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SUPREME COURT OF TEXAS
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NO. 15-0225

IN THE SUPREME COURT OF TEXAS

DENBURY GREEN PIPELINE-TEXAS, LLC,
Petitioner,

v.

TEXAS RICE LAND PARTNERS, LTD., ET AL.,
Respondent.

On Petition for Review from the Ninth Court of Appeals, Beaumont, Texas
Cause No. 09-14-00176-CV

BRIEF OF AMICUS CURIAE BARRON & ADLER, LLP

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FEBRUARY 29, 2016

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IDENTITY OF AMICUS CURIAE AND COUNSEL

This brief is submitted by and on behalf of Amicus Curiae Barron & Adler, LLP, which is paying the fee for preparing the brief. Barron & Adler, LLP is a law firm with offices in Austin and Houston, Texas that primarily represents landowners in eminent domain, statutory condemnation, and inverse condemnation matters.

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TO THE HONORABLE SUPREME COURT OF TEXAS:

SUMMARY OF INTEREST OF AMICUS CURIAE

This amicus curiae brief is tendered on behalf of Barron & Adler, LLP, which is incurring the cost of preparing the brief. Barron & Adler, LLP is a law firm with offices in Austin and Houston that represents landowners in statutory eminent domain, inverse condemnation, and land use litigation throughout Texas and elsewhere.

While the pipeline industry has provided numerous amici briefs to the Court on the issues in the present proceeding from the perspective of the pipeline industry ("Pipeline Amici"), the Court has received only one amici brief on the issues from the landowner's perspective. Many landowners do not know much, if anything, about condemnation law in Texas until their property is being condemned and are therefore unable to meaningfully participate as amici in these sort of proceedings. Barron & Adler, LLP submits this amicus curiae brief in support of Respondent, urging the Court to uphold the decision of the Beaumont Court of Appeals, which was in step with this Court's prior decision in *Texas Rice Land Partners, Ltd. v. Denbury Green Pipeline-Texas, LLC*, 363 S.W.3d 192 (Tex. 2012) ("*Denbury I*"). While Pipeline Amici paint a bleak picture, *Denbury I* provides a workable and fair framework for allowing private pipeline companies to condemn without completely ignoring the property rights of Texas landowners.

TO THE HONORABLE SUPREME COURT OF TEXAS:

SUMMARY OF THE ARGUMENT

Petitioner and the numerous Pipeline Amici seek a condemnation procedure in which the private, for-profit pipeline industry exercises absolute power to pick and choose which private property will be taken for their purposes, along with the right to expeditiously take possession of the private property in their crosshairs with no more than token or administrative oversight of the industry's bona fides as a common carrier. Importantly, the pipeline industry, which is not public, seeks to wield the extraordinary power of eminent domain without real oversight. When asked to succumb to a level of oversight or regulation which falls far short of the processes through which its public and private condemning brethren must go through, the pipeline industry bustles and protests.

Petitioner and the numerous Pipeline Amici also effectively seek to preclude any judicial review of their purported common carrier status and the related power to condemn until well after the pipeline has been installed and the condemned property irreparably altered. The Petitioner and Pipeline Amici deride as an injustice the mere possibility of it being difficult to quickly obtain summary judgments in their favor,[1] a right no litigant in a fair adversarial system should ever have.

[1] *See* Petitioner's Reply Brief at p. 6 ("Denbury Green and the *amici* are justifiably concerned that, by converting the common-carrier test into one of subjective intent, the Court of Appeals

The Pipeline Amici's desired scenario should not be adopted as Texas law because it sets aside the mandate of both the United States and Texas Constitution prohibiting the taking of private property without a public purpose and the payment of just compensation. Such a scenario would unfairly give the pipeline industry substantially more power than other condemnors in Texas, like the Texas Department of Transportation, because other condemnors must go through a lengthy approval process that allows for the involvement and participation of affected landowners as well as governmental oversight.

While the economic considerations and project-driven expectations of Petitioner and Pipeline Amici are important, the private property rights of Texas citizens are equally—if not more—significant. Amici does not suggest that pipeline projects cease or even that they be substantially delayed, but rather suggests a scenario in which the landowner simply has the right to seek judicial review of the purported common carrier status of a pipeline before the landowner's property is forcibly taken and permanently altered. Judicial review should not be problematic or dilatory if the condemning pipeline truly is a common carrier. The Court's opinion in *Denbury I* as well as the Beaumont Court of Appeal's ruling

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has made summary judgment on common carrier status 'rarely' available. . . . [T]he inability to determine the legal question of common-carrier status on summary judgment (without the need for a full trial) will severely hamper pipeline development in Texas.").

protect valuable private property rights long-recognized by this Court and ensure compliance with the mandates of both the United States and Texas Constitutions.

ARGUMENT

1. Texas and federal law has historically protected landowner rights.

As this Court recently recognized in *Severance v. Patterson*, private property rights are "fundamental, natural, inherent, inalienable, not derived from the legislature" and pre-date not only the United States Constitution and the Texas Constitution, but also the United States itself. *See Severance v. Patterson*, 370 S.W.3d 705, 709 (Tex. 2012) (quoting *Eggemeyer v. Eggemeyer*, 554 S.W.2d 137, 140 (Tex. 1977)). The Bill of Rights was not part of the United States Constitution ratified in 1787, but rather was added to address, among other things, concerns raised by citizens about the preservation of private property rights. *See Bute v. Illinois*, 333 U.S. 640, 651 (1948). In 1791, some fifty-four years before Texas became a state, the United States Constitution was amended to include the Fifth Amendment specifically stating: "nor shall private property be taken for public use, without just compensation." U.S. CONST. amd. V.

In 1876, Texas adopted its own Constitution and its own protection of property rights: "No person's property shall be taken, damaged, or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person. . . ." TEX. CONST. art. I, § 17. In the ensuing 140 years,

Texas courts have again and again recognized the importance of and defended private property rights. For example, in 1913 this Court held:

> It would be a very curious and unsatisfactory result, if in construing a provision of constitutional law, always understood to have been adopted for protection and security to the rights of the individual as against the government, and which has received the commendation of jurists, statesmen, and commentators as placing the just principles of the common law on that subject beyond the power of ordinary legislation to change or control them, it shall be held that, if the government refrains from the absolute conversion of real property to the uses of the public, it can destroy its value entirely, can inflict irreparable and permanent injury to any extent, can, in effect, subject it to total destruction without making any compensation, because, in the narrowed sense of that word, it is not 'taken' for the public use. Such a construction would pervert the constitutional provision into a restriction upon the rights of the citizen as those rights stood at the common law, instead of the government, and make it an authority for invasion of private right under the pretext of the public good, which had no warrant in the laws or practices of our ancestors.

Ft. Worth Imp. Dist. No. 1 v. City of Ft. Worth, 158 S.W. 164, 169 (Tex. 1913) (citing *Pumpelly v. Green Bay Co.*, 80 U.S. 166 (1871)).

Indeed, Texas courts recognize that real property is both "valuable" and "unique." *Sayeg v. Fed. Mortgage Co.*, 54 S.W.2d 238, 239 (Tex. Civ. App.—Waco 1932, no writ) (referring to "valuable real property"); *City of San Antonio v. Rische*, 38 S.W. 388, 390 (Tex. Civ. App. 1896, writ ref'd) (same); *Rincon Inv. Co. v. White*, 83 S.W.2d 1090, 1092 (Tex. Civ. App.—San Antonio 1935, no writ); *In re Stark*, 126 S.W.3d 635, 640 (Tex. App.—Beaumont 2004, orig. proceeding) ("[E]very piece of real estate is unique . . . ."). One of the most fundamental rights

of private property ownership is the right to exclude others from the property. Both this Court and the United States Supreme Court have recognized the right to exclude all others from use of property as one of the "most essential sticks in the bundle of rights that are commonly characterized as property." *Dolan v. City of Tigard*, 512 U.S. 374, 384, 393 (1994); *see also Loretto v. Teleprompter Manhattan CATV Corp*., 458 U.S. 419, 435–36 (1982); *U.S. v. Gen. Motors Corp*., 323 U.S. 373, 378 (1945); *Town of Flower Mound v. Stafford Estates Ltd. P'ship*, 135 S.W.3d 620, 634 (Tex. 2004); *Marcus Cable Assoc., L.P. v. Krohn*, 90 S.W.3d 697, 700 (Tex. 2002). Demeaning Texas landowner's constitutionally protected property rights, Petitioner and Pipeline Amici urge the Court, in the name of industry, to make common carrier takings perfunctory.

2. Contrary to other governmental entities with condemning authority, there is effectively <u>zero</u> governmental oversight or regulation on the forcible taking of private property for the benefit of private, for-profit pipeline companies.

Under current law, to exercise the power to condemn private property, a private, for-profit pipeline company purporting to be a common carrier must only make an internal determination that public convenience and necessity require that private property be taken. *See, e.g., Anderson v. Teco Pipeline Co.*, 985 S.W.2d 559, 565–66 (Tex. App.—San Antonio 1998, pet. denied) ("Therefore, once a company establishes that its right to condemn is derived from these articles and that its board of directors determined that the taking was necessary, a court should

approve the taking unless the landowner demonstrates fraud, bad faith, abuse of discretion, or arbitrary and capricious action.").

This determination is exclusively internal and is typically made by the pipeline company's board of directors in a private, non-public meeting. *See, e.g., id.* The determination is often made without even holding a meeting at all. For example, in recent condemnation suits, some pipeline companies have begun relying on a "Written Consent of Managers in Lieu of Meeting" in which an internal decision is made as to what private property the pipeline company desires to forcibly take. *See* Exhibit A, Sample redacted "Written Consent of Managers in Lieu of Meeting."

Once the private, for-profit pipeline company has made its behind-closed-doors decision to take private property, the pipeline company instantly has the power to condemn. *See, e.g., Loesch v. Oasis Pipe Line Co.*, 665 S.W.2d 595, 599 (Tex. App.—Austin 1984, writ ref'd n.r.e.). The taking may consist of only a pipeline easement, but the pipeline company could also determine internally, for example, that it desires to take permanent access roads across private property, surface easements for above-ground compressor stations or pump stations, or any other facility the pipeline company decides it would like to obtain. *See, e.g., Dyer v. Texas Elec. Serv. Co.*, 680 S.W.2d 883, 885 (Tex. App.—El Paso 1984, writ ref'd n.r.e.) ("Even though the only present use of the tap line for which the

property is sought to be condemned is to serve a single customer, Gulf, the condemnation would still be deemed a public use.").

The only hope a landowner has to challenge a pipeline company's determination of the route of the pipeline and what other property rights will be taken is limited to showing the determination was "made in bad faith or was arbitrary, capricious, or fraudulent"—an obviously onerous burden. *See Anderson v. Clajon Gas Co.*, 677 S.W.2d 702, 705 (Tex. App.—Houston [1st Dist.] 1984, no writ).

Furthermore, under current Texas law, a pipeline company does not have to hold, or have even applied for, a T-4 permit before exercising the power to condemn. *See* 16 TEX. ADMIN. CODE § 3.70. The pipeline companies must only possess a T-4 permit and file a New Construction Report (Form PS-48) before actually *constructing* the pipeline. *See id.* § 8.115.

Once the decision to condemn is made, pipeline companies can also move extremely fast in taking private property. Under current law, a pipeline company can decide to condemn and take possession of the condemned property in as little as ***sixty-four*** days. *See* TEX. PROP. CODE §§ 21.0113(b) (initial offer must be open for 30 days, final offer must be open for 14 days before filing condemnation petition), 21.015 (special commissioners' hearing must be held no sooner than 20 days from the date the special commissioners are appointed), 21.021 (pipeline

company can take possession as soon as the special commissioners' award is rendered and the amount of the award is paid to the landowner or deposited in the registry of the court).

The speedy decision to condemn, the secretive/behind-closed-doors nature of the internal determination, and the lack of any involvement by affected landowners in a pipeline company's decision to condemn is unique in Texas, as most other condemning authorities must go through a lengthy process with public involvement almost every step of the way.

i. TxDOT must undergo a 3 to 20 year public and transparent process before using the power to condemn.

The project development process undertaken by the Texas Department of Transportation ("TxDOT") is lengthy with numerous opportunities for public comment and for governmental oversite.[2] TxDOT, *Project Development Process Manual* (July 2014), *available at* http://onlinemanuals.txdot.gov/txdotmanuals/pdp/index.htm. "Project development for major improvement projects can vary from 3 to 20 years, or more, depending on required environmental and ROW (Right of Way) processes; 6 to 10 years is considered typical." *Id.* at 2, linking to TxDOT Project Development Process Flow Chart (Sept. 2008).

[2] Pipeline companies are not required to receive any public comment and have no governmental oversight in selecting the route of the pipeline.

The project development process for TxDOT begins with identifying a need for a project from either public or private sources, including traffic studies and modeling of future demands. *See id.* at 1-2. Once a project is identified, the project must then be approved. *See id.* at 1-6. All projects must be approved by the Texas Transportation Commission, either by inclusion in the Unified Transportation Program (UTP) or through a project specific minute order, before beginning project development but after a budget is formulated and the project has cleared the Transportation Planning and Programming Division.[3] *See id.* 1-6–1-10. Then the project must be reviewed to determine how the project will meet with the department's area goals, as well as for coordination with local governments and agencies. *See id.* at 1-12. Once the project plan has been integrated with other planning requirements, the project begins its design phase where public meeting(s) are held for comment.[4] *See id.* at 2-2–2-20. After a proposed route is determined, the project moves into the Environmental Phase where an "Environmental Impact Statement" (EIS) is submitted for Federal approval, if Federal funds are tied to the project or if there is control of access. *See id.*at 3-3. After the EIS, there is a public hearing again allowing for public comment prior to final environmental clearance.[5]

[3] The routing of pipeline projects, on the other hand, are not approved by the Texas Railroad Commission or any public entity.

[4] Pipeline companies are not required to hold any public meetings.

[5] There is no public involvement in environmental clearance of pipeline projects.

See id. at 3-28–3-29. Only after this multi-year process is completed is TxDOT cleared to begin right-of-way acquisition. *See id.* at 4-9–4-11.

ii. The Public Utility Commission must consider public input and involve affected landowners before authorizing the power to condemn.

Before condemning private property for a transmission power line, most utilities must file an application with the Public Utility Commission ("PUC") to obtain or amend a Certificate of Convenience and Necessity ("CCN"). PUC, *Landowners and Transmission Line Cases at the PUC* (June 2011) at 2, *available at* http://www.puc.texas.gov/industry/electric/forms/ccn/brochure8x11.pdf. The application describes the proposed line and includes a statement by the applicant describing the need for the line and the impact of building it. *Id.* at 3. During the CCN application process, typically a number of routes are proposed. *Id.* at 2–3.

The PUC must then consider a number of factors in deciding whether to approve the newly proposed transmission line, including:

- Adequacy of existing service;
- Need for additional service;
- The effect of approving the application on the applicant and an utility serving the proximate area;
- Whether the route utilizes existing compatible rights-of-way, including the use of vacant positions on existing multiple-circuit transmission lines;
- Whether the route parallels existing compatible rights-of-way;
- Whether the route parallels property lines or other natural or cultural features;
- Whether the route conforms with the policy of prudent avoidance (which is defined as the limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort); and

- Other factors such as community values, recreational and park areas, historical and aesthetic values, environmental integrity, and the probable improvement of service or lowering of cost to consumers in the area.[6]

See id; TEX. UTIL. CODE § 37.056(c) and 16 TEX. ADMIN. CODE § 25.101(b)(3)(B).

In determining the routing of transmission power lines, landowners may informally file a protest or formally intervene in the PUC administrative proceeding.[7] PUC, *Landowners and Transmission Line Cases at the PUC* at 3. If a landowner intervenes, the landowner becomes a party to the administrative proceeding and is allowed to fully participate in the administrative proceeding, which allows the landowner to request information, present fact and expert witnesses, cross-examine adverse witnesses, file briefs, submit proposed proposals for decision, object to the administrative law judge's proposal for decision, ask for re-hearing on determinations made by the PUC after the proposal for decision is submitted, and appeal the PUC's order to Travis County District Court.[8] *Id.*

3. The Beaumont Court of Appeals correctly applied this Court's *Denbury I* test, which is sensible and discourages unfair gamesmanship.

The Beaumont Court of Appeals, consistent with this Court's prior opinion in *Denbury I*, 363 S.W.3d 192, held that the purported common carrier's taking must, among other things, serve a "*substantial* public interest." *Texas Rice Land*

[6] Pipeline companies do not have to consider any of these factors.

[7] A landowner is not permitted to be involved in any aspect of the pipeline company's determination of the routing of the pipeline.

[8] The public is not permitted to participate in any of these activities when a pipeline project is being proposed.

Partners, Ltd. v. Denbury Green Pipeline-Texas, LLC, 457 S.W.3d 115, 121 (Tex. App.—Beaumont 2015, pet. granted) (emphasis in original) (citing *Coastal States Gas Producing Co. v. Pate*, 309 S.W.2d 828, 833 (Tex. 1958)). Although Pipeline Amici make hay about the word "substantial," this test is consistent with the principles underlying the definition of a common carrier: "one who holds itself out to the general public as engaged in the business of transporting persons or property from one place to another." *Bennett Truck Transp., LLC v. Williams Bros. Const.*, 256 S.W.3d 730, 733 (Tex. App.—Houston [14st Dist.] 2008, no pet.).

If a purported common carrier is not held to the "substantial public interest" test, then a pipeline company, to establish common carrier status, only needs to find a single unaffiliated shipper willing to send (or just say it will send) *one* mcf of gas or *one* barrel of oil through the pipeline, despite the fact that the pipeline may be capable of handling 750,000 mcfs/day (273 million+ mcfs/year) or 150,000 barrels/day (54 million+ barrels/year). One drop through the line should not convert a private operator into a common carrier, and the pipeline company's bare assertion of common inclusion within its line should not create the right to take. Moreover, if Petitioner's temporal argument were to be accepted, then a pipeline could establish its common carrier status at the eleventh hour, well after private property has been forcibly taken and even well after the pipeline is in the ground and operational. *See, e.g.*, Petitioner's Brief on the Merits at 49.

Undoubtedly, Texas values the oil and gas industry—but Texas should also value private property rights. The commercial interests of private industry should not be used as a limitless justification to ignore any semblance of process in a the taking of private land, when a well-defined process is the hallmark of every other type of public use taking in Texas.

Under any scenario, what the Petitioner and Pipeline Amici seek is a system whereby a pipeline can establish common carrier status with a single unaffiliated shipped who agrees to transport a miniscule amount of material through the pipeline. *See, e.g.*, Petitioner's Reply Brief at p. 11 ("Given the objective evidence . . ., there was a reasonable probability, at the time the Green Line was planned, that the Green Line would be used by at least one third party, unaffiliated with the pipeline owner."). The Petitioner and Pipeline Amici also seek a system where this solitary unaffiliated shipper can agree to transport the miniscule amount of material through the pipeline a scant seven days before a hearing on a landowner's motion for summary judgment on common carrier status, when the pipeline company's evidence responsive to the landowner's motion for summary judgment is due. *See* TEX. R. CIV. P. 166a(c).

Allowing a pipeline to establish common carrier status with one unaffiliated shipper agreeing to transport one barrel of oil seven days before a hearing on a

motion for summary judgment defies logic and guts private property rights in the state of Texas.

4. Making a preliminary determination on the power to condemn, before irreparable damage to real property occurs, will not stymy pipeline projects in Texas.

Courts from around the State have consistently held that "[t]he law recognizes that each and every piece of real estate is unique." *See Home Sav. of Am., F.A. v. Van Cleave Dev. Co*., 737 S.W.2d 58, 59 (Tex. App.—San Antonio 1987, no writ) (analyzing a piece of property worth $1,500,000 that "will specifically damage the entirety of the larger development involved" and finding "ample evidence for the trial judge to find irreparable damage") (citing *Greater Houston Bank v. Conte*, 641 S.W.2d 407 (Tex. App.—Houston [14th Dist.] 1982, no writ)). Moreover, "[i]t is settled policy that a person in possession of lands, using and enjoying them will be protected from wrongful attempts by others to invade the possession, or to destroy its use and enjoyment." *Cargill v. Buie*, 343 S.W.2d 746, 749 (Tex. Civ. App.—Texarkana 1960, writ ref'd n.r.e.) ("Robert Cargill . . . cut Buie's south fence and entered upon the right-of-way and began preparing an oil well drillsite and moving in drilling equipment. Preparation of the drillsite included clearing trees and underbrush and earth leveling work.").

As an example, oftentimes in taking a pipeline easement, valuable trees are permanently clear cut to make way for the construction and installation of the

pipeline. *See, e.g.*, *Lucas v. Morrison*, 286 S.W.2d 190, 191 (Tex. Civ. App.—San Antonio 1956, no writ) (trees growing upon land are part of the realty unless they have a market value when detached from the land); *see also Ortiz v. Spann*, 586 S.W.2d 560, 562 (Tex. Civ. App.—Corpus Christi 1979, writ ref'd n.r.e.) ("We find, from a review of the temporary injunction record, that a genuine factual dispute exists between the parties relative to the live oak trees in question. We agree with the trial court that the temporary injunction was necessarily issued to preserve the status quo so as to prevent a possible irreparable injury to the plaintiffs if they succeed in a trial on the merits."). Under current law, however, pipeline companies may forcibly take private property, destroy trees and vegetation, and otherwise permanently alter and damage the property *before* the pipeline company has had its purported common carrier status tested by a landowner or approved by a court. Even if the landowner were to prevail on a subsequent challenge to the common carrier status of a pipeline, irreparable damage to the property may have already been inflicted.

Petitioner and Pipeline Amici's oft-repeated complaint that a quick-strike summary judgment may not be available in every case is uncompelling. Texas Rule of Civil Procedure 166a and the standards set forth therein apply to all litigants. The balance this Court thoughtfully struck between the state's need to encourage completion of pipeline projects and to ensure that private property is not

irreparably damaged before a claim of common carrier status is adjudicated by a court, as applied in the Beaumont Court of Appeals' opinion, is good policy for Texas and appropriately protects irreplaceable private property rights.

CONCLUSION

The founding fathers, the Legislature, and Texas and federal courts have recognized for centuries that private property rights are valuable, unique, and worthy of robust protection, only to be disturbed in exceptional circumstances. While pipeline companies and other similarly situated private, for-profit condemnors are undeniably an important part of the Texas economy, their power to forcibly take private property should not be above reproach or a modicum of process. Further, while the interests of the oil and gas industry, while important, wax and wane over time, the permanent impacts on private property they cause can, both physically and figuratively alter our State's precious landscape permanently and irreparably. The fact that the pipeline industry has lead such a concerted effort (exemplified by the throng of Pipeline Amici in this Court) to reverse the Beaumont Court of Appeals (after applauding its prior, pro-pipeline opinion) demonstrates how far the industry is willing to go to retain the pipeline industry's unique, secretive, and almost unfettered power to condemn.

Texas landowners do not seek a system in which pipeline companies are bogged down in litigation for decades over the power to condemn, or that pipeline

projects be put on hold indefinitely. Amici only suggests a scenario in which the landowner has a meaningful opportunity to seek judicial review and to test a purported common carrier's alleged and previously unchecked power to condemn *before* the landowner's property has been taken and permanently altered. If a condemnor truly is a common carrier, it should effortlessly clear this hurdle on its path to promptly taking possession of the condemned property, as envisioned by the Texas Legislature. Amici seeks only that pipeline companies be held to some of the standards to which its condemning brethren are held—a small tick in the legal landscape in the name of fairness and the constitution—nowhere near the tremendous upheaval which Pipeline Amici forecast.

PRAYER

Barron & Adler, LLP respectfully requests that the Court deny the Petition for Review or, alternatively, affirm the Court of Appeals' opinion.

Respectfully submitted,

BARRON & ADLER, LLP

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CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rule of Appellate Procedure 9.4(i)(3), I hereby certify that this brief contains 4,353 words, excluding the words not included in the word count pursuant to Texas Rule of Appellate Procedure 9.4(i)(1). This is a computer-generated document created in Microsoft Word, using 14-point typeface for all text. In making this certificate of compliance, I rely on the word count provided by the software used to prepare the document.

/s/ Blaire A. Knox
Blaire A. Knox

CERTIFICATE OF SERVICE

I certify that a true and complete copy of the above and foregoing Brief of Amicus Curiae Barron & Adler, LLP was sent by e-file and by email on this the 29th day of February, 2016 to the following:

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/s/ Blaire A. Knox
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[redacted]

Consent of Managers in Lieu of a Meeting

November 7, 2014

The undersigned, being all of the managers of [redacted] a Texas limited liability company (the "Company") acting as the sole general partner of [redacted] a Texas limited partnership, and acting without and in lieu of a meeting, do hereby unanimously consent to the adoption of the following resolutions, which will constitute the actions of the Board of Managers of the Company, acting as general partner of [redacted] and do hereby adopt such resolutions:

WHEREAS, the Company, acting as general partner of [redacted] has previously found and determined that public convenience and necessity requires the location, construction, operation and maintenance of a gas utility pipeline facilities in [redacted] Counties, Texas, for the transportation of natural gas; and

WHEREAS, [redacted] operates and maintains gas utility pipeline/gathering systems in various counties in Texas including [redacted] Counties, Texas, and, in connection therewith, the Company, acting as general partner of [redacted] hereby finds and determines that public convenience and necessity require and that it is necessary and in the public interest for [redacted] to enter upon, appropriate, take, acquire, hold and enjoy, by purchase or condemnation, permanent easements and rights-of-way, and temporary construction easements, as are necessary for: (i) the construction of one or more gas utility pipelines/gathering facilities, including, but not limited to, erecting, laying, constructing, maintaining, operating, repairing, inspecting, replacing, changing the size of, abandoning in place, protecting, altering and removing gas gathering, transporting, compressing, measuring, treating and processing facilities, including, but not limited to, above-ground and below-ground valve settings, meters, tanks, pipes, pipelines, dehydrators, separators, pumps, compressors, generators, dew point control facilities, processing and treating equipment, launching-receiving

EXHIBIT
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EXHIBIT A

equipment, electrical facilities, buildings and any and all other devices, equipment and structures to facilitate the operation, maintenance, repair and use of its gas utility pipeline/gathering systems; and (ii) locating, constructing, reconstructing, improving, repairing, operating, inspecting, patrolling, replacing and maintaining electric power and communication facilities (whether above or below grade, or both), or the removal thereof, now or in the future, including, but not necessarily limited to, poles, cross arms, insulators, wires, cables, conduits, hardware, transformers, switches, guy wires, anchors, antennae and other equipment, structures, material and appurtenances, access roads, and ancillary electric facilities, now or hereafter used, useful or desired in connection therewith by [redacted] such line or lines being the [redacted] the first lateral commencing at a point approximately [redacted] miles northeast of the city of [redacted] Texas and extending north northeasterly approximately [redacted] miles to a point approximately [redacted] miles south of the city of [redacted] Texas, and the second lateral commencing at a point approximately [redacted] miles southeast of the city of [redacted] Texas and extending north northeasterly approximately [redacted] miles to a point approximately [redacted] miles southwest of the city of [redacted] Texas, generally along the route depicted as cross-hatched in blue on Exhibit "A" attached hereto, or as may be modified due to route changes or other unforeseen occurrences, and that public convenience and necessity require and that it is in the public interest for [redacted] through one or more of [redacted] duly authorized officers, agents and/or attorneys to enter upon, take, acquire, hold and enjoy, by purchase or condemnation, the land, easements, rights of way, temporary construction easements, and other interests in land convenient and necessary for the location, construction, operation, repair and maintenance of said gas utility pipeline and appurtenant facilities that may be useful, necessary or convenient thereto.

NOW, THEREFORE, BE IT RESOLVED, that public convenience and necessity require that it is necessary and in the public interest that [redacted] through one or more of its duly authorized officers, agents, employees and/or attorneys, acquire, hold and enjoy, by purchase or condemnation, permanent

easements and rights-of-way, and temporary construction easements, as described above, on, in, over, under, through and across certain lands in [redacted] Counties, Texas, along the routes described in Exhibit A.

BE IT FURTHER RESOLVED, that in the event of negotiations, to acquire the permanent easements and rights-of-way, and temporary construction easements, on, in, over, under, through or across the necessary tracts of land are unsuccessful, the officers, agents, employees and/or attorneys of [redacted] be, and each individually is authorized in the name and for and on behalf of [redacted] to institute and file or cause to be filed and instituted condemnation proceedings to acquire for [redacted] said permanent easements and rights-of-way, and temporary construction easements for the public purposes and use by [redacted] and they are further authorized to take any and all action they deem necessary or desirable, to effectuate the purpose and intent of the foregoing Resolutions.

IN WITNESS WHEREOF, the undersigned Managers of the Company have signed this consent in writing, in one or more counterparts on this the 7th day of November, 2014.

[redacted]