

Kellie Martinec

From: Julie Noble [REDACTED]
Sent: Monday, August 25, 2014 9:57 AM
To: rulescoordinator
Cc: [REDACTED]
Subject: Rex H. White, Jr. Proposed Amendments to Draft Rule 3.70
Attachments: 8-25-14 Rex White proposed amendments to draft pipeline permit rule 3.70.pdf

Dear Rulemaking Staff:

Thank you for including Rex H. White, Jr.'s comments for consideration in the review process for amendment to Rule 3.70.

Please call or email with any comments or questions that you may have.

Best regards,

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MEMORANDUM

TO: Gas Utilities Docket 10366 Rules Coordinator,
Office of General Counsel

FROM: Rex H. White, Jr.

DATE: August 25, 2014

SUBJECT: Rule 3.70 Proposed Changes / Pipeline Permits

Comment: In order to comply with *Texas Rice Land Partners, Ltd v. Denbury Green Pipeline-Texas LLC*, 363 S.W.3d 192 (Tex. 2012), the following amendment to the proposal is submitted:

§ 3.70. Pipeline Permits Required.

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

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

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

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

(3) a sworn statement from the pipeline applicant providing the operator's factual basis supporting the classification ~~[and purpose]~~ being sought for the pipeline or the amendment to an existing permit; and

(4) documentation to provide support for the classification ~~[and purpose]~~ or amendment to an existing permit being sought for the pipeline, ~~[if applicable,]~~ and any other information relevant to the application for a permit or amendment to an existing permit requested by the Commission.

(c) For each applicant for a common carrier permit, the applicant shall submit the following:

(1) map of proposed pipeline route identifying all surface owners of record, with address and identification of location of any surface facilities;

(2) commodity proposed to be transported, and business plan;

(3) all proposed receipt points on the proposed common carrier pipeline;

(4) all proposed delivery points on the proposed common carrier pipeline;

(5) known or prospective shipper customers;

(6) proposed width of easement;

(7) proposed pipeline pressure;

(8) proposed common carrier transportation tariff(s);

(9) proof that a copy of notice of application for common carrier status was sent to each affected surface owner by certified mail, return receipt requested.

If a complaint is filed relating to a common carrier permit application, a hearing shall be held by the Commission to determine the status of the pipeline as a common carrier.

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

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

(2) a statement from the pipeline operator confirming the correct classification and purpose of the pipeline or pipeline system as a common carrier, a gas utility, a gatherer, or a private pipeline, if applicable; and

(3) any other information requested by the Commission.

~~(d)~~ (e) The Commission shall determine if the application is complete within 15 calendar days following the date of filing of an application and shall notify the operator

either that the application is complete or that the application is incomplete. The notice of an incomplete application shall specify the additional information needed to complete the application.

~~_____~~ ~~[(e)]~~ (f) Once an application is determined to be complete and sufficient, the Commission shall issue, amend, or cancel the pipeline permit or deny the pipeline permit as filed. If the Commission [and the permit will be granted if the commission] is satisfied from the [such] application and the documentation and information provided [evidence] in support thereof, and its own review [investigation], that the proposed line is, or will be [so] laid, equipped, [and] managed and [as to reduce to a minimum the possibility of waste, and will be] operated in accordance with the [conservation] laws of the state and the [conservation] rules and regulations of the Commission, the permit may be granted [commission].

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

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

~~[(g)]~~ (h) The Commission may delegate the authority to administratively issue pipeline permits.

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