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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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The Eminent Domain subcommittee of the South Texans' Property Rights Association (STPRA) submits the following comments to the Commission's proposed rules under 16 TAC Section 3.70.

STPRA shares the concerns expressed by Texas Farm Bureau that the documentation required under 3.70(b) (4) is insufficient for the Commission to make a determination as to whether the pipeline will qualify as a common carrier under Texas Law.

We suggest adding an additional 3.70(b)(5) as follows:

- (5) If an operator is requesting classification as a common carrier, documentation demonstrating that at least 25 percent of the pipeline's capacity is used or is reasonably likely to be used to transport one or more substances for one or more persons who are not:
- (i) corporate parents of the owner, operator, or manager;

(ii) subsidiaries of the owner, operator, or manager;

or

(iii) under common control with the owner, operator, or manager.

The documentation must also demonstrate that less than 100 percent of the pipeline's capacity will be utilized by a single person as defined above.

STPRA is also concerned that there is no opportunity for landowners to appear and contest operator assertions in applications and provide evidence that would allow the commission to more fully develop the record in determining whether an applicant is a common carrier. There is also no notice or public hearing process provided. Since this process does not allow the record to be fully developed, operators need to be aware that the permit issued pursuant to this rule is not determinative as to common carrier status under Texas eminent domain law.

We suggest adding a new subsection (i) as follows:

(i) A permit issued under this section is not a determination by the Commission that an operator has the right to exercise the powers of eminent domain under Texas law.

Finally, STPRA is concerned that 3.70 (f) does not make clear that renewals require the same information supporting the classification and continued operation required in an application. It is also unclear whether this rule will apply to existing lines or only new applications.

Thank you for the opportunity to comment on this proposed Rule.

**Eric Opiela
Chair, Eminent Domain Subcommittee
South Texans' Property Rights Association**

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