RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

MEMORANDUM

TO: Chairman Christi Craddick
Commissioner David Porter
Commissioner Barry T. Smitherman

FROM: Cristina Self, Attorney– General Counsel Section
Office of General Counsel

THROUGH: Lindil C. Fowler, General Counsel

DATE: November 25, 2014

SUBJECT: Adoption of Amendments to 16 TAC §3.70, relating to Pipeline Permits Required; Gas Utilities Docket No. 10366.

Attached are Staff's recommended preamble and rule text for the adoption of amendments to rule §3.70, relating to Pipeline Permits Required.

On July 8, 2014, the Commission approved publication of the proposed amendments in the *Texas Register* for a 30-day comment period, which ended on August 25, 2014. Staff also conducted a public hearing on the proposal on September 22, 2014. The Commission received numerous public comments regarding the proposed amendments, which are addressed beginning on the first page of the adoption preamble in your notebook materials.

Staff recommend that the Commission adopt these amendments with certain changes to the proposed text (published in the July 25, 2014, issue of the *Texas Register*) described in the attached materials. Staff also recommend implementing an effective date for these rule amendments of March 1, 2015.

cc: Kari French, Director – Gas Services Division
Polly McDonald, Director— Pipeline Safety Division
Milton Rister, Executive Director
Wei Wang, Chief Financial Officer

The Railroad Commission of Texas (Commission) adopts amendments to §3.70, relating to Pipeline Permits Required, with changes from the proposed text published in the July 25, 2014, issue of the *Texas Register* (39 TexReg 5705). The Commission adopts these amendments with an effective date of March 1, 2015.

The Commission received numerous comments on the proposed amendments, including a request for a public hearing regarding the proposed amendments, which was held September 22, 2014. The Commission appreciates the interest shown by the public in this rulemaking effort.

The Commission received timely-filed comments from 11 groups or associations: Gas Processors Association (GPA); Public Citizen; Sierra Club, Lone Star Chapter (Sierra Club); South Texans' Property Rights Association (STPRA); Texas Alliance of Energy Producers (TAEP); Texas Farm Bureau (Farm Bureau); Texas Oil and Gas Association (TXOGA); Texas Pipeline Association (TPA); Texas Pipeline Watch (TPW); Texas and Southwestern Cattle Raisers Association (TSCRA); and the League of Independent Voters of Texas (Independent Voters), on behalf of which 230 individuals submitted comments. The Commission received timely-filed comments from three elected officials or governmental entities: the Honorable Wendy R. Davis (Senator Davis); Presidio Municipal Development District (Presidio); and City of Southlake (Southlake). The Commission received timely-filed comments from four companies: CenterPoint Energy (CenterPoint); Resource Analytical and Management Group, LLC (Resource Analytical); Clayton Williams Energy, Inc. (Williams); and Valero. The Commission received 42 comments from individuals before the comment deadline.

The Commission received one comment at the public hearing held September 22, 2014, from Texas Association of Manufacturers (TAM), as well as additional comments from Public Citizen, Sierra Club, STPRA, TXOGA, TPA, TPW, Williams, and two individuals.

The Commission also received numerous late-filed comments after the August 25, 2014, comment deadline. Late-filed comments were filed by one association (League of Women Voters of Texas (Women Voters)); one elected official (the Honorable David Simpson); three individuals; and an

additional 35 comments on behalf of Independent Voters.

Before addressing the comments, the Commission provides this general background information to explain several issues which generated a number of comments; many of these issues are beyond the scope of this rulemaking or contemplate activities beyond the reach of the Commission's authority.

A T-4 Permit to Operate an intrastate pipeline in Texas is literally and specifically a permit to operate a pipeline. It is not a permit to construct a pipeline, nor is it authorization for a pipeline operator to exercise eminent domain in the acquisition of pipeline right-of-way.

In Texas, pipelines are not required to be permitted before being built except for sour gas pipelines under §3.106 of this title (relating to Sour Gas Pipeline Facility Construction Permit). There is no statutory or regulatory requirement that a pipeline operator seek or receive from the Commission either a determination that there is a need for the pipeline capacity or prior approval to construct a pipeline and related facilities.

It is the Commission's responsibility to apply the applicable statutory provisions to pipelines which operate under the Commission's jurisdiction and classify those lines as private lines, gas utilities, or common carriers. Some of the Commission's regulatory programs apply to all pipelines under its jurisdiction, including "private" lines, while other statutes, rules and regulations are specific to gas utilities or common carriers. Such classification is necessary so that the Commission can exercise the specific statutory authority applicable to each pipeline within its jurisdiction.

The route does not determine the regulatory classification and the regulatory classification does not determine the route. The permitting process simply determines which regulatory classification is to be applied to a pipeline; it does not determine the route a pipeline must or should take. The permitting process does not determine property rights. The Commission has neither the power to require, approve, or deny the building of a pipeline along a particular route nor the power to determine what rights the landowners along that route might or might not have. The Commission's duty is to determine the proper classification of a pipeline and thereafter to apply its rules and regulations to that pipeline. Litigation

over the rights of a property owner or a pipeline's easement is not a Commission matter; it is a courthouse matter.

The Commission requires pipeline operators to comply with the regulatory requirements for pipe material, design of the pipeline and pipeline components, welding and joining, and general construction and environmental requirements, but has no authority to determine the routing or siting of a pipeline.

A pipeline operator or construction company must notify the Commission's Pipeline Safety Division before beginning construction on a pipeline when the construction involves an intrastate pipeline that is longer than one mile and is subject to safety regulation. Commission rule, §8.115 of this title (relating to New Construction Commencement Report), requires the operator to file a new construction report 30 days prior to the commencement of construction. However, operators of natural gas distribution or master meter systems of less than five miles are not required to file a new construction report, nor are operators constructing non-jurisdictional gathering pipelines (Class 1 and rural) and operators constructing transmission lines less than one mile in length. Some operators file new construction reports much earlier than 30 days prior to initiating construction activities.

In Texas, **all** pipelines, whether common carrier, gas utility, or private line, must have a T-4 Permit to Operate, with two exceptions: pipelines that never leave the production lease (production and flow lines) and distribution lines that are part of a gas distribution system or a master meter system are not required to have a T-4 Permit to Operate.

One comment (TSCRA) pointed to the opinion set forth by the Texas Supreme Court in *Texas Rice Partners, Ltd. v. Denbury Green Pipeline*, 363 S.W. 3d 192 (Tex. 2012) to support its assertion that the Commission's process does not provide any meaningful review of a pipeline's eminent domain authority.

The Commission disagrees with assertions made by TSCRA and other commenters that the Court in *Denbury* suggested the Commission should expand its processing of applications for T-4 permits to encompass investigation and adversarial testing of, particularly, the common carrier assertions made by

T-4 applicants. In fact, the Court stated, "the parties point to *no regulation or enabling legislation directing the Commission to investigate and determine whether a pipeline will in fact serve the public.*" (*Id.*, at 200; emphasis added.) For these reasons, the Commission declines to make most of the changes proferred by the commenters, but addresses the comments and certain changes being adopted in more detail as follows.

Many commenters suggested that the Commission: (1) establish standards for proof of common carrier status (Independent Voters, Women Voters, STPRA, Farm Bureau, Public Citizen, Sierra Club, TAEP, several individuals) to include documentation of third-party customers via contracts or similar (Public Citizen); (2) provide a definition of common carrier that either excludes or includes affiliates (Senator Davis); (3) establish a methodology to vet third-party status (two individuals); (4) add a sworn statement from the applicant regarding compliance with applicable State law on classification (one individual); and (5) require annual reporting of percentage of through-put of third-party product (one individual).

In response to these five subjects, and for the reasons set forth above, the Commission disagrees that the rule should include these changes. The new permitting process requires a pipeline operator to substantiate the basis for the classification sought. That classification depends on the statutory definitions of each type of pipeline and it is the definitions in the statutes that the Commission must apply. Requiring a pipeline operator to submit a sworn statement providing the purpose of a pipeline and setting forth a factual basis in support of that purpose provides greater transparency within the limits of the Commission's jurisdiction. Property owners will know the basis on which a pipeline operator claims common carrier status much earlier in the permitting process.

In a related comment, the Farm Bureau suggested adding an attestation to knowledge of the eminent domain provisions under Texas Property Code, Chapter 21, and the Texas Landowner's Bill of Rights.

The Commission agrees that this clarification is helpful in referring pipeline operators and

citizens to the appropriate authority for this matter. The Commission adopts the suggestion in subsection (b)(3). The requirements of subsection (b)(3) apply to those pipelines which claim the right of eminent domain. Such pipelines must attest that they are aware that the eminent domain provisions of Texas Property Code, Chapter 21, and the Texas Landowner's Bill of Rights apply to the exercise of eminent domain.

Another topic suggested by an individual stated that common carrier status should include independently conducted environmental and other reviews.

The Commission disagrees with this comment. Because the Commission does not have routing or siting authority for transmission pipelines, nor does the Commission have the statutory authority to require such review, it is not appropriate to conduct such reviews prior to issuing a T-4 Permit to Operate a Pipeline in Texas.

One commenter (TXOGA) generally supported the proposed revisions, characterizing them as a straightforward mechanism for classification determination. Moreover, the commenter supported the proposed rule's approach of not including a definitive list of supporting information required to accompany the sworn statement. TXOGA pointed out that the type of supporting information will vary not only by the classification sought by the applicant, but also from applicant to applicant.

The Commission agrees with TXOGA's assertion and makes no changes to the rule.

Other commenters (TPA, GPA, TXOGA) suggested adding exclusionary language for local distribution companies and flow lines.

As previously discussed in the preamble, the Commission agrees that local distribution systems and production or flow lines that do not leave a lease are excluded from this rule, as well as operators excluded under §8.1(b)(4) of this title (relating to General Applicability and Standards) which include master metered systems and distribution systems. The Commission adopts a clarifying change in subsection (a) in response to these comments.

Some commenters suggested the Commission: (1) establish standards for revocation of common

carrier status (Independent Voters, Public Citizen, Sierra Club, several individuals); (2) address penalties for making false statements to the Commission (TPW, three individuals); and (3) specify that improper statement of classification or annual reporting will initiate a due-process hearing (one individual).

The Commission disagrees with these comments. The provisions in subsection (h) for revocation of a permit refer to those laws of the State and the rules and regulations that the Commission has authority to administer and enforce. That a court might disagree with a pipeline operator's assertion that it is a common carrier does not necessarily make the operator's assertion a falsehood or a false filing within the meaning and intent of Texas Natural Resources Code, §91.143.

Some commenters suggested that the rule: (1) provide for notice of an application to the neighbors (Independent Voters, Women Voters, Resource Analytical, Public Citizen, Sierra Club, TSCRA, several individuals) or to persons within two miles as well as applicable first responders (Public Citizen); (2) require regional or county public hearings and comments similar to the PUC's process (Independent Voters, TPW, Public Citizen, several individuals); (3) require public comments to be considered prior to issuance of a permit (Independent Voters, Public Citizen, Sierra Club, several individuals); (4) assure that affected parties can request hearings at SOAH before litigation is required (Independent Voters, Women Voters, Public Citizen, Sierra Club, several individuals); (5) require notice and a hearing, including ample time for such notice (Southlake, STPRA, Representative Simpson, one individual); (6) and state that the permit review and approval should not be a closed agency process (Women Voters, several individuals).

The Commission disagrees with comments suggesting that there should be notice, comment, and hearings at the Commission or at SOAH. The Railroad Commission has no authority to determine transmission pipeline routing or siting. There is no prohibition in changing a route as the pipeline is constructed. Pipeline routes often change during construction. Neither the route taken nor the ownership along the route affects the classification of the pipeline. Since the permit does not determine where the pipeline will be built nor the legal rights of any persons along the final route, there is no Commission

action which requires individual notice to any particular person at the time the permit application is filed.

One comment (Public Citizen, Representative Simpson, TPW, two individuals) suggested the rule include notifications related to changes in the material being transported through the pipeline, as well as a sworn statement as to the type and toxicity of the product being transported.

The Commission disagrees with this comment. Any change in pipeline service from liquids to gas or vice versa must be achieved based on compliance with pipeline safety regulations as well as permit amendments. Moreover, under Texas Natural Resources Code, §111.019(c), upon written request by a resident or owner of land crossed by a common carrier pipeline, the common carrier must disclose material data safety sheets concerning the commodities transported by the common carrier required by the commission and the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001, *et seq.*). Such disclosure must be in writing and must be mailed or delivered to the resident or landowner within 30 days of receipt of the request.

Another comment (Independent Voters, Women Voters, TPW, Public Citizen, Sierra Club) stated that applicants should be assessed a fee to assure staff resources are available to review and rigorously enforce the rule.

The Commission disagrees with this comment; the Commission has no statutory authority to impose such a fee. In addition the Commission anticipates that no additional staff will be needed to review and process applications.

A similar comment (two individuals) stated that Commission staff should have additional time to verify applications.

Again, the Commission disagrees; additional information that applicants for a T-4 Permit to Operate a Pipeline in Texas must supply will not require more time than has been set out in the proposed rule language. The Commission does not anticipate that additional staffing will be needed.

One comment (Senator Davis, Women Voters, Valero, several individuals) stated that the proposed rule amendments are too vague.

The Commission disagrees with this suggestion for those reasons stated in the previous discussion of the TXOGA comments. The proposed changes to this rule require documentation that an operator must furnish with an application, and establishes time lines for both the applicant and the Commission. These changes are within the jurisdiction granted to the Commission.

One comment (one individual) suggested revising the rule to call this activity a "registration" as opposed to a "permit."

The Commission disagrees that a rule change is necessary. A permit's revocation must include the minimum due process requirements of notice and an opportunity for hearing.

One comment (TXOGA) suggested changes in subsection (b)(1) and (c) to add mailing address, phone number, and email address to the contact information required to facilitate timely communication between the Commission and the pipeline operators.

The Commission agrees that effective communication with operators is essential and notes that specific contact information is requested on the form and therefore declines to make these changes in the rule.

TXOGA requested that subsection (e) be amended to allow applicants to decline the Commission's decision regarding issuance of a pipeline permit within 10 days after receipt of notice, and without prejudice to an applicant's ability to re-file the application at a later time. In support of this request, TXOGA commented that "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."

The Commission disagrees that these suggested changes are necessary. Subsection (d) of the rule provides a mechanism for the Commission to notify an applicant if the Commission determines that an application is incomplete prior to a final determination. Further, the rule does not prohibit an operator from seeking to obtain an amended permit on the basis of a change in classification. For these reasons, the Commission makes no changes to the rule in response to this comment.

TXOGA also suggested that the current wording of subsection (h) be retained because the current standards are appropriate.

The Commission's proposed amendments in subsection (h) accurately restate the Commission's authority regarding permit revocation standards. As required by Texas Government Code, §2001.024 and §2001.033, the Commission included with the published notice of the proposed rulemaking, a statement of the specific statutory authority under which the proposed amendments are to be adopted. The Commission restated those particular statutory provisions in this adoption preamble, together with an explanation of how the agency interprets those provisions as authorizing the rule. Therefore, the Commission declines to retain the current wording of subsection (h).

TPA suggested a change to wording in subsection (h) to provide that a hearing would be held "not less than 10 calendar days after receipt by the permit holder of notice of said hearing."

The Commission disagrees with this comment. The requirement for giving "10 days' notice" of a hearing is found in §1.45 of this title (relating to Notice of Hearing in Nonrulemaking Proceedings), as well as in Texas Government Code, §2001.051. In addition, Commission hearing notices are routinely sent with at least 14 days' notice and typically about 30 days' notice. Therefore, permit holders and any other person notified of a Commission hearing would already receive more than 10 days' notice in most cases. In addition, the Commission would not know when a permit holder receives a notice; hearings notices are not sent by certified mail. Adding TPA's wording "after receipt by the permit holder" would require the Commission to send hearing notices by certified mail or another confirmed delivery method, which would greatly increase Commission costs.

One comment (TPW, two individuals) stated that the Commission should not delegate authority to staff to issue these permits administratively.

The Commission disagrees. The delegation of authority to staff to issue permits administratively is necessary to ensure that applications are complete, and that review and issuance meet the specified time lines.

Another comment (Public Citizen, TPW, Southlake, two individuals) questioned that the rule does not include a mechanism to contest a Commission decision and stated that Commission decisions must be challengeable in court. Another comment (TAEP) questioned the type of review that will be given to T-4 applications and renewals, and whether producers will be given an opportunity to participate in the process if they believe a common carrier or a gas utility has not complied with applicable statutory requirements.

The Commission agrees in part with these comments. The rule as adopted states that 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. It is correct that the rule does not provide a mechanism by which to challenge the classification of a pipeline operator as a common carrier, and the Commission agrees that those who may disagree with that classification or who believe that an entity has not complied with applicable statutory requirements should be able to challenge it in court. The Commission disagrees that the rule should provide that mechanism, because it exists whether the rule states it or not. That remedy is a court challenge, and nothing in the rule as proposed or adopted prevents that.

One comment (STPRA, Resource Analytical, TSCRA, one individual) stated that an approved permit is not a determination by the Commission that the operator has the power of eminent domain. TSCRA suggested, in order to clarify the Commission's intent, that the following acknowledgment from the applicant be added to the T-4 application form: "Applicant understands and agrees that this permit is not determinative of Applicant's authority to utilize the power of eminent domain to acquire right of way for the pipeline referenced herein." TSCRA also asked for the following language to be added to the final permit form: "The RRC is not, by the granting of this permit, making any determination regarding Applicant's authority to utilize the power of eminent domain to acquire right of way for the pipeline referenced herein." An individual requested that any application and permit issued by the Commission contain in clear, bold and underlined language the following: "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."

The Commission agrees in part with these comments. The Commission reiterates that those who may disagree with the classification reviewed and determined by the Commission, or who believe that an entity has not complied with applicable statutory requirements, are able to challenge the pipeline's classification in court. The Commission disagrees that further clarification is necessary in the rule, however, and makes no change as a result of these comments. Comments regarding contents of Commission forms are outside the scope of this rulemaking. The Commission may consider changes to this form or to the permit at a later date.

One comment (Senator Davis, three individuals) requested that the rule include an affirmative statement that the Commission's decision does not preempt a court challenge.

The Commission agrees in part with this comment. It is correct that a Railroad Commission Permit to Operate a Pipeline in Texas does not preempt a court challenge. However, the Commission disagrees that it is necessary to include this statement in the rule, because the Commission does not have any discretion to determine who may properly bring suit in court. In other words, an indiscriminate statement regarding the availability of a court challenge to a Commission classification could be misleading. Not all potential plaintiffs will have the necessary standing to bring suit; not every court may have jurisdiction over such claims. Those determinations are properly within the purview of the courts, not the Commission.

Another comment (STPRA, one individual) stated that renewals should be held to the same standard to support their classification.

The Commission disagrees. It is not the intent of the proposed rule that the renewal of an existing permit would include revisiting the status of existing pipeline permits issued prior to the effective date of the proposed amendments. However, a pipeline operator seeking to change its classification would have to comply with the requirements of the amended rule.

One comment (an individual) offered several wording changes and additions to the rule "in order to comply" with the *Denbury* decision.

The Commission disagrees that these changes or additions are necessary; the Court in *Denbury* did not direct the Commission to take any required action, and therefore the rule changes offered by this commenter are beyond the scope of this rulemaking. Further, the Commission notes that many of the changes suggested by the individual would have the effect of expanding the scope of application of the proposed rule amendments, as well as the burden imposed by them to a larger group than that originally contemplated by the amendments as proposed (namely, operators seeking to renew or amend an existing permit for any reason other than a change in classification). The Commission makes no changes in response to this comment.

One comment (Resource Analytical, TSCRA) requested the addition of a provision allowing landowners to have input on the pipeline route, as well as requiring each line to have its own permit.

The Commission disagrees with these comments; as explained in the opening paragraphs of this preamble, the Commission has no routing or siting authority with respect to pipelines. With respect to having one permit per pipeline, the Commission observes that, for current pipeline operators, the decision to seek a new pipeline permit or to amend an existing permit is generally determined by the purpose, nature, and location of the pipeline, and is left to the applicant to decide.

One comment (TXOGA) suggested adding a default of granting the application to the rule if the Commission does not act in time.

The Commission disagrees with this comment. The Commission has determined that the timing provisions in proposed §3.70(d) and (e) are sufficient for both the applicant and staff to submit and review the application and any attachments. The Commission will address any failure to meet the deadlines on a case-by-case basis, considering the circumstances involved.

Another comment (GPA, TPA) suggested shortening the review period for a "complete application," and shortening the review period for permit approval, and one individual questioned

whether the 15- and 45-day deadlines would be a burden on staff. Another comment (Sierra Club) suggested extending staff's review time from 45 days to 75 days.

The Commission disagrees with these comments; however, the Commission anticipates that processing most applications will not require the full time authorized by the rule as proposed. On occasion, the Commission will need the times specified in the rule in order to process all applications within the time parameters without additional staff.

One comment (an individual) suggested problems with the proposal preamble's justifications and lack of impact statements; specifically, the comments mentioned whether the proposed rule meets the definition of a major environmental rule set forth in Texas Government Code, §2001.0225(a), thereby requiring a regulatory analysis, and whether "the rule will affect the local economy; therefore the Commission must prepare a local employment impact statement pursuant to Texas Government Code §2001.022."

The Commission disagrees with these comments. The proposed rule does not meet the definition "major environmental rule" as set out in Texas Government Code, §2001.0225(a), because the rule does not apply to the acquisition of pipeline right-of-way or to the construction of a pipeline. This rule pertains to issuing permits to operate pipelines in Texas. The result of this rule does not exceed a standard set by federal law; does not exceed an express requirement of state law; does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; nor is the rule adopted solely under the general powers of the agency instead of under a specific state law.

The Commission also disagrees that this rule affects a local economy. Again, the rule does not apply to the acquisition of pipeline right-of-way or to the construction of a pipeline. This rule pertains to issuing permits to operate pipelines in Texas. The Commission also notes that failure to comply with Texas Government Code, §2001.022, does not impair the legal effect of a rule adopted under Texas Government Code, Chapter 2001.

Another comment (GPA, TXOGA) suggested that the rule include language to protect information designated confidential or proprietary by the applicant from public disclosure.

The Commission has procedures concerning proprietary information and will address these concerns on a case-by-case basis. The issue of whether potentially sensitive information related to trade secrets, financial information, or confidential geological or geophysical information should be disclosed will be ultimately decided by the Office of the Attorney General.

Another comment (GPA, TPA) stated the language of subsection (e) should address the ability of a pipeline operator to extend its system to supply sources and customers, as well as to adjust its system as needed to perform replacements and relocations. TPA further stated that such extensions, replacements and relocations do not change the classification of a pipeline. TPA suggested language be added to subsection (e): "Subject to annual renewals, a pipeline permit issued by the Commission will allow extensions, replacements and relocations of segments of the pipeline system in the operator's normal course of business." A similar comment (GPA) requested clarification that, under the proposed amendments, gas utilities will not be subjected to additional classification reviews for any new or amended pipeline permits, provided that the company is already classified as a gas utility and is not seeking a change in its classification. Moreover, GPA requested the addition of language in subsection (f) stating that "renewals of permits for pipelines shall not alter the classification previously accorded to the existing pipeline except upon application of the applicant."

The Commission agrees with the comment that a pipeline that has already been classified as a gas utility and which is not seeking a change in its classification, but rather an amended permit (for purposes including extensions, replacements, or relocations) will not be subject to additional classification reviews, but will continue to maintain its gas utility classification. Likewise, a pipeline classified as a common carrier will not be subject to additional classification reviews solely on the basis of performing any extensions, replacements, or relocations.

However, a pipeline classified as a non-utility under Texas Utilities Code, §121.005, must

continue to satisfy all the requirements of Texas Utilities Code, §121.005. A natural gas pipeline that has not previously been classified as a gas utility must reassert to the Commission its non-utility status following any extension, replacement, or relocation of any part of the pipeline system. Generally speaking, if the Commission determines that a natural gas pipeline holding itself out to be a private line no longer meets the requirements of Texas Utilities Code, §121.005, the Commission will designate that pipeline as a gas utility. The classification currently assigned to a pipeline permit will remain in place unless it is changed using the mechanism set forth in the rule or by court ruling. The Commission adds a clarifying change in subsection (f) with regard to these comments.

One comment (CenterPoint) supported the proposed amendments, but stated that the common carrier standards should not be blended into the "gas utility" process.

The Commission disagrees. The Commission recognizes that the statutory standards for common carrier status and gas utility status are different. The permitting process is and will remain sufficiently flexible that the classifications will be distinguishable.

Another comment (Williams, TAEP) was opposed to amending the rule, stating that the proposed amendments are not necessary and may result in delays, additional costs to pipelines, producers, and the Commission, or other problems. TAM commented that while it appreciates the need to clarify the rule and more properly classify pipelines, it encouraged the Commission to avoid any unnecessary hurdles or steps in making a regulatory determination, as delays in the construction of critical infrastructure can significantly harm the state's economy.

The Commission disagrees that the amendments are not necessary. While §3.70 in its present form has served the Commission well over the years, the proposed amendments will add to the transparency and completeness of the permitting process by requiring pipelines to substantiate the basis for the requested classification. The time requirements placed on both the applicant and the Commission are reasonable and should not result in any undue delays in obtaining a permit to operate. Further, as stated in the proposal, the Commission has determined that there are no anticipated fiscal implications to

the state as a result of administering the amendments, nor will there be any expected significant economic costs for persons required to comply with the amendments as adopted.

One comment (Women Voters, several individuals) requested that the Commission exercise authority to monitor interstate pipelines.

The Commission disagrees with this comment. While some interstate pipeline operators voluntarily secure and renew T-4 Permits to Operate a Pipeline in Texas, the Commission lacks statutory authority to require them to do so. The Commission is not an interstate agent and has no authority to regulate interstate pipelines.

Presidio commented that it has been working to bring a natural gas pipeline to the city and encouraged the Commission to adopt best practices rules to facilitate construction of this pipeline between the city of Presidio and Mexico.

The Commission thanks Presidio for the comment and finds that no changes to the rule are necessary.

Several individuals filed comments that did not address specific provisions in the rule, but concerned eminent domain provisions, federal regulations, and other subjects previously discussed in this preamble or that are outside the scope of this rulemaking or the Commission's authority.

The Commission acknowledges receipt of these comments and thanks the commenters for participating in the rulemaking process.

The Commission adopts the amendments in order to clarify and more specifically prescribe the procedure by which a pipeline operator may be classified by the Commission as a common carrier, gas utility, or private line operator when applying for a new T-4 permit to operate a pipeline or when renewing, amending, or cancelling an existing T-4 permit.

The Commission adopts amendments in subsection (a), including a change previously discussed to exclude production or flow lines that do not leave a lease, and operators excluded under §8.1(b)(4) of this title, to reword the requirement that certain pipeline operators must obtain a T-4 permit, renewable

annually, as provided in this rule.

The Commission adopts amendments in subsection (b) to state the application requirements for obtaining a new pipeline permit or for amending a permit because of a change of a pipeline's classification. Operators must use the form approved by the Commission and must include certain additional information. More specifically, pipeline operators must provide contact information; state the requested classification and purpose of the pipeline or pipeline system as a common carrier, a gas utility, or private line; and submit a sworn statement from the pipeline applicant providing the operator's factual basis supporting the classification and purpose being sought for the pipeline. In addition, if applicable, the pipeline operator must submit documentation to provide support for the classification and purpose being sought for the pipeline together with any other information requested by the Commission. The Commission adopts a minor clarifying change in subsection (b), as previously discussed.

In new subsection (c), the Commission adopts a new provision to state the application requirements for renewing an existing permit, amending an existing permit for any reason other than a change in classification, or cancelling an existing permit. In each of those instances, an operator must use the form approved by the Commission and must include certain additional information. More specifically, pipeline operators must provide contact information; a statement from the pipeline operator 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 any other information requested by the Commission.

In new subsection (d), the Commission adopts a new provision stating that the Commission will 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 will specify the additional information needed to complete the application.

In new subsection (e), the Commission adopts wording to state that, once an application is determined to be complete and sufficient, the Commission shall either issue, amend, or cancel the pipeline

permit or deny the pipeline permit as filed. If the Commission is satisfied from the application and the documentation in support thereof, and its own review, that the proposed line is, or will be, laid, equipped, managed and operated in accordance with the laws of the state and the rules and regulations of the Commission, the permit may be granted. Further, new wording in subsection (e) provides that 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 Commission adopts new subsection (f), which states that this rule applies to 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, including a change previously discussed to clarify that the classification assigned applies to extensions, replacements, and relocations on that pipeline.

New subsection (g) provides that the Commission may delegate the authority to administratively issue pipeline permits.

New subsection (h) states that the pipeline permit, if granted, shall be revocable at any time after a hearing held after 10 days' notice, if the Commission finds that the pipeline is not being operated in accordance with the laws of the state and the rules and regulations of the Commission.

The Commission adopts the amendments to §3.70 pursuant to Texas Natural Resources Code §81.051 and §81.052, which provide the Commission with jurisdiction over all persons owning or operating pipelines in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; Texas Natural Resources Code §85.202, which authorizes the Commission to promulgate rules requiring records to be kept and reports made, and providing for the issuance of permits, tenders, and other evidences of permission when the issuance of the permits, tenders, or permission is necessary or incident to the enforcement of the

Commission's rules for the prevention of waste; Texas Natural Resources Code §86.041 and §86.042, which allow the Commission broad discretion in adopting rules to prevent waste in the piping and distribution of gas, require records to be kept and reports made, and provide for the issuance of permits and other evidences of permission when the issuance of the permit or permission is necessary or incident to the enforcement of its blanket grant of authority to make any rules necessary to effectuate the law; Texas Natural Resources Code §111.131 and §111.132, and Texas Business Organizations Code, §2.105, which authorize the Commission to promulgate rules for the government and control of common carriers and public utilities; Texas Natural Resources Code §§117.001 - 117.101, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. §§60101, *et seq.;* and Texas Utilities Code §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, *et seq.*

Texas Natural Resources Code §§81.051, 81.052, 85.202, 86.041, 86.042, 111.131, 111.132, and §§117.001 - 117.101; Texas Business Organizations Code, §2.105; Texas Utilities Code §§121.201 - 121.210; and 49 United States Code Annotated, §§60101, *et seq.*, are affected by the adopted amendments.

Statutory authority: Texas Natural Resources Code §§81.051, 81.052, 85.202, 86.041, 86.042, 111.131, 111.132, and §§117.001 - 117.101; Texas Business Organizations Code, §2.105; Texas Utilities Code, §§121.201 - 121.210; and 49 United States Code Annotated, §§60101, *et seq.*

Cross-reference to statute: Texas Natural Resources Code, Chapter 81, Chapter 111, and Chapter 117; Texas Business Organizations Code, §2.105; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

[*NOTE: RULE LANGUAGE BEING ADOPTED THAT DIFFERS FROM THE PROPOSAL IS INDICATED IN **BOLD***]

§3.70. Pipeline Permits Required.

(a) Each operator of a [~~No~~] pipeline or gathering system**, other than a production or flow line that does not leave a lease or an operator excluded under §8.1(b)(4) of this title (relating to General Applicability and Standards,** 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 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 or a private line;

(3) a sworn statement from the pipeline applicant providing the operator's factual basis supporting the classification and purpose being sought for the pipeline**, including, if applicable, an attestation to the applicant's knowledge of the eminent domain provisions in Texas Property Code, Chapter 21, and the Texas Landowner's Bill of Rights as published by the Office of the Attorney General of Texas;** and

(4) documentation to provide support for the classification and purpose being sought for

the pipeline, if applicable, and any other information requested by the Commission.

(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 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 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.

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

(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 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, 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) 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. **The classification of a pipeline under this rule applies to extensions, replacements, and relocations of that pipeline.**

(g) The Commission may delegate the authority to administratively issue pipeline permits.

(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 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.]~~

This agency hereby certifies that the rules as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 2nd, 2014.

Filed with the Office of the Secretary of State on December 2nd, 2014.

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