Pipeline Safety Trust November 2014 Conference Notes

Reported by Jack Petropoulos

The Pipeline Safety Trust (PST) held its annual conference in New Orleans this year from November 20 to the 21st. The PST was born out of a pipeline tragedy that resulted in significant fines imposed on an operator. The Trust was created from those fines with a mission of advancing pipeline safety and a perspective of challenging operators to work with regulators and community groups to do so. The result was a relationship that is aimed at moving from 'Fake Harmony' to 'Constructive Conflict'. What I saw was an amazing coming together of industry representatives, service providers, impacted entities, and activists. This was a no holes barred conference where activists did not hesitate to call operators out on their motives and practices. The willingness of Industry players to be here and to participate, in spite of an often antagonistic audience was impressive.

Many of Groton's complaints about transparency, false cooperation etc. were echoed over and over by both citizens, and members of the Trust. At the same time, many of Kinder Morgan's assertions that their routes were preliminary and subject to change, and that both they and FERC were interested in community feedback were substantiated. The enormity of the prospect of having to address communities that are predisposed to resistance was as clear as was the validity of the complaints that those communities had about the success of operators in meeting their responsibility of community involvement.

For me the biggest take away was that the industry is not simply rolling over communities, and that communities are not simply standing by and being rolled over. There is certainly tension. Resistance is having an impact. Yet while all this is going on, there are efforts to address and change this dynamic. Industry is understanding that time is money and that working to address resistance may be more effective than simply trying to plow through it. Communities are learning that Safety is addressable and that operators are willing to talk. Federal agencies have difficult reputations but absolutely take their roles seriously. The example of KM batting 1000 with FERC applications is offset by the fact that their routes often change substantially as a result of the review process.

It is worth noting that in no instance did I hear reports of an example where pipeline operators simply came in to town and did as they liked simply because they could. Certainly there may be such examples but they were not presented here. Nor was there any professing that the community : operator relationships were all about singing 'Kymbaya'. It was clear that there is tension, that all sides recognize that it exists, and that they value the role of the PST in working to address it.

For my part, I gave a 12 minute presentation (you can watch a video of the presentation here and a .pdf of the presentation is located here) in a segment of the conference focused on telling operators what municipalities wanted to know, and what they wanted Operators to know. My focus was to describe Groton's response to the proposed pipeline and the outstanding questions we had for Kinder Morgan including the need for more gas supply. The closing message was: "When you lose credibility you create active opponents." The presentation was well received with many people approaching to offer suggestions, resources and confirmation that our experience was not unique. Ron McClain President of Pipeline Products at KM approached me to say that my rendition of the failure of KM to communicate disappointed him. He wanted me to know that our experience was not what KM wanted to create as an impression, and that it was their goal to be leaders in the industry with regard to community responsibility. That KM works hard to be a leader in responsibility in this industry was substantiated by many throughout the conference.

Much of the conference produced information that was useful for us to know about. Here are some useful notes:

- Collette Honorable of the Arkansas Public Utility Commission was nominated to FERC. Seen by Carl of PST as fair and objective with a reputation of fighting for transparency.
- Burning natural gas is lower in emissions than coal but leaking gas can add to the total emissions and needs to be factored in an analysis of clean energy. If leak rate of natural gas is >3% then the compounded effect of emissions from burning and leaking is greater than the emission effect of coal. The EPA says that the leak rate is 1.4% but this is open to question.
- States very in their inspection, enforcement, penalty levying and collecting practices and records. Raw numbers may be deceiving. Washington State issues many violations and collects lots of fines. Arizona issues even more violations yet has a low collection record. Their philosophy is that fines are less effective than other measures. For instance when they find a violation that goes uncorrected, such as to a large industrial park, they turn off the gas and let the end users drive the owner to compliance.
- Lindsay Sander Principal at Sander Resources made the following observation about negotiation strategies:
    - "Point to Point" advantage favors the early mover in negotiations. KM is coming from point *A* (NY state) and going to point *B* (Dracut). The first entity that gives KM certainty along that route is going to be able to dictate the terms of where it enters that entity and where it exits that entity. Be the first to set new points along the way and enjoy significant influence. Be the last and you lose the ability to dictate where it comes in and where it goes out. This position enables a significant negotiating advantage.
- John Tynan of Central Arkansas Water john.tynan@carkw.com offered his experience with protecting watersheds through local ordinances but they have to be properly constructed.
    - There are ways that local government can overcome the power of the pipeline. Local ordinances that are created simply to address safety do not stand challenge. But things that are there to address legitimate home rule issues like noise, preserve open space etc may withstand challenge. Safety doesn't fly because PHMSA is responsible for safety so if you claim "We do this because of safety, the courts say: PHMSA is responsible for that".
- One consistent theme was the discussion about absence of transparency. Operators seemed to be getting the message as many of the sessions were joint presentations where local entities stood with operators who had worked together to resolve differences. In many cases these relationships had started out badly but had evolved positively.
        - Karen Sullivan, Economic Development Manager for Adams County (Colorado) Adams County Commissioners had a Conditional Use Permit requirement for a proposed pipeline where Enterprise Products' Front Range Pipeline (FRP) wanted to come through her County. County commissioners were presented with 3 options and all 3 were poorly reviewed so they felt that they were being played. So they just threw up an obstacle and denied the application and took the gamble that Enterprise would come to the table rather than fight in court and spend time.

- The gamble worked and a second application was submitted and eventually approved as a result of changes in the path, easement widths, pipe wall thicknesses etc. But what really changed was that there was a realignment of trust through shared information and collaboration. There was give and take on both sides. This had been quite an antagonistic initiative with a fair amount of police involvement, nails spread out in parking lots and other forms of ugly protest. The fact that it got back on track is evidence that even challenging situations can change.
- Enterprise Rep Jeff Waldo acknowledged that ***time was a factor (and that time is money)*** in their coming back to the table.
    - We really desire, and work toward, voluntary agreements.
    - Cost to Enterprise to submit a new application was several million $ (had to rebuy new right of ways having already
- Karen felt that after saying no, that Enterprise really did sit back and ask themselves what they did wrong. Said she saw a real change.
- It is interesting to note that in this case Adams County was alone in opposing the pipeline. Neighboring counties were proponents. Adams County opposed it based on the impact that they though it would have on their long range planning. They received a lot of political pressure from their neighboring counties. This points out that ***opposition is regional***.

- Kristina Lawson, Mayor of Walnut Creek CA. talked about fighting PGE's Pipeline Pathways Project relative to PGE's initiative to cut 53 trees that were important in their city. She used an existing tree cutting ordinance to help to get PGE to the table. Together Walnut Creek and PGE worked out a way to address trees one by one and have forestalled a lot of work as a result. They have not found out if the Ordinance will actually stand up in court and both parties know that day will come.
- Chuck Lesniak, City of Austin discussed Pipelines Informed Planning Alliance (PIPA)
    - PIPA is a set of guidelines created to encourage Operators and Property Owners to work well together. Primarily around property owners (mostly developers or managers of large developments) reaching out to pipeline operators to be sure that their interests are coordinated. But there is emerging thought that the same principles can be applied to operators who should be working with land managers as Standard Operating Procedure.
- Pipelines are as prevalent and important a part of our nation as are roads. There are 2.6m miles of paved road in the US and 2.7m miles of pipe.
- There was a session discussing how Pipeline location and safety was handled in Canada.
    - Canadian operators have a reputation for more transparency than in the US, but multiple areas of the resulting discussion suggested that this may not be accurate.
        - Nana Conea, Director of Applications, National Energy Board (NEB) of Canada provided some insight. NEB is an Independent regulator (PHMSA and FERC in one). They have an Intervener program as well (similar to FERC). In order to participate as an intervener you must be directly affected or have expertise. NEB provides funding for individuals, non-profits

and non-industry groups to help them to participate. Over the last 5 years there has been a huge bump in public participation and Intervener applications this year.

- Melanie Omeniho, Chief Admin Officer Metis Regional Council was told by a regulator "We are here to approve projects not to disapprove them". Metis Regional has filed as Interveners and get $15k in funding from NEB as an intervener on a project. Not enough by any means. Carl from PST remarked: Seems like your experience is the same as ours except that you get $15k.
- Jim Donihee, CEO, Canadian Energy Pipeline Assn (CEPA) described CEPA as the single association representing all transmission operators in Canada. "Integrity First" is their registered trademark. Board made up of industry CEOs who agree to hold each other accountable
  - Their approach is: Trust = ((Credibility + Reliabielity + Intimacy) / Selv interest)
    - Constituents have committed to "Getting to Zero". CEPA's has an External Advisory Board made up of a broad range of individuals that can bring perspective to Board
- Carl Weimer (Director of PST) observed that PHMSA may be providing more transparency in the US than the NEB achieves in Canada. My take away was that there are no Nirvanas in this scenario. Canada doesn't do it better. This is a difficult scenario and conflict is inevitable.

- Catherine D. Little of Hunton & Williams (Legal) who tend to represent pipelines
  - Other than the fact that the public often does not want a pipeline to be built, we (Operators and the Public) have highly aligned interests such as public safety, environment, community impact and cost.
- I spoke with Sam Hall, Program Manager, Pipeline and Hazardous Material Safety Administration (PHMSA). Among other things Sam is involved with providing Technical Assistance Grants (TAG) to communities. The objective of the TAGs is to help the public to become aware of pipelines and safety issues before and after they are installed. These grants go up to $100k and he was very encouraging of applications even for communities that are simply faced with the prospect of a pipeline. For example the idea of putting together a documentary on how a pipeline has affected the town of Hopkinton was very well received. Overall Sam's representation of PHMSA (and the extent of their involvement in this conference) suggested a very sincere interest on the part of PHMSA to advance community education.