

**Kellie Martinec**

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**From:** Wendi Hammond <[REDACTED]>  
**Sent:** Monday, August 25, 2014 11:55 AM  
**To:** rulescoordinator; Wendi Hammond  
**Subject:** Proposed Rule - Gas Utilities Docket No. 10366  
**Attachments:** 2014-0825\_RCC-Comments.pdf

**WENDI HAMMOND**

7325 Augusta Circle

Plano, TX 75025

PH: (972) 746-8540 [REDACTED]

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August 25, 2014

VIA email: [rulescoordinator@rrc.state.tx.us](mailto:rulescoordinator@rrc.state.tx.us)

Rules Coordinator

Office of General Counsel

Railroad Commission of Texas

RE: Proposed Rule - Gas Utilities Docket No. 10366

Dear Rules Coordinator:

This serves as comments regarding above named and numbered docket concerning the proposed rule 16 TAC §3.70 which was published in the Texas Register at 39 Tex. Reg. 5705 on July 25, 2014

The proposed amendments fail to meet the Commission's goal "to clarify and more specifically prescribe the procedure by which a pipeline operator may identify itself as a common carrier, gas utility or private line operator when renewing, amending or cancelling an existing T-4 permit."

The most recent and recurring problem arising from the T-4 permit concerns a company's self-declared common carrier oil pipelines T-4 permit actually establishes that the pipeline is in fact a "common carrier" under Texas laws for eminent domain purposes. The Commission has only acknowledged in letters and phone calls that an oil pipeline, which is purely interstate, does not fall under the Commission's jurisdiction and that the T-4 permit does NOT determine whether such a pipeline is a common carrier for eminent domain purposes. This informal acknowledgement fails to adequately protect the public, and the proposed rule fails to adequately protect the public. In fact, the proposal new language at §3.70(c) would muddle the rules even more so. Therefore, any T-4 application AND permit issued by the Texas Railroad Commission must contain in clear, bold and underlined print language which clarifies for the average Texas landowner that **the issuance of a T-4 permit DOES NOT determine or establish whether an oil pipeline is a common carrier pipeline in which the owner or operator may use the Texas eminent domain process to seize private property.**

Furthermore, if it is the Commission's intent for this proposal to actually establish that the issuance of a T-4 permit does determine whether an oil pipeline is a common carrier pipeline in which the owner or operator may use the Texas eminent domain process to seize private property, then this proposal is wholly inadequate to protect the public's interest. For example:

- Changing language from "investigation" to a mere "review" fails to meet statutory requirements.
- Deleting the language "as to reduce to a minimum the possibility of waste" fails to meet statutory requirements.
- The proposed rule fails to identify the documentation that must be provided to support the clarification, including the documentation necessary to prove "public use."
- The Commission has failed to provide any reasoning for requiring a 15 day deadline to determine whether an application is complete, and a 45 day deadline for issuance of a permit. The Commission has not provided any justification or support that such a requirement has been met on a regular basis in the past and will not put an undue burden on existing staff or will not require additional staff.
- The proposed rule meets the definition of a major environmental rule as set forth in Texas Government Code § 2001.022(a) and thus requires a regulatory analysis.
- The proposed rule will affect the local economy; therefore, the Commission must prepare a local employment impact statement pursuant to Texas Government Code §2001.022.

- The proposed rule will have an adverse economic effect on small business or micro-businesses; therefore, the Commission must provide an economic impact statement and regulatory flexibility analysis as described in Texas Government Code § 2006.002.

Thank you for your time and consideration of these comments. I also incorporate by reference any comments submitted on by Tom "Smitty" Smith and/or Public Citizen.

Sincerely,

Wendi Hammond

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