

I respectfully dissent. In 2007, the Texas Railroad Commission promulgated 16 TEX. Admin Code §7.6002 to implement statutory provisions set forth in TEX. Nat. Res. Code § 117.102 and TEX. Util. Code § 121.2025 regarding rates cities can charge pipeline companies for use of municipal rights of way and pipeline companies' appellate rights regarding those charges.

In this case of first impression, numerous pipeline companies appealed rates that Texas City attempted to impose for use of the city's rights of way from 2010-2014. The concern I have with the commission adopted decision is the abandonment of the clear requirements of §7.6002(a) of our rules. The examiners in the case dismissed appellants appeal of the 2010-2013 rates because they found those rates were not appealed within one year of receiving "written notice."¹ However, 16 TEX. Admin Code §7.6002(a) states:

"A pipeline shall file an appeal under this subchapter in writing no later than one year after the pipeline receives the **invoice for or a similar written notice** of the charge being appealed." (emphasis added)

The fact that the examiners dropped "similar" from their reference to "written notice" is paramount in this case. Our rules state that a specific form of notice is required; any written notice is not sufficient. The condition precedent to a pipeline company's ability to appeal these charges to the commission is that they receive an invoice or something similar that is reasonably calculated to notify the recipient of the payment due. Invoices put people on notice that a party to a transaction believes an amount is owed. They are processed by specific departments within companies and treated in a particular way.

By Texas City's own admission, they did not invoice pipeline companies in this case until September of 2014.² The pipeline companies quickly filed their appeal on December 22, 2014, well within the one year timeframe dictated by 16 TEX. Admin Code §7.6002(a).

The decision adopted by the commission sets a dangerous precedent regarding the seriousness with which we handle our notice requirements, and in this commissioner's opinion, deprives certain operators of their due process rights under our rules. I hope that in future cases of a similar nature that the commission will insist that pipeline companies must receive an invoice, or something substantially similar to an invoice, to trigger the one year regulatory appellate period set out in our rules.

In conclusion, I appreciate the work our staff did on this case and I respect the other commissioners' decision. I think it was the wrong decision for the reasons articulated above.

¹ January 13, 2017 Proposal for Decision P. 24 immediately preceding FN 122.

² *Id.* P.24