

Update and Commentary on Recent Developments Concerning the Permian Highway Pipeline Project

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A Texas appellate court passed on expediting Kinder Morgan's fight to dissolve a temporary injunction blocking construction of the \$2 billion Permian Highway Pipeline Project ("PHP Project") and instead ordered a bit of patience in *In re Permian Highway Pipeline LLC*, 03-20-00215-CV (Tex. App.—Austin Apr. 3, 2020, no pet. h.).

On March 12, 2020, the Hays County Court-at-Law granted Electro Purification, LLC's applications to temporarily halt construction of the 430-mile pipeline system extending from West Texas to the Houston area. After Kinder Morgan moved to lift the temporary restraining order obtained by the Houston-based water supplier, the court advised that the injunction would be extended until a future hearing was set.

Kinder Morgan filed a petition for writ of mandamus with the Austin Court of Appeals, arguing that the lower court abused its discretion by refusing to schedule a hearing by teleconference or videoconference in contravention of the Texas Supreme Court's guidance that temporary restraining orders and temporary injunctions remain essential functions during the COVID-19 pandemic. The appellate court's panel declined to intervene, instead recognizing that the trial court may need additional time to put appropriate systems in place during these "unprecedented circumstances." The panel expressed sympathy for the "the trial court's concern that it not endanger essential staff . . . most at risk from an in-person hearing."

On April 9, the parties filed a joint status report indicating that a hearing will take place via (what else?) Zoom—a reminder that all industries and governmental branches must adapt to this ever-changing environment. Kinder Morgan, meanwhile, appears to be taking appropriate precautions related to the coronavirus pandemic. It has implemented social distancing protocols at worksites. According to recent statements, Kinder Morgan does not expect the pandemic to impact its PHP Project construction schedule at this time.

The much-needed PHP Project will provide an outlet for increased natural gas production in the Permian Basin, and is expected to be in service in 2021. The project is engineered to transport a maximum 2.1 cubic feet per day (Bcf/d) of natural gas from Waha, Texas, to growing markets in the Gulf Coast and Mexico. A notable benefit of the PHP Project is that it will provide the ability to significantly reduce natural gas flaring in Texas and New Mexico. Interestingly, the environmental groups who are plaintiffs in the *In re Permian Highway Pipeline LLC* case, typically criticize flaring and frequently lobby for mitigation efforts, still oppose completion of the pipeline but for other reasons.