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## Interview, part 1: Rep. Phil King talks electricity

House Regulated Industries Chairman **Phil King** (R-Weatherford) is a critical member of Speaker **Tom Craddick**'s leadership team. We caught up with King to talk about utilities and other key political matters. Due to the interest in these issues, we are splitting the interview into two parts. In this week's installment, King discusses electricity issues.

**LSR:** Given what happened last session, is there still a need for bills like SB 482 and SB 483?

**King:** [One of the bills] dealt with how much generation any one company could own or control. I think it's a little too early to tell if we're going to need similar legislation, but ask me again at the end of the summer. The market monitor we created seems to be doing a good job at policing price manipulation. The nodal market model which is coming online is going to make the whole pricing system on the grid a lot more visible, a lot more transparent. The more transparent, the more difficult it is for

anyone to manipulate prices. I think we're OK, but ask me again at the end of summer after we see how electric prices do over the hot months.

**LSR:** Could the same be said of the retail sides of those bills?

**King:** Don't get me wrong. Electric rates are way, way high. But if you look at the growth in electricity rates this year compared to the growth of other commodities — food, gasoline, diesel — the retail market's been holding its own.

**LSR:** What do you make of the way the Public Utility Commission and the Electric Reliability Council of Texas (ERCOT) have handled the CREZ [Competitive Renewable Electricity Zones] docket as well as the PUC's overall efforts to build more transmission to get wind power to the populated areas of the state?

**King:** I think the PUC is showing a lot of competence. It's a tough process. Balance is the

key. We want and we need the economic development that wind can bring to Texas. And we certainly need to diversify our fuel mix if we want to bring down the cost of electricity.

Natural gas is what is driving up the cost of electricity. Wind is a good option, but it's not the silver bullet for prices. There is no silver bullet.

We have a lot of room to expand wind generation, but the expansion has to be balanced against the cost of building transmission and against reliability concerns.

We can turn a power plant on and off when we want to; we can't control the wind. To bring down retail prices, we need to build wind generation; we need to build coal plants; we need to build nuclear; and we need to encourage other generation sources like solar. The key thing is that the Legislature not specify the technology, or we could end up creating problems the way the feds have with ethanol.

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## Committee studies eminent domain, Christmas mtns

by **Mark Lavergne**

The House Land and Resource Management Committee will have its work cut out for it this session.

The committee chaired by **Rob Orr** (R-Burleson) met On May 5 and 6 this week to discuss a number of hot button land-related issues, among them eminent domain reform (or lack thereof), and the Christmas Mountains.

### Eminent domain reform

If there is any land issue at which another swing will assuredly be taken in the next session, it is eminent domain reform. **Richard Cortese**, a Texas Farm Bureau director, argued to the committee that "eminent domain proceedings are heavily favored towards condemning authorities."

**Phillip Russell**, assistant executive director of the Texas Department of Transportation (TxDOT), said May 6 that the controversial agency tries to "balance those private property rights with the needs of a growing and bustling

economy and a bustling state."

But the committee seemed to wonder if that balance can be better achieved through statutory means, such as requiring condemning authorities to pay for landowners' appraisal and attorney's fees.

Reform of eminent domain law in Texas is important, say proponents, because of the 2005 U.S. Supreme Court decision *Kelo v. New London*.

The court held that economic development qualifies as public use, and therefore the government could force a private citizen to sell land, so that the government could hand that land off to a commercial entity in order to "develop" the local economy.

The decision left open a window for state lawmakers to place limitations on the condemning powers of the government. Sen. **Kyle Janek**'s (D-Houston) SB 7 from 2005 was the first step in that direction. Rep. **Beverly Woolley**'s (R-Houston) HB 2006 from last

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## Land/from 1

session would have taken it further by defining “public use” to exclude the possibility of handing private land over to private commercial entities.

Just before finally passing the Legislature, Sen. **Glenn Hegar** (R-Katy) added a provision that owners who suffer diminished access to their property as a result of eminent domain must be compensated for it.

The bill made it to Gov. **Rick Perry**’s desk. Perry vetoed it. He said the diminished access amendment would have cost the state \$1 billion.

Property rights activists were not pleased, and the hearing on May 6 showed they still aren’t.

**Kristina Sillcocks** of the Attorney General’s Office, who has represented TxDOT in litigation proceedings, told the committee that just compensation of property owners is currently defined by determining “fair market value,” i.e., looking at similar-sized properties that have sold in the same general area. In other words, the citizen whose land is taken is compensated only for the land, not the cost of litigation should any disagreements arise.

Sillcocks said 85 percent of eminent domain cases are negotiated between the condemning authority and the landowner.

**Harold Collum** of TJD Corporation in Fort Worth told the committee of his experiences having a small tract of land taken by the state. Two independent appraisers sized up the land for Collum and the state respectively, settled with Collum for the higher amount, (\$109,000), but then sued Collum to try to recover some of it. A third appraiser set the price of the land in the middle of the first two appraisals – this one at \$64,000.

What followed was a lengthy litigation process over the price of the land that is “killing us really, financially,” Collum said. His attorney estimates that by the process, once over, will have cost him about \$35,000. That does not even include the possibility that, in the event of a trial, a six-person jury could side with the state as to the land’s value, in which case Collum would have to return about \$45,000. All told, the taking of his land could end up costing him a pretty penny as well.

“It’s probably too late to help us,” Collum said, “but I sure hope you change the law.”

Conservatives and liberals both have reasons for wanting to make the eminent domain process a little less ... eminent. For conservatives it is a simple matter of property rights and ensuring just compensation.

Orr asked Collum for suggestions on how to “better the process,” to which the landowner

replied, “Chairman Orr, if they had to pay our attorneys’ fees, I don’t think this would have gone forward. If they had to pay attorneys’ fees and our expenses, then I think this would stop real quick.”

For liberals it’s a text book case of the big guy picking on the little guy.

Rep. **Yvonne Davis** (D-Houston) hammered Russell on whether it was common practice for TxDOT to appeal appraisals. Russell said only “a very small amount” of cases are appealed by either the landowners or the state.

But Davis seemed skeptical, saying that among entities with “unlimited resources,” like big businesses and the government, “there is an incentive to string it along because it basically depletes the other person’s resources, and therefore they end up settling under duress.”

“To me I don’t think that’s a way to treat citizens,” Collum said.

Said Rep. **Dan Barrett** (D-Fort Worth): “If there is some way that we as a Legislature can deal with this system and make it fairer to landowners of all stripes, then I think that that’s something we ought to look at.”

**Bill Peacock**, director of the Center for Economic Freedom at the Texas Public Policy Foundation (TPPF), said that a recent study by TPPF has shown that there are no negative economic consequences from eminent domain reform. In fact, large scale economic development can and does occur without eminent domain, he said.

“At the end of the day,” Russell said, “if you think it is appropriate and public policy that additional compensations should be due to private property owners, all we would say ... is please try to be very clear about it so that there’s no argument or worry that if something passes later on we find ourselves arguing in the courthouse about what the intent was of the Legislature.”

### *The Christmas Mountains*

With several members of the Capitol Press Corps sitting about 20 feet to his left, General Land Commissioner **Jerry Patterson**, speaking about the now-infamous Christmas Mountains, told the House Land and Resource Management Committee that in all his political career, “I’ve never encountered an issue that the press has screwed up more than this one.”

LSR interviewed Patterson on Oct. 5 of last year, at which time he emphasized that the Christmas Mountains are not accessible to the general public. On May 5, he showed the Land and Resource Management Committee a satellite map of the controversial tract of land that demonstrated as much.

Patterson told the committee that an easement has been added that leads onto the property, but that the land there is so rugged that it provides access only legally, not practically.

Rep. **Joe Pickett** (D-El Paso), admitting he had only read the papers, said: “I’m telling you, this is completely different from what I had envisioned. I didn’t realize the limited access, the rugged terrain, the pros and cons of who has it.”

The Texas Parks and Wildlife Department told the committee that they are still not interested in acquiring or running the Christmas Mountains. **Carter Smith**, executive director of Texas Parks and Wildlife, said that TPWD’s priorities for acquisition of land is governed by the State Land and Water Resources plan, which does not include Christmas Mountains. TPWD manages 450,000 acres near the Christmas Mountains, including Big Bend State Park, Smith said.

**Andy Jones**, who represents the Conservation Fund in Texas, Arkansas and Oklahoma, told the committees that donors have developed an apprehension towards working with them as a result of the Christmas Mountains controversy. Said Jones: “I guarantee you the first question out of the donor’s mouth is, ‘Are you working with the Land Office on this at all? And if you are we’re not going to talk to you.’ They’re concerned about where their money is going.”

Jones said that the National Parks Service (NPS) had a very substantial staff at the neighboring Big Bend, and thus would be better equipped than the limited staff at the General Land Office.

Patterson said the intent is to keep the Mountains in the ownership of the state of Texas, but said “that could change in a matter of months.” He said he would be open to any type of entity, state—federal, or private—owning the property so long as his concerns are met, among them, the allowance of hunting and the preservation of visitors’ rights to bear arms on the property.

“I happen to believe it is unconstitutional to have an arbitrary ban on firearms,” he said.

Patterson also emphasized that if the state sells the property to NPS, it must maintain rights to the minerals there.

“I’m not interested in our access to minerals contingent upon a mineral plan developed by the National Parks Service,” he said. “... Mineral reservation will remain to the best of my opinion at this point, and we will have the ability to access those minerals without any federal requirements that we need to satisfy. Only state requirements in doing so.” ♪

