

**Kellie Martinec**

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**From:** Lisa Lucero [REDACTED]  
**Sent:** Monday, August 25, 2014 11:27 AM  
**To:** rulescoordinator  
**Cc:** Deb Mamula; Mari Ruckel; Cory Pomeroy; Lisa Lucero; Bill Ennis  
**Subject:** Texas Oil and Gas Association (TXOGA) Formal Comment Submission  
**Attachments:** Coverletter - TXOGA comments to RRC - Proposed Revisions to Section 3.70 - 08.25.2014.pdf; TXOGA Comments to RRC - 16 TAC 3.70 - 08.25.2014.pdf

**Attn: Rule Coordinator:**

Attached please find formal comments submitted by the Texas Oil and Gas Association (TXOGA) regarding the Proposed Amendments 16 Texas Administrative Code, Chapter 3, Section 70, Relating to Pipeline Permits Required, Gas Utilities Docket No. 10366

Please direct your questions to Cory Pomeroy, [cpomeroy@txoga.org](mailto:cpomeroy@txoga.org) or (512)478-6631.

Submitted by:

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August 25, 2014

Rule Coordinator  
Railroad Commission of Texas  
Post Office Box 12967  
Austin, Texas 78711-2967

Submitted to: [rulescoordinator@rrc.state.tx.us](mailto:rulescoordinator@rrc.state.tx.us)

Re: *Proposed Amendments 16 Texas Administrative Code, Chapter 3, Section 70  
Relating to Pipeline Permits Required  
Gas Utilities Docket No. 10366*

Dear Coordinator:

The Texas Oil & Gas Association ("TXOGA") is a non-profit corporation representing the interests of the oil and gas industry in the State of Texas. Founded in 1919, TXOGA is the largest and oldest petroleum organization in Texas, representing more than 5,000 members. The membership of TXOGA produces in excess of 90 percent of Texas's crude oil and natural gas, operates nearly 100 percent of the state's refining capacity, and is responsible for the vast majority of the state's pipelines. In 2013, the oil and gas industry employed 389,000 Texans, providing wages and salaries of over \$44 billion in Texas alone. In addition, large associated capital investments by the oil and gas industry generate significant secondary economic benefits for Texas.

TXOGA appreciates the opportunity to provide input on the proposed revisions to §3.70. Below are our general observations and attached are our detailed comments and recommendations.

The proposed revisions provide a straightforward mechanism for the classification determination while enhancing the process so that the Railroad Commission has sufficient information to make that determination. Further, the proposed rule properly concentrates on the "classification" of the pipelines and leaves ancillary landowner property interest issues fully within the purview of the Texas courts.

TXOGA supports the proposed rule's approach of not providing a definitive list of supporting information required to accompany the sworn statement. The type of supporting information will vary not only by the classification sought by the applicant, but also from applicant to applicant. Allowing the unique facts related

to each permit application to govern the supporting documentation places well-founded confidence in staff's expertise gained from the 1,400 applications they see on an annual basis.

Additionally, the codification in the proposed rule of a permit holder's obligations on renewals, amendments, and transfers of T-4 permits is an important enhancement for compliance. Currently, these permit holder obligations are located in the "Instructions" to the form, which is a trap for the unwary as most stakeholders will review the rules to determine their obligations.

Thank you for the opportunity to comment on this important issue. Should you have questions, please contact me at [cpomeroy@txoga.org](mailto:cpomeroy@txoga.org) or (512) 478-6631.

Sincerely,

A handwritten signature in black ink, appearing to read "Cory Pomeroy". The signature is fluid and cursive, with the first name "Cory" and last name "Pomeroy" clearly distinguishable.

Cory Pomeroy  
Vice President and General Counsel

Attachment

**Texas Oil & Gas Association  
Detailed Comments  
Railroad Commission Proposed §3.70**

**Reference: §3.70(a)**

**Comment:** Consider revising as follows:

(a) Each operator of a [No] pipeline or gathering system used in transport from any tract of land within the state and subject to the jurisdiction of the Commission, excluding flow lines, 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].

**Explanation:** The proposed rule deletes the phrase “from any tract of land” from the current rule. The deleted language appropriately excluded flow lines from the T-4 permitting process. Removal of this language raises a concern that the new rule could be read to extend the T-4 permitting process to flow lines. Given the comments in the preamble concerning the economic impact of the proposed rule, TXOGA suggests that that flow lines be explicitly excluded.

**Reference: §3.70(b)(1)**

**Comment:** Consider revising as follows:

(1) the contact information for the individual who can respond to any questions concerning the [pipeline's construction, operation or maintenance] application, including mailing address, phone number, and email address;

**Explanation:** To facilitate timely responses, email or telephonic communication is encouraged. To that end, the applicant's contact information should include both email address and phone number.

**Reference: §3.70(b)(4)**

**Comment:** Consider revising as follows:

(4) if applicable in the determination of the applicant, documentation and other information can be provided to [provide] support [for] the classification and purpose being sought for the pipeline [if applicable.] and any other information requested by the Commission. Such documentation may be provided in a format that protects any information designated confidential by the applicant. The Commission may provide a process for review of information designated confidential by the applicant, which protects the information from disclosure.

**Explanation:** The applicant is responsible for choosing and providing appropriate support for its application. If the Commission decides that more documentation or more specificity should be required from the applicant, the Commission has the ability to make the request as currently provided in the proposed rule. Some information that could be helpful for the Commission to review in this process may also be commercially sensitive and therefore must be provided in a manner that protects confidentiality of that information.



**Texas Oil & Gas Association  
Detailed Comments  
Railroad Commission Proposed §3.70**

**Reference: §3.70(c)**

**Comment:** Consider revising as follows:

(c) 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, including mailing address, phone number, and email address, for the individual who can respond to any questions concerning the pipeline's construction, operations, or maintenance; change in operator or ownership; or other change including operator cessation of pipeline operations.

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

~~(3) any other information requested by the Commission]~~

**Explanation:** To facilitate timely communication, email or telephonic is encouraged. To that end, the applicant's contact information should include both email address and phone number.

**Reference: §3.70(d)**

**Comment:** Consider adding provision to end of subsection (d) as follows.

(d) 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 applicable is incomplete. The notice of an incomplete application shall specify the additional information needed to complete the application. **If the Commission fails to issue a determination on the completeness or incompleteness of an application within the 15-day period, the application shall be deemed complete. Placement of written determination in the U.S. mail addressed to the applicant shall constitute notification by the Commission.**

**Explanation:** This treatment regarding determination of completeness has precedent in the Commission's treatment of gas utility applications, storage wells, etc. The Commission's commitment to timely processing permits is commendable. In the event of delay, however, operator costs are incurred. Therefore, after a certain period of time, it is appropriate to allow an application to be complete by operation of law.

**Reference: §3.70(e)**

**Comment:** Consider revising as follows:

(e) ~~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~~

**Texas Oil & Gas Association  
Detailed Comments  
Railroad Commission Proposed §3.70**

line is, or will be ~~[-se]~~ 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]~~ **shall** be granted ~~[commission]~~.

~~[(b)]~~ The pipeline permit, if granted, shall classify the pipeline as a common carrier, a gas utility, 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. The applicant may decline the Commission's decision within 10 days after receipt of notice from the Commission of such decision. Declining a decision under this subsection does not prejudice the right of the applicant to re-file an application for a pipeline permit under this section at a later time.

**Explanation:** While not contemplated, there could be circumstances where an applicant did not provide the Commission with information necessary to result in a decision and permit in the form anticipated by the applicant. This suggested revision would provide the applicant with the option to decline the Commission's permit. The suggested revision would also clarify that the applicant is not restricted from re-filing an application as desired for the Commission's further consideration. To accommodate this new period of time for an applicant to decline the Commission's decision, the typical T-4 permit notice that is currently emailed by Commission staff to an applicant should in the future provide that the permit becomes effective upon a date certain if not declined by applicant. The ten-day period is a suggestion to take into account absences from an applicant's office and/or the need for a company to ascertain the effect of the unanticipated decision.

**Reference: §3.70(h)**

**Comment:** Consider maintaining current provisions in subsection (h).

**Explanation:** The current standards for pipeline conditions required to be established for revocation are appropriate. Likewise, the current standard on the operator's volition necessary to be established for revocation is appropriate.