

Chairman Christian's Dissent Lends a Dramatic Flair to an Otherwise Routine Decision of the Texas Railroad Commission

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On the 6th of August 2019 the Texas Railroad Commission (the "RRC") issued a Final Order authorizing EXCO Operating Company, LP ("EXCO") to flare casinghead gas from 69 flare points covering various leases (www.rrc.texas.gov/media/53471/01-0308609-ord.pdf). Such an order from the RRC is hardly notable; the RRC has never rejected a request to flare excess gas under Statewide Rule 32 since its inception, and the agency held true to its record in this case. What is notable in this particular Final Order, however, is the empty signature line of one of the three RRC Commissioners. Chairman Wayne Christian dissented among the panel of the three Commissioners.

As the agency that oversees the oil and gas industry in Texas, among the charges of the RRC is to regulate flaring of natural gas. The on-going boom of oil production in Texas has brought with it more associated gas than the infrastructure can take on. As a result, the RRC has approved permits for flaring as a matter of course, resulting in a volume of flared gas that exceeds the statewide demand for natural gas.

However, the dissent of the Chairman of the RRC in the EXCO Final Order begs the question of whether Chairman Christian's position in the EXCO case is a harbinger of things to come, or merely a small blip that can be disregarded – perhaps due to unique circumstances involved, or other unprophetic reasons – by what remains a state and regulatory body supportive of the oil and gas industry.

The facts of the EXCO case are unique in two respects: (1) this was the first protested application to Statewide Rule 32; and (2) the applicant sought to flare nearly 100% of its gas, despite the existence of a capable gathering system that could deliver the majority of gas production to the market.

EXCO's rationale for flaring was not for a lack of pipeline infrastructure or to address a temporary curtailment of pipeline capacity, but because it did not have a contract to use the existing gas gathering system and its previous gas purchaser had canceled its contract to purchase gas. Insolvency and commercial factors created a situation in which EXCO, despite the availability of a ready to use gathering system, determined that gathering and marketing the gas would be economically infeasible.

Chairman Christian cited concerns of waste and current levels of flaring, indicating the possibility that the RRC's days of rubber-stamping flaring permits may have an end in sight. In the 2018 U.S. Senate election, a Texas Democratic congressman gave the Republican incumbent a competitive campaign, causing analysts to wonder if the political sands of Texas are shifting left. As elected officials, the Commissioners of the RRC stand on those same sands, and could perhaps be shifting with them. Presumably the 2020 elections will provide additional

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data points to this analysis, as will further decisions, on flaring permits and other industry issues, from the RRC.

For now, Republicans represent Texas in the U.S. Senate, the Governor's mansion and all statewide offices; and the RRC issued a permit to authorize flaring of nearly 100% of gas produced at the wells in a location with existing infrastructure and capacity to take the gas to market. Perhaps the Texas skies will remain bright, and hazy.