

Honorable Elizabeth Ames Coleman  
Post Office Box 309  
Rosedale, Mississippi 38769

Chairman Wayne Christian  
Commissioner Christi Craddick  
Commissioner Ryan Sitton  
Railroad Commission of Texas  
1701 North Congress Avenue  
Austin, Texas 78711

April 13, 2020

Re: **Motion for Commission called hearing on the verified complaint of Pioneer Natural Resources USA INC and Parsley Energy Inc. to determine reasonable market demand for oil in the state of Texas.**

Dear Chairman Christian and Commissioners Craddick and Sitton,

In advance of the hearing tomorrow, we are hoping you will have the chance to read these comments jointly made by Elizabeth Ames Coleman and Jack Coleman. Elizabeth is a former Commissioner and Chairman of the Texas Railroad Commission serving from February 2005 to March 2012, a former member of the Texas House of Representatives from 2001-2005, a mineral owner, and most importantly, a daughter of the oil patch, the 5<sup>th</sup> generation of a family of independent oil and gas producers.

Jack is a former senior environmental and oil and gas regulatory and litigation lawyer at the U.S. Department of the Interior and then energy counsel and general counsel of the U.S. House of Representatives Committee on Natural Resources. Jack drafted many parts of the Energy Policy Act of 2005, including the North American Energy Freedom Act establishing U.S. energy policy for North America to become energy self-sufficient by 2030, the proposed Deep Ocean Energy Resources Act of 2006, and many other pieces of energy legislation. In 2009 Jack founded EnergyNorthAmerica LLC, an energy policy consulting and research firm.

Unlike certain comments submitted by Washington DC-based organizations, such as those from writers associated with so-called conservative nonprofits offering up opinions on free markets, or even oil and gas industry trade associations mistakenly claiming to represent a complex, multi-dimensional industry in its entirety, we hope and believe our perspective - based on our unique combination of our various levels of state and federal legislative and regulatory experience, including, but not limited to, the understanding of the jurisdiction of the TRC and its statutory mandate to prevent waste and protect correlative rights, the fiduciary duties of business owners, and the global market and international trade rules, will be of value as your decision making proceeds. As a supplement to our comments, we respectfully include a link to a recent article in Forbes written by Elizabeth and cosigned by our colleague, Phil Bryant, the former Governor of Mississippi.

<https://www.forbes.com/sites/steveforbes/2020/04/01/save-americas-oil-and-gas-industry/#1a88e5dd7d98>

We believe that recent comments suggesting that market demand pro-rationing by the Texas Railroad Commission is contrary to free market principles are based on a misunderstanding of the functions of the Texas Railroad Commission. With the enforcement of every single statewide rule, promulgated through due process, ranging from proper signage on gates, waste storage, water disposal, quality of cement used in casing, even requiring a drilling permit to drill on one's own land for one's privately owned minerals, there is no free market except that which operates within the confines of the regulatory authority that is the Texas Railroad Commission. Those rules may have changed over the last 100 years to adapt to environmental needs and technological advances but the industry is well aware of these rules when they apply for even the basic permit to operate as an oil and gas producer in the state of Texas. Industry accepts the rules and the administrative procedures process through which complaints are adjudicated; and these rules have contributed mightily to the vibrancy of the industry and to the people of Texas. Companies choose to drill for oil and gas in Texas for other reasons along with its abundance of hydrocarbons. One of those reasons is the oversight of the Railroad Commission, that has been finely tuned over decades so as to create conditions that have made Texas if it were a country the 3<sup>rd</sup> largest producer of oil in the world just behind Russia and Saudi Arabia. Producers knowingly enter into a "non free market" arrangement with the Railroad Commission when they make an application to drill a well. The Railroad Commission's evenhandedness in applying the rules they promulgate has been a magnet for oil and gas producers and simply put, industry knows the rules going in. In fact, Elizabeth can never recall a party claiming ignorance of a rule or law as a defense by a protestant in a hearing. So, the suggestion that applying an existing rule in the TRC's toolbox would be anti-free market suggests a serious lack of understanding of what and why the Railroad Commission exists -- its stewardship role on behalf of many stakeholders. Similarly the allegation that exercising such a tool to protect correlative rights and prevent waste, in this case market demand prorationing of production - as one commenter said " gives Saudi Arabia, Russia and other countries leverage over Texas in perpetuity", is elementary and a notion not worth the paper it is printed out on.

Invoking a force majeure during Elizabeth's tenure on the Commission, the Commission was requested to temporarily set allowables on natural gas production due to the inability for certain gathering systems in the coastal regions during a hurricane to accommodate the supply. It would be a tragedy for the Railroad Commission to forfeit this tool, which protects all Texas producers equally from demands made from parties up and downstream who may want to take advantage of an emergency situation. Temporary across-the-board government-mandated production limits relieves producers of contractual obligation to produce hydrocarbons, thus ensuring that predatory plaintiffs, predatory lenders, and even predatory buyers are not able to take unfair advantage of a situation caused by extreme circumstances.

What are the extreme circumstances other than hurricanes? We believe that extreme conditions started many months before the Coronavirus played havoc on world demand. It is clear that the new Saudi Crown Prince, Mohammed bin Salman, instigated the dumping of oil on the world market early in his tenure (and now joined in this by the energy minister, his brother, Prince Abdulaziz bin Salman), and along with Russia, their trade offences went unaddressed by US trade regulators. We do not believe that the US domestic producer was

collateral damage between this competition by Russians and the Saudis to predatorily flood the world oil market, in fact that they were and will remain a target as US crude gains market share which will happen thanks to the relatively recent crude oil export policy approved by the US Congress.

We disagree with the suggestion from those unfamiliar with trade laws, that Saudi Arabia is not dumping because “the Saudis can just drill cheaper than we can”. Dumping is selling below the cost that is required to sustain the value of the commodity to the country, in this case Saudi Arabia. They are and have been backstopping their low-price crude with their sovereign wealth funds. COVID-19 is their friend in that their effort to illegally flood the market to recoup market share and reduce their competition was positively affected by the pandemic. Unfortunately for the perpetrators of unfair trade, the pandemic has destroyed demand when their goal was simply to destroy supply coming from the United States.

Simply put, companies that operate wells in America, in legal collaboration with their investors, make binding contractual obligations based on the laws of our nation - laws that protect American industry from trade offenses by predatory nations. These trade offenses have gone unpunished for reasons too numerous to mention here. But comments - such as those made in the editorial of a major newspaper and others suggesting that by letting companies go broke it is somehow an appropriate way to free up the market for those companies who “planned better” - are not only un-American, but could be - to some extent - aiding and abetting an enemy in a time of crisis. A healthy domestic energy industry is critical to our national security interests, and allowing our domestic industry to founder due to illegal machinations of countries that do not respect America’s rule of law cannot possibly be attributable to free markets, and in fact is anti-free market.

On a macro level, the very notion that assets lost from bankruptcy, due to circumstances beyond the control of the company, somehow increases efficiencies in productivity are nothing more than the musings of economic illiterates. In fact, a company’s failure cannot be attributed to leadership or investors’ decisions when operating under extreme circumstances beyond their control. The creative destruction of capitalism notwithstanding, to tout bankruptcy as an acceptable outcome and a reason to avoid the TRC’s statutory authority to prevent waste, is a sad development in the thinking of the oil and gas industry. It malevolently implies, with no facts to support, that all companies unable to survive the onslaught of sinister trade practices, are necessarily mismanaged thus they should get their just rewards, so to speak. Using tools at your disposal that establish production quotas for all companies in times of emergencies, will create a level playing field for crude oil producers because all producers are treated the same.

This issue is purely for the Texas Railroad Commission and applies to operators producing in Texas for the benefit of Texas mineral owners, companies, and state coffers. Unfortunately for some pundits singing the siren song of free markets to influence public opinion, there is sound legal precedent for all the regulations in the Commissioners’ quivers, including the authority to allocate production limits. We all want free markets, but that is not applicable here. There is no one rule or regulation that is more “free-market” than another. Commissioners, you will

not be condemned as “anti- free marketeers” by people who really know the facts and the law if you decide to use market demand proration as a tool to stabilize the oil industry operating in Texas. We believe that a market demand proration in the current circumstances will result in a balanced, fair result to all who are intended to be protected by this rule.

Thank you,

Elizabeth Ames Coleman

Jack Coleman