conclusion

The law of eminent domain does not require a condemning authority to pay remainder damages where there is no evidence the authority's easement has affected the remainder, let alone damaged it. INGAA therefore respectfully requests the Court grant LaSalle Pipeline's motion, review of this important case, reverse the court of appeals' opinion, and keep Texas eminent domain law on remainder damages consistent with its historical application.

Respectfully submitted,

/s/ Kelly Noel Higgason

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A member of and on behalf of
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CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rule of Appellate Procedure 9.4(i)(3), I hereby certify that this brief was prepared in Times New Roman 14-point font and contains 1,314 words, exclusive of the portions set forth in Rule 9.4(i)(1), and that this number was calculated using the word count program of Microsoft Word, which is the program that was used to prepare this document.

/s/ Kelly Noel Higgason

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CERTIFICATE OF SERVICE

The undersigned counsel certifies that the foregoing document was electronically filed with the Clerk of the Court using the electronic case filing system of the Court, and that a true and correct copy was served on the following lead counsel for all parties via electronic service, 1st Class U.S. Mail, or facsimile on the 14th day of June, 2013.

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