


STATE COMMISSION ON PETROLEUM PIPELINES

REPORT TO GEORGIA GENERAL ASSEMBLY

2016

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## I. HISTORICAL CONTEXT

The history of petroleum pipelines in Georgia can be traced back to World War II. Prior to the War, railroads successfully blocked attempts by pipeline companies to gain rights-of-way in Georgia.<sup>1</sup> In fact, despite the proliferation of petroleum pipelines in the other parts of the country, in 1940 almost all of the petroleum consumed on the East Coast of the United States was transported by tanker ship in coastal waters.<sup>2</sup> These tankers quickly became targets for German submarines in World War II.<sup>3</sup>

Across the country, U-boat attacks reduced tanker deliveries to one-fifth the level of pre-war shipments.<sup>4</sup> Less than six months into the conflict, they had sunk 55 tankers.<sup>5</sup> These U-Boat attacks occurred off the coast of Georgia as well, including the sinking of the oil tanker *Oklahoma*, the steam tanker *Esso Baton Rouge*, and one other ship off the coast of St. Simons Island on April 8, 1942.<sup>6</sup>

In 1941, Congress enacted the Cole Act, which granted interstate pipelines the power of eminent domain in cases where the President determined such pipelines' services were necessary for the national defense.<sup>7</sup> Thereafter, President Roosevelt decided two interstate pipelines running through Georgia were necessary for purposes of national defense, and those pipelines were completed in 1941 and 1942.<sup>8</sup> Federal eminent domain authority for oil pipelines under the Cole Act expired in 1943, and today interstate and intrastate oil pipelines may only obtain eminent domain authority under state law.<sup>9</sup>

In 1943, by Act of the General Assembly the state of Georgia granted the power of eminent domain to "corporations constructing, running or operating pipe lines for the transportation of petroleum and petroleum products," and in the process declared it to be in the public's interest for such corporations to have the right of eminent domain.<sup>10</sup> Very few limitations were placed on pipeline companies' power of eminent domain.<sup>11</sup> Indeed, the Act conferring this power declared that any property or interest condemned for a petroleum pipeline "shall be deemed to have been condemned for public purposes."<sup>12</sup>

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<sup>1</sup> Alexandra B. Klass & Danielle Meinhardt, *Transporting Oil and Gas: U.S. Infrastructure Challenges*, 100 Iowa Law Review 947, p. 962-963 (2015). See also George S. Wolbert, Jr., *U.S. Oil Pipe Lines* 3 (1979) at 19-20.

<sup>2</sup> Klass, at 962-963, citing Arthur Menzies Johnson, *The Development of American Petroleum Pipelines: A Study in Private Enterprise and Public Policy, 1862-1906*, note 39 at 307-308 (1956).

<sup>3</sup> Klass, *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* citing George S. Wolbert, Jr., *U.S. Oil Pipe Lines* 3 (1979) note 22, at 20.

<sup>6</sup> See <http://www.todayingeorgiahistory.org/content/world-war-ii-german-u-boat-attacks>.

<sup>7</sup> Klass at 962-963, citing also Wolbert at 19-20. See also Act of July 30, 1941, Pup. L. No. 77-197, 55 Stat. 610.

<sup>8</sup> Klass at 963, citing Wolbert at 20 and William A. Mogel, *Ratemaking for Oil Pipelines in the Outer Continental Shelf*, 17 TULSA L.J. 469, 476-77 (1982).

<sup>9</sup> Klass at 963.

<sup>10</sup> Ga. L. 1943, p.1662, §1.

<sup>11</sup> *Id.* See also Beberman, J., "Eminent Domain: Exercise of Power of Eminent Domain for Special Purposes: Provide Restrictions on Use of Eminent Domain Power by Petroleum Pipeline Companies," 12 Ga. St. L. Rev. 184 (1995).

<sup>12</sup> *Id.*

The statute remained intact and, for the most part, unchanged, until 1994, when the General Assembly temporarily suspended the exercise of eminent domain by petroleum pipeline companies and established a Petroleum Pipeline Study Committee to assess the “need for land use controls or restrictions related to the siting and regulation of petroleum pipelines.”<sup>13</sup> That legislative measure was passed by the General Assembly in part because of ground water pollution in Crawford County caused by a leak of petroleum products pipeline.<sup>14</sup>

The following year, the General Assembly passed legislation amending the process by which a petroleum pipeline company can utilize the right to eminent domain. Based on the findings of the Petroleum Pipeline Study Committee, the General Assembly found that “while petroleum pipelines are appropriate and valuable for use in the transportation of petroleum and petroleum products, there are certain problems and characteristics indigenous to such pipelines which require the enactment and implementation of special procedures and restrictions on petroleum pipelines and related facilities as a condition of the grant of eminent domain.”<sup>15</sup> Consequently, the General Assembly made significant revisions to the statute, restricting the use of eminent domain by petroleum pipeline companies and increasing the state’s regulatory function.<sup>16</sup>

The statutory framework codified by the General Assembly in 1995 remains in place to this day, and it was this statutory and regulatory system that came under scrutiny in 2015 when Kinder Morgan, Inc. proposed a new petroleum products pipeline, the Palmetto Products Pipeline, to run from its terminal in Belton, South Carolina south to North Augusta, then southeast to Richmond Hill, Georgia, and then directly south to Jacksonville, Florida.<sup>17</sup> The company sought to use the power of eminent domain to acquire a portion of the property for this pipeline and applied to the Georgia Department of Transportation (GDOT) for a Certificate of Public Convenience and Necessity – the first step required by law for a pipeline company to exercise the power of eminent domain.

After a series of public hearings, considerable media attention and zealous advocacy both for and against the proposed pipeline, the GDOT denied the application.<sup>18</sup> On appeal, the Superior Court of Fulton County upheld the decision of the GDOT Commissioner.<sup>19</sup>

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<sup>13</sup> Ga. L. 1994, p.229.

<sup>14</sup> *Id.* See also Beberman, J., “Eminent Domain: Exercise of Power of Eminent Domain for Special Purposes: Provide Restrictions on Use of Eminent Domain Power by Petroleum Pipeline Companies,” 12 Ga. St. L. Rev. 184, 187, n.20 and 189, n.25 (1995).

<sup>15</sup> Ga. L. 1995, p.161.

<sup>16</sup> See, generally, Beberman, J., 12 Ga. St. L. Rev. 184 (1995).

<sup>17</sup> Superior Court of Fulton County, CAFN: 2015 CV 262194: Memorandum in Support of Petition for Review of the Georgia Department of Transportation’s Denial of Application for a Certificate of Public Convenience and Necessity, p. 3.

<sup>18</sup> See Final Decision Regarding Palmetto Products Pipe Line, LLC’s Application for Certificate of Public Convenience and Necessity, Georgia Department of Transportation, Commissioner Russell R. McMurry, P.E., May 18, 2015.

<sup>19</sup> Superior Court of Fulton County, Final Order Denying Petition for Judicial Review. Hon. Kimberly M. Esmond Adams, CAFN: 2015 CV 262194.

## II. CREATION OF THE COMMISSION, MEETINGS AND TESTIMONY

Due in part to the controversy surrounding the proposed Palmetto Products Pipeline, the General Assembly passed House Bill 1036 during the 2016 Legislative Session, which Governor Deal signed into law on May 3, 2016.<sup>20</sup> House Bill 1036 created this State Commission on Petroleum Pipelines and placed a temporary moratorium on the use of eminent domain by petroleum pipeline companies through June 30, 2017. It also barred state officials from issuing any approval, permit or other document necessary for the construction of a petroleum pipeline for the duration of the moratorium.<sup>21</sup>

In accordance with House Bill 1036, this Commission was charged with examining the grant of eminent domain powers to pipeline companies and siting procedures and weighing those with the rights of property owners and the impacts on land uses and natural resources associated with pipeline siting, construction and operation. This Commission was also instructed to consider the current legal and regulatory mechanisms by which the eminent domain powers of pipeline companies can be appropriately restricted or controlled in order to ensure siting of pipelines is consistent with land use policies and the protection of natural resources. Upon completion of its work, this Commission was instructed to prepare a report summarizing its findings and recommend to the General Assembly proposed legislation as necessary to accomplish the continuing goal of ensuring that pipeline siting, construction and operation are consistent with and implement the state's essential public interests.<sup>22</sup>

This Commission is chaired by state representative Bill Hitchens of the 161<sup>st</sup> House District and state senator Rick Jeffares of the 17<sup>th</sup> Senate District. Also serving on the Commission from the General Assembly are Rep. Barry Fleming of the 121<sup>st</sup> House District, Rep. Al Williams of the 168<sup>th</sup> House District, Sen. Jack Hill of the 4<sup>th</sup> District and Sen. Frank Ginn of the 47<sup>th</sup> District.

Representing the Georgia Department of Natural Resources on the Commission is Mr. Richard Dunn, Director of the Environmental Protection Division (EPD). Representing the Georgia Department of Community Affairs on the Commission is Mr. Seth Coker, Director of Government and External Relations. The five members appointed by Governor Deal to the Commission are Ryan Chandler of Colonial Group, representing the petroleum industry; Brian Nipper, Mayor of Odum, Georgia, representing the interests of local government; Mike Clanton of Georgia Power, representing the interests of business; Wade Hall of Stuckey Timberland, Inc., representing the interests of agriculture; and Robert Ramsay of the Georgia Conservancy, representing the interests of conservation.

The Commission held four meetings in 2016, all of which were open to and well-attended by the public. The first meeting was held on October 20, 2016 at Armstrong State University in Savannah. The second meeting was held on November 3, 2016 at the Columbia County Board of

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<sup>20</sup> Ga. L. 2016, p. 726, § 1/ HB 1036. See also O.C.G.A. §22-3-85.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

Commissioners in Evans, GA. The third and fourth meetings were held on November 17, 2016 and December 16, 2016, respectively, at the State Capitol.

During the first three meetings, the Commission heard testimony from public officials, stakeholders and members of the public, including from Angela Jones, Esq., Deputy General Counsel at the Georgia Department of Transportation; Chuck Mueller, Director of Cross Media Programs at Georgia EPD; Hunter Hopkins of the Georgia Petroleum Commission; Dan Gardner of Colonial Pipeline Company; Andres Villegas of the Georgia Forestry Commission; Gary W. Poliakoff, Esq.; Steven Caley, Esq. of GreenLaw; Tonya Bonitatibus of the Savannah Riverkeeper; Emily Markesteyn of the Ogeechee Riverkeeper; Jen Hilburn of the Altamaha Riverkeeper; Neill Herring of the Georgia Sierra Club; Steve Willis of Center for Sustainable Coast; Louise Phelps of Coastal Empire News; Henry Morgan of Savannah, GA; Alan Zipperer of Rincon, GA; Carlton Gill of Richmond Hill, GA; Phil Odom; John Scarborough; Claudia Collier; Damon Youngblood; Kevin Grainey of Savannah, GA, and others.

Prior to the fourth meeting, each member of the Commission was given the opportunity to submit proposed statutory and/or regulatory changes to the full Commission for consideration. These individual proposals were considered and debated at the Commission's fourth meeting on December 16, 2016, after which the Commission reached a consensus on certain findings and recommendations set forth below:

### III. FINDINGS

Under current Georgia law, petroleum pipeline companies are granted the power to acquire property or interests in property by eminent domain for the construction, reconstruction, operation, and maintenance of pipelines in the state.<sup>23</sup> Before exercising this power of eminent domain, a petroleum pipeline company must first obtain from the commissioner of transportation or the commissioner's designee a certificate of public convenience and necessity that such action by the pipeline company is authorized.<sup>24</sup> Next, the pipeline company must obtain a permit from the director of the Environmental Protection Division of the Department of Natural Resources.<sup>25</sup> In addition to these two requirements, the pipeline company must provide notice to each landowner whose property may be condemned prior to instigating eminent domain proceedings or threatening to do so.<sup>26</sup>

#### Application for Public Convenience and Necessity

With respect to the application process for the Certificate of Public Convenience and Necessity, the Commission heard testimony from Ms. Angela Jones, Esq., Deputy General Counsel for the Georgia Department of Transportation. Ms. Jones reviewed each Code section and each Rule promulgated by the Georgia DOT governing the application for certificate of

<sup>23</sup> O.C.G.A. §22-3-86(a).

<sup>24</sup> O.C.G.A. §22-3-87(a).

<sup>25</sup> O.C.G.A. §22-3-88.

<sup>26</sup> See O.C.G.A. §22-3-86 for specific notice requirements.

public convenience and necessity. Ms. Jones also discussed the Department's process for reviewing and deciding whether to grant or deny an application.

Based on this information, the testimony of other witnesses, and the Commission's own review of the current statutory and regulatory system, the Commission members reached a consensus regarding changes to the current system that would better serve the interests of the state. Specifically, the Commission recommends the General Assembly provide a statutory definition for the term "public convenience and necessity." At present, there is no such definition in the petroleum pipeline statute, and this issue was raised in litigation over the proposed Palmetto Products Pipeline. In that instance, the GDOT looked to the natural gas pipeline statute, O.C.G.A. §46-4-25, for guidance in making its determination, which in the context of subsequent litigation was criticized by the Palmetto Products Pipeline company as being "improper."<sup>27</sup> Upon review and consideration of the matter, the Commission finds a definition of this term would benefit the process as a whole by providing statutory guidance for applicants, for objectors and for the GDOT to use in its decision-making process.

Although a statutory definition is needed, the Commission did not reach a consensus on what the definition of "public convenience and necessity" should be or what criteria should be used in determining whether a proposed pipeline would constitute a public convenience and a necessity. In fact, this topic was raised by several testifying witnesses and discussed at length by the Commission members. Many witnesses were concerned that an interstate petroleum pipeline that delivers fuel to market in another state would force landowners and taxpayers in Georgia to bear the risk and costs associated with the pipeline without enjoying its benefits. Consequently, these witnesses asked that the statute be modified in a way to require an applicant to demonstrate its project will provide a "public benefit" to Georgia. Other witnesses proposed eliminating the term "convenience" from the statute, thereby restricting use of eminent domain only for emergency situations or to those projects that constitute a "necessity."<sup>28</sup> Others advocated for eliminating the power of eminent domain all together for petroleum pipeline companies. Due to the range of ideas discussed, and the lack of consensus by the Commission members, the Commission recommends that it be given additional time to consider the issue and reach a consensus on how this term should be defined prior to making a final recommendation to the General Assembly.

Second, the Commission finds that the interests of the state would be better served with more transparency to the process of applying for a certificate of public convenience and necessity. As noted above, the eminent domain statute does not include a definition of "public convenience and necessity," and in the recent case of the Petroleum Products Pipeline, a point of dispute was whether the proposed pipeline would decrease gasoline prices in Southeast Georgia, thereby providing a benefit to Georgia consumers which could have been considered a "public convenience" or "necessity." Yet, this rate and price information was not disclosed as part of the

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<sup>27</sup> Superior Court of Fulton County, CAFN: Memorandum in Support of Petition for Review of the Georgia Department of Transportation's Denial of Application for a Certificate of Public Convenience and Necessity, p. 18-22, 22. The Palmetto Products Pipeline company also asserted that GDOT's reliance on factors set forth in the natural gas pipeline resulted in a "fundamentally unfair and unreasonable process." *Id* at p.22.

<sup>28</sup> To that end, one proposal considered by the Commission was to define "necessity" in economic terms: "an applicant should be required to demonstrate existing modes of supply are inadequate to meet current and future demand."

application. Had it been disclosed, according to the Superior Court, this information “would have permitted... a comparison of pipeline rates to rates charged on existing infrastructure.”<sup>29</sup>

Therefore, this Commission determines that requiring an applicant to disclose additional information would permit the Commissioner and any reviewing Court to make a better determination of public convenience and necessity. This may include pricing and rate information, and it may also include requiring the applicant to provide a more detailed description of where the proposed pipeline will go, who the shareholders are in the pipeline company, the volume of product to be transported, the destinations of those shipments, what suppliers have committed to using the pipeline and whether there is any shared ownership interest between those suppliers and the shareholders or owners of the applicant. Such information, in the opinion of the Commission, would further assist the GDOT in making an assessment about the potential economic impact of a proposed pipeline and whether a project will produce economic benefits to the state.

That said, the Commission in its deliberations did not reach a final determination as to what specific information should be disclosed. As a result, the Commission finds that further study is needed and recommends that it be given additional time to consider the issue and hear testimony from the stakeholders – including petroleum pipeline companies, suppliers, distributors and retailers. The Commission finds that it would be both prudent and fair to allow representatives from the industry to be heard and to submit recommendations of their own regarding this issue before the state enacts any additional, specific disclosure requirements.

Third, the Commission finds that expanding the rights to appeal the Commissioner’s decision would better serve the interests of fairness and due process for all interested parties. At present, the law only permits an appeal if an application for certificate of public convenience and necessity is denied.<sup>30</sup> If, on the other hand, an application is approved, no such decision is appealable, which means a party who submits an objection to the application could not appeal an adverse decision. The Commission recommends allowing an approval of the application to be appealed as well.

Fourth, the Commission finds that petroleum pipeline companies should be required, prior to exercising the power of eminent domain, to attempt in good faith to negotiate a settlement with each property owner from whom the company needs to acquire property rights.<sup>31</sup> Such a requirement would provide the affected landowner with additional assurance his property will not be taken without adequate compensation. Likewise, the Commission recommends further study into the process by which the measure of just compensation is determined and whether such process should be modified.<sup>32</sup>

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<sup>29</sup> Superior Court of Fulton County, Final Order Denying Petition for Judicial Review. Hon. Kimberly M. Esmond Adams, CAFN: 2015 CV 262194, p.8.

<sup>30</sup> O.C.G.A. §22-3-87(d).

<sup>31</sup> In crafting this good faith requirement, the General Assembly may want to refer to O.C.G.A. §22-3-161, which governs eminent domain for electrical transmission lines, as a guide.

<sup>32</sup> For instance, Sen. Frank Ginn, a member of the Commission, proposed a requirement that landowners receive 25% above fair market value for property taken.



## Permit from Environmental Protection Division

This Commission also examined, in great detail, the impacts on land associated with pipeline sitting, construction, and operation, including impacts associated with potential leaks and spills. To that end, the Commission considered testimony from stakeholders on many sides of this issue. At the third Commission meeting, the Commission heard testimony from Gary W. Poliakoff, Esq., an attorney who represents landowners in a lawsuit against a pipeline company for damages alleged from a pipeline leak near Belton, South Carolina, and from Steven Caley, Esq. of GreenLaw. At the Commission's first meeting in Savannah, the Commission heard testimony from Neill Herring of the Georgia Sierra Club and Riverkeepers advocating for protection of the Savannah, Ogeechee and Altamaha Rivers. These witnesses warned the Commission of the potential dangers posed by petroleum pipeline leaks, including contamination of surface and groundwater resources, soil and coastal wetlands, and adverse impacts on natural resources, agricultural and business operations. These witnesses also expressed concern the pipeline infrastructure currently in use is "old" and "fragile," and they questioned whether leak detection devices used by pipeline companies are effective.

On the other hand, the Commission heard testimony from representatives of the petroleum industry, including Hunter Hopkins of the Georgia Petroleum Council and Dan Gardner of Colonial Pipeline Company. These witnesses described in great detail the safety measures currently used by pipeline companies, in compliance with federal law, for operations of petroleum pipelines in interstate commerce. Such measures include, without limitation, the use of "smart pig" devices which inspect pipelines from within, using on-board diagnostic systems to identify internal pressure volatility and problems in the pipe wall due to corrosion, cracking or other sources of damage.<sup>33</sup> Other testifying witnesses insisted that shipping petroleum by pipeline is the "safest way to transport oil" and specifically warned the Commission that other modes of transporting petroleum and petroleum products, including by sea, rail and truck pose dangers of their own. In this context, it is often argued, as it was by the Palmetto Products Pipe Line Company, that "pipelines are the safest mode of transportation to deliver products such as gasoline, jet fuel and diesel."<sup>34</sup>

The Commission greatly appreciates the information provided by these witnesses and the time they devoted. With the testimony of these witnesses in mind, the Commission examined the current legal and regulatory structure pertinent to the protection of land uses and natural resources from impacts associated with pipeline siting, construction and operation. Specifically, Georgia law requires that, in addition to obtaining the certificate of public convenience and necessity referenced above, a petroleum pipeline company must, prior to exercising the power of

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<sup>33</sup>In addition to testimony of these witnesses, see American Petroleum Institute, *America's Energy Revolution. Pipelines: A Critical Role in America's Energy Future*, 2014, at note 6. See also <http://aopl.org/safety/safety-excellence-program/>

<sup>34</sup>Memorandum in Support of Petition for Review of the Georgia Department of Transportation's Denial of Application For a Certificate of Public Convenience and Necessity, prepared by attorneys for Palmetto Products Pipe Line, LLC and submitted to the Superior Court of Fulton County on September 3, 2015. For this factual assertion, the applicant cited "Pipelines Are the Safest For Transportation of Oil and Gas" by Diana Furchtgott-Roth, Manhattan Institute for Policy Research (June 23, 2013).

eminent domain, obtain a permit from the Director of the Environmental Protection Division of the Department of Natural Resources.<sup>35</sup>

To understand this process in greater detail, the Commission heard testimony from Mr. Chuck Mueller, Director of Cross Media Programs for the Georgia Environmental Protection Division (EPD). As Mr. Mueller described, the environmental permit is only required after the DOT issues a Certificate of Public Convenience and Necessity and then only for those portions of the pipeline project where eminent domain is exercised.<sup>36</sup> Further, a permit may not be issued unless the Director determines after a hearing that the location, construction, and maintenance of such portion of the pipeline (using eminent domain) is consistent with and not an undue hazard to the environment and natural resources of this State.<sup>37</sup> In the event the permit application is not approved or denied within 120 days of the date of the publication of the public notice of the application, the application shall be deemed approved by operation of law.<sup>38</sup>

By Regulation, the EPD also requires that permit application include an environmental effects report that consists of the following: a description of the project; a copy of the Certificate of Public Convenience and Necessity; the location of lands under consideration and the names of their owners; information on other corridors of public utilities; information on the existence of any local zoning ordinances; a proposal, where appropriate, for monitoring the effects of petroleum pipeline on the surrounding environment and natural resources (but no proposal is necessary for leak detection or any other monitoring required by federal regulations); information on consultations with owners, listing all significant disputes and the manner in which they either were resolved or settled; and copies of any background data on engineering or environmental studies relevant to selecting or developing the proposed pipeline. This environmental affects report is generally consistent with the EPD's July 1, 1991 Guidelines for the Georgia Environmental Policy Act, which requires applicants to demonstrate they have addressed all Federal and State requirements.

Based on this information and the witness testimony referenced above, the Commission makes the following findings with respect to the current legal and regulatory system of environmental review. First, the Commission recommends modifying the "120-Day" limit set forth in O.C.G.A. §22-3-88 and increasing the application fee required of applicants. Currently, an application that is not approved or denied within 120 days of the date of the publication of notice is deemed approved by operation of law. The Commission finds this rule limits the EPD's ability to perform a full and thorough evaluation of a proposed project. As the testimony revealed, the review of a permit application can and probably should take more than four months, given the amount of information involved and the technical and specialized knowledge required. Thus, sufficient time should be granted to the EPD to ensure a full and proper review is conducted, particularly given the stakes of its decision and the considerable public interest. For the same reason, the Commission recommends EPD consider charging a fee for the application. At present, the Commission understands EPD does not charge such a fee, in which

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<sup>35</sup> O.C.G.A. §22-3-88.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> O.C.G.A. §22-3-88(d).

case the Commission would recommend charging an application fee that represents the amount of state resources EPD has to devote to perform a full and proper review.<sup>39</sup>

Next, the Commission finds that the state's interests in preserving its natural resources, environment and vital areas would be better served by expanding the scope of the EPD's regulatory review authority. Under current law, an environmental permit is required only for those portions of a pipeline project for which property interests are acquired by eminent domain.<sup>40</sup> This means an environmental permit is not required for a pipeline project that does not use the power of eminent domain, nor is a permit required for those portions of the pipeline for which property interests are acquired by means other than eminent domain. The result is that an environmental review of a proposed pipeline project will only be performed for a pipeline project prior to construction if the project uses eminent domain and only for those portions of the project that use eminent domain. In essence, a "holistic" review of a proposed pipeline project is not required by current state law. Given the potential damage that can occur when a petroleum pipeline leaks, the Commission finds it reasonable to consider expanding the scope of the state EPD's authority to review a proposed pipeline project prior to construction, regardless of how the property rights for such project will be acquired.

Third, the Commission finds that a petroleum pipeline company should obtain a bond or insurance to cover losses in the event of a pipeline malfunction or leak. Several reasons were offered for such a requirement during the Commission's meetings. One purpose is to avoid the state having to devote taxpayer funds for clean-up or environmental mitigation if a pipeline company, or successor thereto, becomes financially insolvent. Therefore, consideration should be given to whether such a requirement would apply not just to a pipeline company but also, potentially, to a parent company thereof. Another reason offered for such a requirement is to ensure ample funds are available immediately after a loss to mitigate the potential damage and disruption. Similarly, several witnesses and Commission members asserted that landowners whose property encompasses a pipeline, or is located nearby, should not be responsible for damage caused by a pipeline leaking on their property. Likewise, some witnesses and Commission members questioned what rules are in place, if any, to ensure that pipelines are properly closed, removed and/or sealed when their operational life is over.

Although there is a broad consensus for an insurance and/or bonding requirement, the Commission acknowledges that further study is warranted before the Commission can make specific legislative recommendations to the General Assembly. Indeed, the market for financial assurance instruments is complex and is not something the Commission studied in great detail. Consequently, the Commission did not reach a consensus on what specific types of products should be recommended or required, what regulatory authority should oversee their enforcement, if any, what types of losses should be insured against, or what types of coverage should be required. As such, the Commission finds that further study is warranted to determine how best to achieve these stated objectives in a manner that is fair and efficient to all stakeholders.

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<sup>39</sup> An initial estimate of \$5,000.00 was provided to the Commission, which would account for 40 hours of professional geologist review, 20 hours of administrative review and overhead costs.

<sup>40</sup> O.C.G.A. §22-3-88.

#### IV. RECOMMENDATIONS

The Commission concludes that it is in the state's interest for Georgia's petroleum needs to be supplied by a variety of sources and modes of transportation, and moreover, that optionality in this regard serves the state well. Just this year, the supply chain for petroleum products into Georgia markets was threatened and/or affected, albeit temporarily, by external events: two disruptions in the Colonial Pipeline and Hurricane Matthew. These events provided the Commission clear examples, in real time, of the value in maintaining diversity in sources of petroleum supply and modes of transporting this supply to market in Georgia.

With that in mind, the Commission finds petroleum pipelines are an indispensable part of the energy supply infrastructure of this state, and thus, vital to the state's economy. There has been considerable debate in the public, and before the Commission, about whether the state's current or future demand for petroleum products necessitates expansion of the current pipeline infrastructure in the state. This Commission does not attempt to resolve this debate. Instead, the Commission finds that if/when the need arises for new petroleum pipeline infrastructure, the state would be better served if the following modifications were made to the current legal and regulatory system:

With respect to eminent domain and the application for a certificate of public convenience and necessity, the Commission recommends requiring that any petroleum pipeline company using the power of eminent domain must negotiate in good faith with landowners in an attempt to settle prior to exercising that power. In addition, this Commission believes the application process would be improved by adding a statutory definition of "public convenience and necessity," by expanding the right to appeal, and by requiring an applicant to produce additional information about its proposed pipeline, its ownership structure, its volume commitments, suppliers and rate structure.

With respect to the potential environmental impacts of a pipeline, and the environmental permit currently required, the Commission recommends removing the "120-Day" time limit, extending the amount of time for review of the permit application, and requiring an affirmative decision be made by EPD for an application to be approved. Next, the Commission recommends EPD increase its application fee to a figure that better represents the amount of resources the department must devote to ensure a full and proper review. Further, the Commission recommends expanding the scope of the state EPD's authority to review a proposed pipeline project prior to construction, regardless of how the property rights for such project are to be acquired, and to include the entire length of the proposed pipeline within the bounds of the state. This would enable the Department to review any new proposed pipeline in full and make a complete, rather than partial, assessment of the pipeline's potential impacts on land uses, natural resources and vital areas.

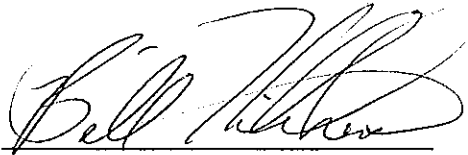
That said, the Commission acknowledges many of these recommendations involve complex issues which warrant further study, and the Commission submits that, prior to recommending additional regulatory oversight by EPD and disclosure requirements for pipeline companies, the stakeholders should have another opportunity to address these specific proposals and submit recommendations of their own to the Commission for the purpose of crafting the best public

policy. In addition, the Commission determines it will be necessary to hear from experts in the insurance and risk management industry to further assess the need for insurance and bonding of petroleum pipelines and for the purpose of making final recommendations in that regard.

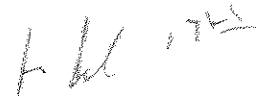
The Commission also notes that neighboring states are studying the implications of new pipeline construction and the use of eminent domain for such projects, and that South Carolina recently implemented a three-year moratorium on the use of eminent domain by private, for-profit pipeline companies which will not be lifted until June 30, 2019 unless modified by their legislature prior to that date.<sup>41</sup> Therefore, the Commission respectfully asks the General Assembly to reconstitute and extend this State Commission on Petroleum Pipelines, for another two years, to permit this Commission to complete its study and finalize its recommendations. Likewise, the Commission recommends extending the current moratorium specified in House Bill 1036 for the duration of this Commission to give the Commission time to complete its investigation and finalize its recommendations before any substantive changes in the law and regulatory system are enacted.

#### V. SIGNATURES OF COMMISSION CO-CHAIRMEN

Respectfully submitted on behalf of the State Commission on Petroleum Pipelines,



Hon. Bill Hitchens, Co-Chair  
Georgia House of Representatives  
District 161  
Chairman



Hon. Rick Jeffares, Co-Chair  
Georgia Senate  
17<sup>th</sup> District  
Chairman

<sup>41</sup> S.C. Code Ann. §58-7-10 (Supp. 2016).