
Pipelines & The City

Purpose of Discussion

- **Pipeline Authority to Use or Cross City Streets**
 - **Authorized Activities of City**
 - **Condemnation**
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**What Entities in Texas are
Authorized by Law to
Operate Gas Pipelines?**

Entities That Can Operate Gas Pipelines

- **Common Carriers**
 - **Gas Utilities**
 - **Gas Corporations**
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What is a Common Carrier?

- **A pipeline that transports gas “for hire.”**
 - **Section 111.002 of the Texas Natural Resources Code.**
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What is a Gas Utility?

- **An entity engaged in the business of transporting or distributing gas for public consumption.**
 - **Section 181.021(2) of the Texas Utilities Code.**
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What is a Gas Corporation?

- **A gas corporation includes partnerships, limited partnerships, corporations, and limited liability corporations that operate gas pipelines.**
 - **A gas corporation can be a gas utility.**
 - **Sections 181.001 and 181.021 of the Texas Utilities Code.**
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No Pipeline May Be Operated Without Texas Railroad Commission Approval

- **Section 121.051 of the Texas Utilities Code subjects gas utilities to the jurisdiction of the Texas Railroad Commission.**
 - **Section 121.151 of the Texas Utilities Code allows the Railroad Commission to prescribe and enforce rules to control and supervise pipelines.**
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**Do Common Carriers, Gas
Utilities, and Gas Corporations
Have the Power to Condemn?**

Gas Corporations and Gas Utilities Have the Right to Condemn Property

- **Section 181.004 of the Texas Utilities Code provides:**
 - A **gas corporation** has the right and power to enter on, **condemn**, and appropriate the land, right-of-way, easement, or other **property of any person or corporation**.
 - A gas utility is included in the definition of corporation used in this section.
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Common Carriers Have the Right to Condemn Property

- **Section 111.019 of the Texas Natural Resources Code provides:**
 - **(a) Common carriers have the right and power of eminent domain.**
 - **(b) In the exercise of the power of eminent domain granted under the provisions of Subsection (a) of this section, a common carrier may enter on and condemn the land, rights-of-way, easements, and property of any person or corporation necessary for the construction, maintenance, or operation of the common carrier pipeline.**
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**Do Gas Utilities, and Gas
Corporations Have the Right
to Cross City Streets?**

Yes, Subject to a City's Consent and Subject to the City's Direction

- **Sections 181.005 & 181.006 of the Texas Utilities Code – gas corporations**
 - **Sections 181.022 & 181.023 of the Texas Utilities Code – gas utilities**
 - **Section 111.022 of the Texas Natural Resources Code – common carriers**
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City's Authority Over its Streets

- **Texas Transportation Code § 311.001**
 - **Municipality has exclusive control over and under the public highways, streets, and alleys**
 - **This includes the right to:**
 - **Control, regulate, or remove an encroachment or obstruction from a public street**
 - **Open or change public street**
 - **Improve street**
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Texas Statutes Authorize Cities To:

- **Establish conditions for mapping, inventorying, locating, or relocating pipelines over, under, along, or across a public street. Texas Utilities Code § 121.202(b)(3)(A).**
 - **Establish conditions for mapping or taking inventory in a municipality's extraterritorial jurisdiction. Texas Utilities Code § 121.202(b)(3)(B).**
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- **Assess charges for the placement, construction, operation, or use of a gas pipeline in city streets, if the streets incur damage. Texas Utilities Code § 121.2025.**
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Limitations on Cities' Authority

Limits on Safety Regulations

- **A city may not establish a safety standard or practice that is regulated under state law, or a federal law. Texas Utilities Code § 121.022(a).**
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Federal Role as Provided in the Natural Gas Act

- **The Federal Natural Gas Act applies to the transportation and sale of natural gas in *interstate* commerce. 15 U.S.C. § 717(b).**
 - **The Federal Energy Regulatory Commission (the “FERC”) regulates the interstate transmission of natural gas, oil, and electricity. The FERC was established by 42 U.S.C. § 7171.**
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States' Roles as Provided in the Natural Gas Act

- **Under the Natural Gas Act, the states retain jurisdiction over:**
 - ❑ **Intrastate transportation,**
 - ❑ **Local distribution,**
 - ❑ **Distribution facilities,**
 - ❑ **Production of natural gas, and**
 - ❑ **Gathering of natural gas.**
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Federal Role as Provided

in the Natural Gas Pipeline Safety Act

- The National Gas Pipeline Safety Act (NGPSA) governs
 - safety requirements for interstate gas transmission lines and
 - *expressly preempts* more stringent safety regulation of such lines by state agencies. *United Gas Pipe Line Co. v. Terrebonne Parish Police Jury*, 319 F. Supp. 1138 (E.D. La. 1970), *aff'd*, 445 F.2d 301 (5th Cir. 1971).
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Right to Condemn Pursuant to Federal Law

- **An interstate pipeline, having a federal certificate of public convenience and necessity, probably can condemn a Texas city to cross its streets.**
 - **Zoning authority was unreasonable, arbitrary and without foundation when it prevented interstate pipeline from going through the town. *Transcontinental Gas Pipe Line Corp. v. Milltown*, 93 F. Supp. 287, 295 (E.D. N.J. 1950).**
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Right to Condemn Pursuant to Texas Law

- Under Texas Law, Gas Utilities, Gas Corporations, and Common Carriers have the right of eminent domain against *Persons* and *Corporations*.
 - “Person” includes the government or governmental subdivisions. Texas Government Code § 311.005(2).
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