



RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

MEMORANDUM

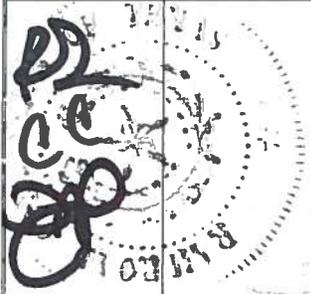
TO: Chairman David Porter
Commissioner Christi Craddick
Commissioner Ryan Sitton

FROM: Haley Cochran, Attorney— General Counsel Section
Office of General Counsel 

THROUGH: Alexander C. Schoch, General Counsel 

DATE: November 29, 2016

SUBJECT: Proposed New Rule 16 TAC §20.81, relating to
Enhanced Contract Monitoring.

December 6, 2016		
Approved	Denied	Abstain
		

Attached is Staff's recommendation to publish proposed new rule 16 Tex. Admin. Code §20.81, relating to Enhanced Contract Monitoring. The rule is proposed to establish a procedure to identify each contract that requires enhanced monitoring, as required by Texas Government Code §2261.253, which was added by Senate Bill 20 (84th Legislature, 2015).

Staff requests the Commission's approval to publish the proposed new rule in the *Texas Register* for a 30-day comment period. If approved at conference on December 6th, the proposal should appear in the December 23, 2016 issue of the *Texas Register*. The proposal and an online comment form would also be made available on the Commission's website the day after conference, giving interested persons more than two additional weeks to review and submit comments to the Commission.

cc: Kimberly Corley, Executive Director
Jessica Byrne, Director of Administration
Wei Wang, Chief Financial Officer

1 The Railroad Commission of Texas (Commission) proposes new §20.81, relating to Enhanced
2 Contract Monitoring. The Commission proposes the new rule pursuant to Texas Government Code
3 §2261.253(c), which was added by Senate Bill 20 (84th Legislature, 2015) and requires state agencies to
4 establish a procedure to identify each contract that requires enhanced contract monitoring and submit
5 information on the contract to the agency’s governing body. It also requires that the agency’s contract
6 management office or procurement director immediately notify the agency’s governing body of any
7 serious issue or risk that is identified with respect to a contract monitored under the statute.

8 The proposed new rule lists the factors that the Commission will use to assess each contract and
9 determine whether enhanced contract monitoring is necessary. The factors include the complexity of the
10 services, the contract amount, whether the services or vendor are new or have changed significantly, and
11 any other factors that may impact the project. The proposed new rule also specifies what the
12 Commission may require of a vendor if the Commission determines that a contract requires enhanced
13 monitoring, and identifies Commission staff who are responsible for monitoring contracts.

14 Sandy Williams, Director, Procurement and Contracts Management, Administration Division,
15 has determined that for each year of the first five years the new rule will be in effect there will be no
16 fiscal implications for state or local governments as a result of the new rule. In addition, there is no
17 anticipated cost for persons required to comply with the proposed rule.

18 Ms. Williams has determined that for each year of the first five years the proposed new rule will
19 be in effect, the anticipated public benefit will be enhanced monitoring of Commission contracts and
20 Commission compliance with recent changes to state agency contract requirements.

21 The Commission has determined that the proposed new rule will not have an adverse economic
22 effect on small businesses or micro-businesses. Therefore, the Commission has not prepared the
23 economic impact statement or the regulatory flexibility analysis pursuant to Texas Government Code
24 §2006.002.

1 The Commission has also determined that the proposed new rule will not affect a local economy.
2 Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas
3 Government Code §2001.022.

4 The Commission has determined that the new rule does not meet the statutory definition of a
5 major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory
6 analysis conducted pursuant to that section is not required.

7 Comments on the proposed new rule may be submitted to Rules Coordinator, Office of General
8 Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at
9 www.rrc.texas.gov/legal/rules/comment-form-for-proposed-rulemakings; or by electronic mail to
10 rulescoordinator@rrc.texas.gov. The Commission will accept comments until noon (12:00 p.m.) on
11 Monday, January 23, 2017, which is 31 days after publication in the *Texas Register*. The Commission
12 finds that this comment period is reasonable because the proposal and an online comment form will be
13 available on the Commission's website more than two weeks prior to *Texas Register* publication of the
14 proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The
15 Commission cannot guarantee that comments submitted after the deadline will be considered. For further
16 information, call Sandy Williams at (512) 463-7680. The status of Commission rulemakings in progress
17 is available at www.rrc.texas.gov/legal/rules/proposed-rules.

18 The Commission proposes the new rule under Texas Government Code §2261.253, which
19 requires the Commission to establish a procedure to identify each contract that requires enhanced
20 contract or performance monitoring, and Texas Natural Resources Code §§81.051 and 81.052, which
21 provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil
22 or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons
23 and their operations under Commission jurisdiction.

24 Texas Natural Resources Code, §§81.051 and 81.052 are affected by the proposed amendments.

1 Statutory authority: Texas Natural Resources Code §§81.051 and 81.052, and Texas Government
2 Code §2261.253.

3 Cross-reference to statutes: Texas Natural Resources Code §§81.051 and 81.052 and Texas
4 Government Code §2261.253.

5
6 SUBCHAPTER A. CONTRACTS AND PURCHASES.

7 §20.81. Enhanced Contract Monitoring.

8 (a) The Commission shall use the following factors to assess each contract and determine
9 whether enhanced contract monitoring is necessary.

10 (1) the complexity of the services;

11 (2) the contract amount;

12 (3) whether the services or vendor are new or have changed significantly; and

13 (4) any other factors that may impact the project.

14 (b) If the Commission determines that a contract requires enhanced monitoring, the Commission
15 will require that the vendor provide status reports on a scheduled basis to determine whether performance
16 measures are being met. Enhanced monitoring may also include site visits, additional meetings with the
17 vendor, and other documentation requirements needed to assess progress toward meeting performance
18 measures.

19 (c) The Director of Procurement and Contracts Management shall notify the Commissioners of
20 contracts requiring enhanced monitoring under this section. The Director shall also immediately notify
21 the Commissioners of any serious issue or risk that is identified in a contract monitored under this
22 section.

23 (d) This section does not apply to an interagency agreement, interlocal agreement, a
24 memorandum of understanding with another state agency, or a contract for which there is no cost to the

1 Commission.

2 This agency hereby certifies that the proposal has been reviewed by legal counsel and found to
3 be within the agency's authority to adopt.

4 Issued in Austin, Texas on December 6, 2016.

5 Filed with the Office of the Secretary of State on December 6, 2016.


Haley Cochran

Rules Attorney, Office of General Counsel
Railroad Commission of Texas