



What is a Common Carrier in Texas?

This webcast will begin promptly at 12:00 PM Eastern

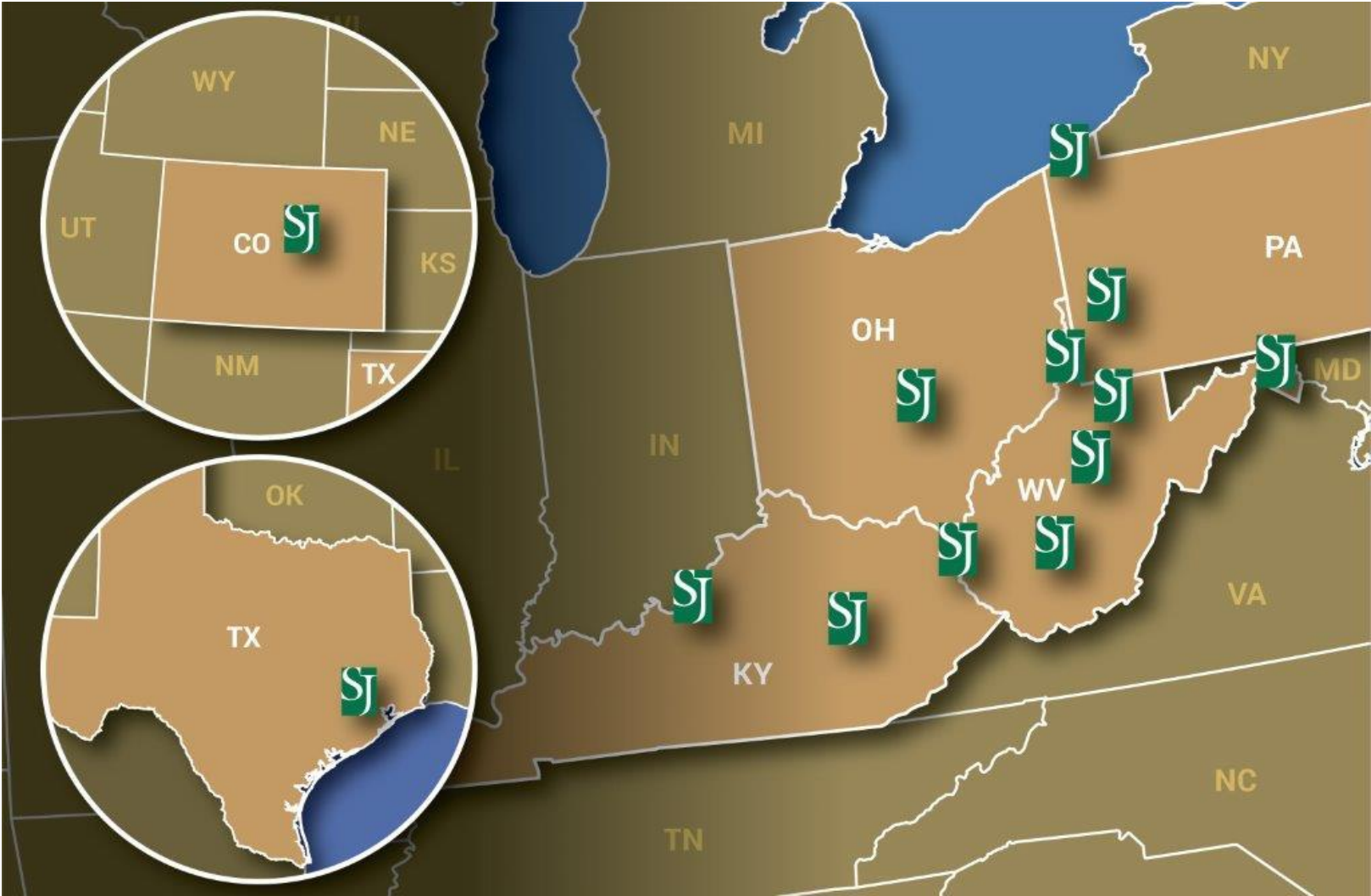
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Welcome



Today's Presenter



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Denbury Green Pipeline-Texas, LLC

v.

Texas Rice Land Partners, LTD., et al.

510 S.W.3d 909

“Because Denbury Green’s summary judgment evidence conclusively established a reasonable probability that, at some point after construction, the carbon dioxide pipeline known as “the Green Line” would serve the public, as it does currently, we hold that Denbury Green is a common carrier as a matter of law.”

Background

- Texas Rice Land Partners, Ltd., owns about 3,800 acres of land in Jefferson County, Texas, which is leased and used for rice farming.
- Denbury Green owns a CO₂ reserve in Mississippi known as the Jackson Dome, and wanted to build a pipeline to transport this CO₂ to its existing oil wells in Texas, where it would be injected to increase production.
- In March 2008, Denbury Green applied with the Railroad Commission to operate a CO₂ pipeline in Texas. There was already a pipeline from the Jackson Dome across Louisiana, so this new pipeline would be a continuation of the existing pipeline. It would start at the Texas-Louisiana border and extend to the Hastings Field in Brazoria and Galveston counties. It would be known as the Green Line.

Background, Cont.

- In April 2008, the Railroad Commission granted the T-4 permit.
- In July 2008, the Railroad Commission furnished Denbury Green a letter confirming that the permit to operate a pipeline had been granted, and all of the necessary filings to be classified as a common carrier pipeline for transportation of carbon dioxide had been made.
- In November 2008, Denbury Green filed a tariff with the Railroad Commission setting out the terms for the transportation.
- There was no hearing and no notice to landowners along the proposed pipeline route.
- Denbury Green was ready to survey. Texas Rice and its lessee said no and the fight was on.



Procedural History

- Denbury Green sued Texas Rice for an injunction allowing access to the tracts Texas Rice owned along the pipeline route. On cross-motions for summary judgment, the trial court rendered judgment in favor of Denbury Green.
- The court of appeals affirmed, concluding that Denbury Green had established, as a matter of law, its common-carrier status. 296 S.W.3d 877, 878, 881.
- The Supreme Court of Texas found that Denbury Green had not established common carrier status as a matter of law, and was not entitled to summary judgment. In its holding, the Court stated that “for a person intending to build a CO₂ pipeline to qualify as a common carrier under Section 111.002(6), a reasonable probability must exist that the pipeline will at some point after construction serve the public by transporting gas for one or more customers who will either retain ownership of their gas or sell it to parties other than the carrier.” It reversed the court of appeals and remanded the case to the district court for further proceedings. 363 S.W.3d 192.
- This test is commonly referred to as the *Texas Rice I test*.



Procedural History, Cont.

- On remand, Denbury Green again moved for summary judgment. The trial court granted Denbury Green's motion, declared that Denbury Green is a common carrier under both statutory provisions and has the right of eminent domain as to the carbon dioxide pipeline, and dismissed Texas Rice's counterclaims.
- The Court of Appeals of Texas, Beaumont, quoted the *Texas Rice I* test and focused its inquiry on Denbury Green's intent at the time of its plan to construct the Green Line, particularly since Texas Rice had challenged Denbury Green's common carrier status as early as mid-2008. The Court of Appeals considered the new evidence presented by Denbury Green and found that reasonable jurors could differ on its sufficiency to establish an intent to serve the public and whether the taking would serve a substantial public interest. The Court found that summary judgment was improper and reversed the trial court's order granting Denbury Green summary judgment. 457 S.W.3d 115.



Procedural History, Cont.

- The dispute over whether Denbury Green’s new evidence adduced on remand entitled it to summary judgment on the issue of whether it is a common carrier was appealed to the Supreme Court of Texas.
- The Court found that “Denbury Green’s summary judgment evidence conclusively established a reasonable probability that, at some point after construction, the carbon dioxide pipeline known as ‘the Green Line’ would serve the public, as it does currently,” and held that “Denbury Green is a common carrier as a matter of law.” The judgment of the court of appeals was reversed and the trial court’s judgment was reinstated. 510 S.W.3d 909.



Reliance on Intent?

- The court of appeals incorrectly interpreted the prefatory phrase, “for a person intending to build” that introduced the Texas Rice I test when it held that “central to our inquiry is Denbury Green’s intent at the time of its plan to construct the Green Line.” Reliance on this phrase to focus on intent is improper because “person intending to build” does not describe the requisite intent of a party at the time the pipeline was contemplated. Rather, the prefatory phrase demonstrates who must prove common carrier status—the pipeline company. Focusing on intent, the court of appeals disregarded relevant evidence submitted by Denbury Green. *510 S.W.3d 909, 915*
- In Texas Rice I, the evidence did not establish a reasonable probability of the Green Line’s future public use. At most, it suggested only a mere possibility of future public use. *Id.* at 914
- The test balances the property rights of Texas landowners with our state’s robust public policy interest in pipeline development, while also respecting the constitutional limitations placed on the oil and gas industry. *Id.* at 915



Substantial Public Interest?

- This is an erroneous requirement.
- We hold that evidence establishing a reasonable probability that the pipeline will, at some point after construction, serve even one customer unaffiliated with the pipeline owner is substantial enough to satisfy public use under the Texas Rice I test. *Id.* at 917




The T-4

- In 2008, the T-4 was a one-page permit application.
- The Applicant would check the box indicating whether the pipeline would be operated as “a common carrier” or “a private line.”
- Then, the Applicant would check the box indicating if the gas would be “purchased from others,” “owned by others, but transported for a fee,” or “both purchased and transported for others.”
- Denbury Green checked the “common carrier” box and the “owned by others, but transported for a fee” box.



2016 T-4

2. Mark the appropriate box for each of the following questions:

- a) Are the pipelines covered under this permit: Interstate Intrastate
- b) Commodity transported: Crude Oil Full Well Stream Condensate Products * Other *
- * Describe Commodities Transported: _____
- c) Does the commodity contain H2S? Yes No If "Yes", at what concentration? _____ ppm
- d) Requested Pipeline Classification (Common Carrier or Private Pipeline): _____
- e) Does pipeline use any public highway or road, railroad, public utility easement, or other common carrier right-of-way? Yes No
- f) Does the pipeline carry only the liquids produced by the operators? Yes No If "No", select the activity below:
 Purchased from others Owned by others but transported for a fee Both purchased from and transported for others
clear f) 

Basis for Requested Classification

A Statement or Sworn Statement is required to be submitted with this application.

If obtaining a new pipeline permit or amending a permit because of a change in classification:

- Submit Sworn Statement from the applicant providing the operator's factual basis supporting the classification and purpose being sought.

And, if requesting Common Carrier status:

- Submit documentation to support the classification and purpose.

To renew an existing permit, to amend an existing permit for any reason other than a change in classification, or to cancel an existing permit:

- Submit Statement confirming the current classification and purpose of the pipeline or pipeline system as a Common Carrier or Private Pipeline.

Other Products

- Texas Rice was limited to CO₂. Will it apply to other products? What does the future hold?
- What is happening now?



Other Cases

Crosstex NGL Pipeline, L.P. v. Reins Rd. Farms-1, Ltd., 404 S.W.3d 754 (Tex.App.-Beaumont 2013)

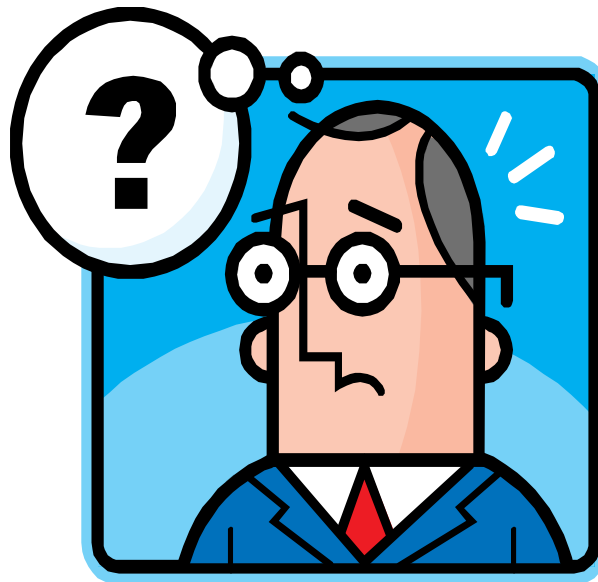
Crawford Family Farm Partnership v. Transcanada Keystone Pipeline, L.P., 409 S.W.3d 908 (Tex.App.-Texarkana 2013)

Saner v. Bridgetex Pipeline Company, LLC, 530 S.W.3d 196 (Tex.App.-Eastland 2016)





QUESTIONS?



Thank You



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