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Comments Form for Proposed Rulemakings

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§3.70: Amend T-4 pipeline permit procedures

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Rules Coordinator
Office of the General Counsel
Railroad Commission of Texas

Comments of the Lone Star Chapter of the Sierra Club on Proposed Amendments to Rule 3.70

Dear Railroad Commission of Texas,

The Lone Star Chapter of the Sierra Club appreciates the opportunity to offer these brief comments on proposed amendments to better clarify and prescribe the process to apply for a new T-4 permit, and declare oneself a common carrier. As the Commission is well aware, the current T-4 permit process and common carrier designation

has been called into question by stakeholders, the legislature and the court system. Thus, the Sierra Club fully supports the Commission considering a rulemaking to better create a fair process and clarify how a private pipeline carrier may declare a pipeline to be open to use by other companies. That being said, while we support the Commission in looking at the issues, we are disappointed the rules are not even clearer and do not appear to give specific notice to nearby pipeline owners who have a right to dispute the common carrier designation. In addition, there may be additional issues outside the scope of this rulemaking that the Legislature may want to address, or the Railroad Commission should consider through a separate rulemaking.

Sierra Club, and the Lone Star Chapter, with some 20,000 members in Texas, suggests that a public meeting be held to receive additional comments as this is a significant issue for the public and the Legislature.

Comments on Proposed Rule

The proposed rule reads well in the sense that it does increase the amount of information required by the Commission in the permit application process, and it does require the applicant to sign a sworn statement and assert which type of pipeline it is applying to be, be it a utility, a private carrier or common carrier. This is certainly an improvement from the current "check-a-box" requirement. That being said, we are not sure it meets the requirements set out in the Danbury case, not does it establish any public input process for the public to provide information or contest an assertion by the applicant. Thus, there is no specific notice provision, no public input or comment period, and no apparent chance to oppose a proposed permit, be it new or an annual renewal.

Among the changes we would request in the present rulemaking include:

1. Assess a permit fee for T-4 applicants. The additional information required by this rulemaking will require additional staff time that should be paid for through the application process.
2. Establish standards for proof that the applicant is really a common carrier and that it has future customer(s) for the line. While we recognize the Commission is requiring information and a sworn statement, much greater clarity is needed in this rulemaking about the type of information required. There do exist actual standards of what a common carrier is, and that specific information should accompany the statement. We have provided some suggested language.
3. Similarly, the rules should lay out the standards for revocation of common carrier status and the penalty for those falsely claiming to have common carrier status.
4. The rules must provide neighbors and landowners notice of the application, as well as an opportunity for the general public to make comments.
5. Assure that public comments are considered by the Commission and that the Commission respond to these comments prior to the issuance of the permit;
6. Provide for timely notice of final approval of permits and provide a process for landowners and others to challenge the status and category of pipelines
7. Allow a process for hearings at the RRC or SOAH as appropriate.

Permit Fees

The proposed rulemaking –or if needed through a guidance document – should establish a reasonable fee for

applying for a T-4 for the first time, as well as for annual renewals. Recently, the Legislature authorized surcharges on a variety of permit fees at the RRC, but pipelines were not covered. We would suggest a reasonable fee in the \$500 to \$1,000 range, which is consistent with other fees charged by the agency

Additional information along with sworn statement

In 3.70 (b) (4), the Commission proposes requiring additional information for the classification being sought by the applicant, but that information is not detailed. We would suggest adopting some specific requirements on the information related to seeking common carrier status including a definition of affiliated entity, such as that laid out in Texas Utilities Code, § 101.003. Thus, under (4), or as a possible (5), the rules might state:

(5) If Common Carrier status is sought, the documentation required by the Commission shall include the operator's sworn statement that third-party shippers have executed transportation service and throughput agreements for a specified aggregate volume/day and that neither the shipper nor the purchaser, if different, is an affiliated entity of the operator. For purposes of this rule, affiliated entity is defined by Texas Utilities Code, § 101.003

Similarly, under C (3), similar language should be added such as: "If continued "common carrier" status is sought, the documentation required by paragraph (4) and (5) of subsec. (b) of this section is also required under this subsection. "

Revocation of Common Carrier Standard

The Rules should establish a standard and process for revocation of common carrier status, including penalties. While the rules do state that a permit is revocable under (h), there is no specific provision other than revocation for those who would falsely claim common carrier status, and abuse this privilege. We would suggest language such as: (h) The pipeline permit, if granted, shall be revocable at any time after a hearing held after 10 days' notice, if the Commission [commission] finds that the pipeline is not being operated in accordance with the laws of the state and the rule and regulations of the Commission. If the Commission finds the permit holder is operating the pipeline in a manner different from that authorized under the permit, the operating permit may be revoked. An individual making or filing a sworn statement about the classification of a pipeline that is considered to be false by the Commission shall be referred to the Attorney General for civil or criminal perjury.

Notice and public comment

The Rules should require notice for those seeking a permit and an opportunity for public comment, and for a public hearing. Thus, when a permit is sought, notice to nearby landowners should be required in the largest newspaper in the county or counties in which the route is proposed and sent to those within two miles of the proposed route. The rules should allow for the public to request a public meeting to discuss the route.

Once a permit is determined to be administratively complete, it should be posted on the RRC's website, a notice in the largest newspaper of the county or counties in which the pipeline is located should be published and notice

provided to landowners within two miles of the proposed pipeline. The Commission should be required to consider any comments from the public related to the pipeline, including its proposed category, that are timely filed with the Commission, such as within 30 days after notice is provided and the application for the permit is posted on the website.

Thus, we would suggest that once the permit is found to be administratively complete under (d), the Commission should post it on its website for a 30-day comment period, and the applicant should post a notice in the largest local newspaper while also providing notice to landowners. Only after this 30-day comment period, and after considering any timely filed comments, should the Commission deny, amend or issue the permit. We would also suggest allowing a public official, or commentators that might be impacted by the proposed route to request a public meeting.

Similarly, we would add language making it clear that the Commission must consider timely filed comments. Thus, we would amend section e) on page 8 line 4 by adding The Commission may, after its own review [investigation] and considering the public comments, ...

The additional public comment period would require more time for the Commission to act upon the application, and we would suggest extending the maximum time from 45 to 75 days for the Commission to act upon an application.

Notice of Final Approval and Process to Contest Permits

Once the Commission determines that it has enough evidence to grant a permit, there should be a process to provide notice to the public, and a process to challenge the permit. Thus, the final permit should also be posted to the RRC's website, and notice provided to the local county, as well as nearby landowners. Once a permit is granted, the public should have up to 30 days to request a contested case hearing before an RRC hearing examiner or the State Office of Hearings Examiner.

The Lone Star Chapter of the Sierra Club appreciates the opportunity to provide these comments.

Sincerely,

Cyrus Reed
Conservation Director

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