



RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

MEMORANDUM

TO: Chairman Barry T. Smitherman
Commissioner David Porter
Commissioner Christi Craddick

FROM: Cristina Self, Attorney– General Counsel Section
Office of General Counsel *CS*

THROUGH: Lindil C. Fowler, General Counsel *LF*

DATE: July 1, 2014

SUBJECT: Proposed Amendments to 16 TAC §3.70, relating to Pipeline Permits Required; Gas Utilities Docket No. 10366.

July 8, 2014		
Approved	Denied	Abstain
<i>CC</i>		

Attached is Staff's recommendation to publish certain amendments to 16 Tex. Admin. Code §3.70, relating to Pipeline Permits Required.

Staff requests the Commission's approval to publish the proposed amendments in the *Texas Register* for a 30-day comment period. If approved at conference on July 8th, the proposal should appear in the July 25th, 2014, issue of the *Texas Register*. This proposal and an online comment form would also be made available on the Commission's website the day after conference, giving interested persons more than two additional weeks to review and submit comments to the Commission.

cc: Jason Boatright, Director– General Counsel Section
Bill Geise, Director – Gas Services Division
Polly McDonald, Director— Pipeline Safety Division
Milton Rister, Executive Director
Wei Wang, Chief Financial Officer

1 The Railroad Commission of Texas (Commission) proposes amendments to §3.70, relating to
2 Pipeline Permits Required. The Commission proposes the amendments in order to clarify and more
3 specifically prescribe the procedure by which a pipeline operator may identify itself as a common carrier,
4 gas utility, or private line operator when applying for a new T-4 permit to operate a pipeline or when
5 renewing, amending, or cancelling an existing T-4 permit.

6 The Commission proposes amendments in subsection (a) to reword the requirement that certain
7 pipeline operators must obtain a T-4 permit, renewable annually, as provided in this rule.

8 The Commission proposes amendments in subsection (b) to state the application requirements for
9 obtaining a new pipeline permit or for amending a permit because of a change of a pipeline's
10 classification. Operators must use the form approved by the Commission and must include certain
11 additional information. More specifically, pipeline operators must provide contact information; state the
12 requested classification and purpose of the pipeline or pipeline system as a common carrier, a gas utility,
13 or private line; and submit a sworn statement from the pipeline applicant providing the operator's factual
14 basis supporting the classification and purpose being sought for the pipeline. In addition, if applicable,
15 the pipeline operator must submit documentation to provide support for the classification and purpose
16 being sought for the pipeline together with any other information requested by the Commission.

17 In new subsection (c), the Commission proposes a new provision to state the application
18 requirements for renewing an existing permit, amending an existing permit for any reason other than a
19 change in classification, or cancelling an existing permit. In each of those instances, an operator must
20 use the form approved by the Commission and must include certain additional information. More
21 specifically, pipeline operators must provide contact information; a statement from the pipeline operator
22 confirming the current classification and purpose of the pipeline or pipeline system as a common carrier,
23 a gas utility, or a private line, if applicable; and any other information requested by the Commission.

24 In new subsection (d), the Commission proposes a new provision stating that the Commission

1 will determine if the application is complete within 15 calendar days following the date of filing of an
2 application and shall notify the operator either that the application is complete or that the application is
3 incomplete. The notice of an incomplete application will specify the additional information needed to
4 complete the application.

5 In new subsection (e), the Commission proposes that, once an application is determined to be
6 complete and sufficient, the Commission shall either issue, amend, or cancel the pipeline permit or deny
7 the pipeline permit as filed. If the Commission is satisfied from the application and the documentation in
8 support thereof, and its own review, that the proposed line is, or will be, laid, equipped, managed and
9 operated in accordance with the laws of the state and the rules and regulations of the Commission, the
10 permit may be granted. Further, proposed new wording in subsection (e) provides that the pipeline
11 permit, if granted, shall classify the pipeline as a common carrier, a gas utility, or a private pipeline based
12 upon the information and documentation submitted by the applicant and the Commission's review of the
13 application. The Commission's decision on issuance of a pipeline permit shall be completed within 45
14 calendar days following the Commission's determination that an application is complete.

15 The Commission proposes new subsection (f), which states that this rule applies to new pipeline
16 permits and to amendments, renewals, and cancellations of existing pipeline permits which are submitted
17 to the Commission on or after the effective date of this rule.

18 Proposed new subsection (g) provides that the Commission may delegate the authority to
19 administratively issue pipeline permits.

20 Proposed new subsection (h) states that the pipeline permit, if granted, shall be revocable at any
21 time after a hearing held after 10 days' notice, if the Commission finds that the pipeline is not being
22 operated in accordance with the laws of the state and the rules and regulations of the Commission.

23 Mary ("Polly") Ross McDonald, Director, Pipeline Safety Division, has determined that for the
24 first five years the amendments will be in effect, there are no anticipated significant fiscal implications to

1 state or local governments as a result of enforcing or administering the proposed amendments.

2 Ms. McDonald also has determined that for each year of the first five years that the amendments
3 will be in effect, the public benefit expected as a result of adoption of the proposed amendments will be
4 greater confidence in the Commission's classification of pipelines as common carriers, gas utilities, or
5 private lines, and the assurance that there is a review of the pipeline operator's assertion of a particular
6 classification. The permitting process will include a more developed inquiry into the issue of a pipeline's
7 public use, thereby providing more credibility to the Commission's process with respect to the ultimate
8 classification of the pipeline, as well as increased certainty for both pipelines and landowners.

9 Ms. McDonald has determined that for each year of the first five years that the amendments will
10 be in effect, the probable economic costs for persons required to comply expected as a result of adoption
11 of the proposed amendments will be minimal, if any. The requirement that pipeline operators obtain a T-
12 4 permit is not new; only the requirement to substantiate the classification as a common carrier, gas
13 utility, or private line is new. The sworn statement and corresponding documentation required under
14 sections (b)(3) and (b)(4) should be readily available to the applicant or otherwise easily procured.

15 Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic
16 Effect, requires that, as a part of the rulemaking process, a state agency prepare an economic impact
17 statement that assesses the potential impact of a proposed rule on small businesses and micro-businesses
18 and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the
19 rule if the proposed rule will have an adverse economic effect on small businesses or micro-businesses.
20 The Commission has determined that the proposed amendment is not anticipated to have an adverse
21 economic effect on small businesses or micro-businesses that are pipeline operators, and therefore, the
22 economic impact statement and regulatory flexibility analysis described in Texas Government Code,
23 §2006.002, are not required.

24 Ms. McDonald has also determined that the proposed amendments will not affect a local

1 economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to
2 Texas Government Code, §2001.022.

3 Ms. McDonald has determined that the amendments do not meet the statutory definition of a
4 major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory
5 analysis conducted pursuant to that section is not required.

6 Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel,
7 Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at
8 www.rrc.state.tx.us/legal/rules/comment-form-for-proposed-rulemakings; or by electronic mail to
9 rulescoordinator@rrc.state.tx.us. The Commission will accept comments until noon (12:00 p.m.) on
10 Monday, August 25, 2014, which is 31 days after publication in the *Texas Register*. Comments should
11 refer to Gas Utilities Docket No. 10366. The Commission finds that this comment period is reasonable
12 because the proposal and an online comment form will be available on the Commission's web site more
13 than two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional
14 time to review, analyze, draft, and submit comments. The Commission encourages all interested persons
15 to submit comments no later than the deadline. The Commission cannot guarantee that comments
16 submitted after the deadline will be considered. For further information, call Cristina Self, Office of
17 General Counsel, at (512) 463-2299 or Polly McDonald at (512) 463-7008. The status of Commission
18 rulemakings in progress is available at <http://www.rrc.state.tx.us/legal/rules/proposed-rules>.

19 The Commission proposes the amendments to §3.70 pursuant to Texas Natural Resources Code,
20 §81.051 and §81.052, which provide the Commission with jurisdiction over all persons owning or
21 operating pipelines in Texas and the authority to adopt all necessary rules for governing and regulating
22 persons and their operations under the jurisdiction of the Commission; Texas Natural Resources Code
23 §85.202, which authorizes the Commission to promulgate rules requiring records to be kept and reports
24 made, and providing for the issuance of permits, tenders, and other evidences of permission when the

1 issuance of the permits, tenders, or permission is necessary or incident to the enforcement of the
2 Commission's rules for the prevention of waste; Texas Natural Resources Code §86.041 and §86.042,
3 which allow the Commission broad discretion in adopting rules to prevent waste in the piping and
4 distribution of gas, require records to be kept and reports made, and provide for the issuance of permits
5 and other evidences of permission when the issuance of the permit or permission is necessary or incident
6 to the enforcement of its blanket grant of authority to make any rules necessary to effectuate the law;
7 Texas Natural Resources Code §111.131 and §111.132, which authorize the Commission to promulgate
8 rules for the government and control of common carriers and public utilities; Texas Natural Resources
9 Code, §§117.001-117.101, which give the Commission jurisdiction over all pipeline transportation of
10 hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as
11 provided by 49 U.S.C. Section 60101, et seq.; and Texas Utilities Code, §§121.201-121.210, which
12 authorize the Commission to adopt safety standards and practices applicable to the transportation of gas
13 and associated pipeline facilities within Texas to the maximum degree permissible under, and to take any
14 other requisite action in accordance with, 49 United States Code Annotated, §§60101, et seq.

15 Texas Natural Resources Code, §81.051, §81.052, §85.202, §86.041, §86.042, §111.131,
16 §111.132, and §§117.001-117.101; Texas Utilities Code, §§121.201-121.210; and 49 United States Code
17 Annotated, §§60101, et seq., are affected by the proposed amendments.

18 Statutory authority: Texas Natural Resources Code, §81.051, §81.052, §85.202, §86.041,
19 §86.042, §111.131, §111.132, and §§117.001-117.101; Texas Utilities Code, §§121.201-121.210; and 49
20 United States Code Annotated, §§60101, et seq.

21 Cross-reference to statute: Texas Natural Resources Code, Chapter 81, Chapter 111, and Chapter
22 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

23

24

1 §3.70. Pipeline Permits Required.

2 (a) Each operator of a [No] pipeline or gathering system subject to the jurisdiction of the
3 Commission shall obtain a pipeline [~~whether a common carrier or not, shall be used to transport oil,~~
4 ~~gas, or geothermal resources from any tract of land within this state without a~~] permit, renewable
5 annually, from the Commission as provided in this rule [~~commission~~].

6 (b) To obtain a new pipeline permit or to amend a permit because of a change of
7 classification, an operator shall file an application for a pipeline permit on a [~~Application for the~~
8 ~~permit shall be made upon the required~~] form approved by the Commission which includes or is
9 accompanied by the following documentation and information:

10 (1) the contact information for the individual who can respond to any questions
11 concerning the pipeline's construction, operation or maintenance;

12 (2) the requested classification and purpose of the pipeline or pipeline system as a
13 common carrier, a gas utility or a private line;

14 (3) a sworn statement from the pipeline applicant providing the operator's factual
15 basis supporting the classification and purpose being sought for the pipeline; and

16 (4) documentation to provide support for the classification and purpose being

1 sought for the pipeline, if applicable, and any other information requested by the Commission.

2 (c) To renew an existing permit, to amend an existing permit for any reason other than a
3 change in classification, or to cancel an existing permit, an operator shall file an application for a
4 pipeline permit on a form approved by the Commission which includes or is accompanied by:

5 (1) the contact information for the individual who can respond to any questions
6 concerning the pipeline's construction, operation, or maintenance; change in operator or
7 ownership; or other change including operator cessation of pipeline operation;

8 (2) a statement from the pipeline operator confirming the current classification and
9 purpose of the pipeline or pipeline system as a common carrier, a gas utility or a private line, if
10 applicable; and

11 (3) any other information requested by the Commission.

12 (d) The Commission shall determine if the application is complete within 15 calendar days
13 following the date of filing of an application and shall notify the operator either that the
14 application is complete or that the application is incomplete. The notice of an incomplete
15 application shall specify the additional information needed to complete the application.

16 (e) Once an application is determined to be complete and sufficient, the Commission shall

1 issue, amend, or cancel the pipeline permit or deny the pipeline permit as filed. If the Commission
2 ~~[, and the permit will be granted if the commission]~~ is satisfied from the [such] application and the
3 documentation and information provided [evidence] in support thereof, and its own review
4 ~~[investigation]~~, that the proposed line is, or will be ~~[,so]~~ laid, equipped, ~~[and]~~ managed and [as to
5 ~~reduce to a minimum the possibility of waste, and will be]~~ operated in accordance with the ~~[conservation]~~
6 laws of the state and the [conservation] rules and regulations of the Commission, the permit may be
7 granted [commission].

8 ~~[(b)]~~ The pipeline permit, if granted, shall classify the pipeline as a common carrier, a gas
9 utility, or a private pipeline based upon the information and documentation submitted by the
10 applicant and the Commission's review of the application. The Commission's decision on issuance
11 of a pipeline permit shall be completed within 45 calendar days following the Commission's
12 determination that an application is complete.

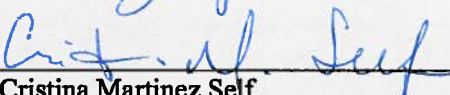
13 (f) This rule applies to applications made for new pipeline permits and to amendments,
14 renewals, and cancellations of existing pipeline permits which are submitted to the Commission on
15 or after the effective date of this rule.

16 (g) The Commission may delegate the authority to administratively issue pipeline permits.

1 **(h) The pipeline permit, if granted, shall** be revocable at any time after a hearing held after 10
2 days' notice, if the Commission [~~commission~~] finds that the **pipeline is not being operated in**
3 **accordance with the laws of the state and the rules and regulations of the Commission** [~~line is so~~
4 ~~unsafe, or so improperly equipped, or so managed, as likely to result in waste. If the commission finds~~
5 ~~the line is in such condition as to cause waste, five days' written notice shall be given to the operating~~
6 ~~company to correct the condition before notice of hearing for revocation of the permit is given. A permit~~
7 ~~may also be revoked after 10 days' notice and hearing, if the commission finds that the operator of the~~
8 ~~line, in its operation thereof, is willfully violating or contributing to the violation of the laws of Texas~~
9 ~~regulating the production, transportation, processing, refining, treating, and/or marketing of crude oil or~~
10 ~~geothermal resources, or any of the laws of the state to conserve the oil, gas, or geothermal resources, or~~
11 ~~any rule or regulation of the commission enacted under such laws].~~

12 Issued in Austin, Texas on July 8, 2014.

13 Filed with the Office of the Secretary of State on July 8, 2014.



Cristina Martinez Self
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Railroad Commission of Texas