



RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

MEMORANDUM

TO: Chairman Christi Craddick
 Commissioner Ryan Sitton
 Commissioner Wayne Christian

FROM: Haley Cochran, Attorney *HC*
 Office of General Counsel

THROUGH: Alexander C. Schoch, General Counsel *AS*

DATE: March 13, 2018

SUBJECT: Proposed Amendments to 16 TAC §3.70 To
 Implement HB 1818

March 20, 2018		
Approved	Denied	Abstain

Attached is Staff's recommendation to amend 16 Texas Administrative Code §3.70, relating to Pipeline Permits Required. The proposed amendments are necessary to implement provisions of House Bill 1818, which requires the Commission to create fees to fund the Pipeline Safety Program pursuant to Texas Natural Resources Code §81.071. The attached amendments propose the following fee structures:

Pipeline Group	Proposed Fees
Group A Pipelines Natural gas transmission and storage pipelines; hazardous liquids transmission and storage pipelines; and hazardous liquids gathering pipelines	\$20 annual mileage fee \$500 fee for a new permit or permit renewal
Group B Pipelines Intrastate production and gathering pipelines leaving a lease	\$10 annual mileage fee \$500 fee for a new permit or permit renewal

In Fiscal Year 2019, a pipeline operator's permitted mileage will be based on the mileage assigned to that operator as of June 29, 2018, and the mileage fee will be due to the Commission on August 31, 2018. In all subsequent years, the pipeline operator's permitted mileage will be based on the mileage assigned to that operator as of December 31, and the mileage fee will be due to the Commission on April 1. The \$500 fee for a new permit or a permit renewal will be due to the Commission when the application is submitted.

Staff requests the Commission's approval to publish the proposed amendments in the *Texas Register* for public comment. If approved at conference on March 20th, the proposal should appear in the April 6th issue of the *Texas Register*. The proposal and an online comment form would also be made available on the Commission's website by March 21st, giving interested persons more than two additional weeks to review and submit comments to the Commission.

cc: Wei Wang, Interim Executive Director
Kari French, Director, Oversight and Safety Division
Jim Osterhaus, Director of Pipeline Safety, Oversight and Safety Division

1 The Railroad Commission of Texas (Commission) proposes amendments to §3.70, relating to
2 Pipeline Permits Required, to implement fees to fund the Commission's Pipeline Safety Program pursuant
3 to Texas Natural Resources Code §81.071. The proposed amendments also specify time periods for filing
4 permit renewals, require the electronic filing of permits, require specific time periods for Commission
5 review of permit filings, specify time periods and procedures for transfers of permits, and state that an
6 operator who fails to comply with the rule may be assessed a penalty.

7 The Sunset Advisory Commission (Sunset Commission) reviewed the Commission from 2016-
8 2017. Upon completion of its review, the Sunset Commission submitted a final report to the 85th
9 Legislature, Regular Session, 2017, containing various recommendations for changes to the Commission's
10 funding and operations. The legislature reviewed the Sunset Commission's recommendations and adopted
11 a final "sunset bill", House Bill 1818 (HB 1818). HB 1818, through various statutory amendments,
12 directs the Commission to develop and implement new policies and procedures. Included in HB 1818
13 were amendments to §81.071 of the Natural Resources Code, which authorizes ~~and requires~~ the HJC 3/20
14 Commission to establish pipeline safety and regulatory fees to be assessed for permits or registrations for
15 pipelines under the jurisdiction of the Commission's pipeline safety and regulatory program. Before the
16 enactment of §81.071, the Commission received funding for the pipeline safety program from the
17 legislature's General Revenue Fund. However, the 85th Legislature directed the Commission to fund its
18 pipeline safety program with federal funds and fees collected from the industry. Therefore, §81.071 was
19 promulgated to provide necessary funding for the Commission's pipeline safety and regulatory program.

20 Section 81.071(b) authorizes the Commission to assess: (1) an annual fee to permit or registration
21 holders; and (2) individual fees for new permits or registrations, permit or registration renewals, and
22 permit or registration amendments. Section 81.071(d) ~~requires~~ ^{authorizes HJC 3/20} the Commission to establish by rule the
23 methods by which the fees will be calculated and assessed. The Commission may base the fees on any
24 factor it considers necessary to efficiently and fairly recover the pipeline safety and regulatory program's
25 costs. Section 81.071(e) authorizes reasonable late payment penalties for such fees. In accordance with
26 these provisions, the Commission proposes amendments to §3.70 to establish an annual mileage fee, a

1 permit processing fee for new permits and annual permit renewals, and the procedure by which pipeline
2 operators will pay both fees.

3 The Commission proposes amendments to subsection (a) to clarify that operators are required to
4 renew permits annually.

5 Proposed amendments to subsections (b) and (c) require an operator to utilize the Commission's
6 online filing system (currently known as the Pipeline Online Permitting System or POPS) to file an
7 application for a new permit, renew an existing permit, amend an existing permit, or cancel an existing
8 permit.

9 Proposed amendments to subsections (d) and (e) shorten the time period for Commission staff's
10 review of permit filings from 45 days upon the receipt of an administrative complete application to 30 days.

11 Proposed amendments in subsection (h) add that the Commission may call a hearing to revoke a
12 permit if the permit is not renewed annually.

13 Proposed new subsection (i) establishes an annual fee based on the pipeline operator's permitted
14 mileage. For purposes of calculating the mileage fee, the Commission proposes to categorize pipeline
15 operators into two groups. Group A includes transmission and gathering pipelines that are required by
16 Commission rules to have a valid T-4 permit to operate and are subject to the regulations in 49 Code of
17 Federal Regulations (CFR) Parts 192 and 195. Group A pipelines include natural gas transmission and
18 storage pipelines, natural gas gathering pipelines, hazardous liquids transmission and storage pipelines,
19 and hazardous liquids gathering pipelines. Group A pipelines are subject to pipeline safety inspections by
20 the Commission. Group B includes gathering pipelines that are required by Commission rules to have a
21 valid T-4 permit to operate but are not subject to the regulations in 49 CFR Parts 192 and 195. Group B
22 pipelines include intrastate production and gathering pipelines leaving a lease. Group B pipelines are
23 subject to pipeline safety inspections as codified in Texas Natural Resources Code, §§117.011 and
24 117.012, and Texas Utilities Code, §121.201 pursuant to House Bill 2982, 83rd Regular Session, and are
25 also required to comply with any other applicable Commission rules. However, because the Commission
26 inspects pipelines in Group A more regularly pursuant to 49 CFR Parts 192 and 195, Group A pipelines

1 create higher costs to the Commission. Therefore, pipelines in Group A will be assessed a higher annual
2 mileage fee.

3 Proposed new subsection (i)(2) requires pipeline operators in Group A to pay an annual fee of
4 \$20 per mile of pipeline based on the number of miles permitted to the operator as of June 29, 2018 for
5 the initial year that the proposed amendments are in effect, and as of December 31 for each subsequent
6 year. Proposed subsection (i)(3) requires pipeline operators in Group B to pay an annual fee of \$10 per
7 mile of pipeline based on the number of miles permitted to the operator as of June 29, 2018 for the initial
8 year that the proposed amendments are in effect, and as of December 31 for each subsequent year.
9 Proposed subsection (i)(4) assesses a \$20 or \$10 fee, as appropriate, for any pipeline distance that is a
10 fraction of a mile.

11 For the first year that the proposed amendments are in effect, the mileage fee will be calculated
12 using the number of pipeline miles permitted to an operator as of June 29, 2018, with the mileage fee
13 payable to the Commission by August 31, 2018. For all subsequent years, the mileage fee will be
14 calculated using the number of pipeline miles permitted to an operator as of December 31 of each year
15 with the mileage fee payable to the Commission by April 1 of each subsequent year.

16 For example, a pipeline operator in Group A that has 20.1 miles of pipeline included on its permit
17 as of June 29, 2018, must pay \$420 to the Commission by August 31, 2018. A pipeline operator in Group
18 B that has 20.1 miles of pipeline included on its permit as of June 29, 2018, must pay \$210 to the
19 Commission by August 31, 2018.

20 The Commission will provide an online portal for the payment of all fees. Pipeline operators are
21 directed to monitor the Commission's website for more information regarding the online payment portal.
22 The Commission will post on its website by the end of March 2018 a chart showing the number of
23 permitted miles in Commission records assigned to each operator. If an operator needs to update its
24 number of permitted miles, the operator must submit a permit amendment no later than May 15, 2018, to
25 allow Commission staff adequate time to process the amendment. The number of permitted miles
26 assigned to each operator in Commission records on June 29, 2018, will be the number used in the online

1 payment portal to calculate the mileage fee that each operator must pay by August 31, 2018. The
2 Commission's online payment portal will be available no later than August 1, 2018, giving the operators a
3 month to pay the mileage fee.

4 Proposed subsection (j) establishes a \$500 permit processing fee, which beginning upon the
5 effective date of the adopted amendments, must be paid for each new permit application and permit
6 renewal. Each pipeline operator is required to annually renew its T-4 permit. Therefore, the \$500 permit
7 processing fee will be assessed annually upon the pipeline operator's renewal date. When applying for a
8 new permit, a pipeline operator will pay the \$500 fee and will subsequently pay the fee every year
9 thereafter upon the permit renewal date. The permit renewal date for a pipeline operator who has an
10 existing, valid permit will be the date shown in the Commission's online filing system on June 29, 2018,
11 when the pipeline mileage is calculated for purposes of paying the mileage fee. Permit amendments that
12 may occur in the future will not change the permit renewal date.

13 Subsections (k) and (l) establish reasonable late fees, as authorized by Texas Natural Resources
14 Code, §81.071(e), for a pipeline operator who fails to pay the annual fee or renewal processing fee on
15 time. A pipeline operator who fails to renew a permit on or before the permit expiration date or who fails
16 to timely pay the annual mileage fee will owe a late-filing fee.

17 Proposed amendments in subsection (m) specify that an operator has 30 days after completion of
18 a transfer to notify the Commission of the transfer and the procedure to do so, and in subsection (n),
19 clarify that a violation of §3.70 may result in a penalty.

20 ^{HPC} ^{authorized}
_{3/26} As ~~required~~ by HB 1818, the proposed fees would be sufficient to support the Commission's
21 pipeline safety and regulatory program costs. The fees generated will be used entirely to support the
22 pipeline safety and regulatory program costs, including permitting or registration costs, administrative
23 costs, costs of employee salaries and benefits, inspection costs including travel, and supplies and
24 equipment. The General Appropriations Act (Senate Bill 1, 85th Legislature, Regular Session, 2017)
25 appropriated \$14,047,137 for Pipeline Safety funding in state fiscal year 2018, of which \$9,037,449 is
26 from the General Revenue Dedicated Fund, the Oil and Gas Regulation Cleanup Account. Existing fees

1 assessed pursuant to Utilities Code §121.211 contribute over half of that cost and therefore the remaining,
2 additional cost must be covered by the proposed new fees.

3 The proposed annual mileage fee will generate the majority of the program funding. Commission
4 staff estimates that there are currently approximately 73,000 miles of Group A pipelines permitted in
5 Texas and 173,000 miles of Group B pipelines permitted in Texas. Thus, the proposed annual mileage fee
6 of \$20 per Group A mile would generate \$1,460,000 and the proposed annual mileage fee of \$10 per
7 Group B mile would generate \$1,730,000 for a total of \$3,190,000.

8 Commission staff estimates that the new \$500 fee for each permit application and permit renewal
9 will generate an estimated \$1,095,000 per year. On average, Commission staff processes approximately
10 170 new permit applications a year, and 2,020 permit renewals per year, which will continue to be
11 required pursuant to subsection (a) to be renewed every year. The annual revenue derived from the \$500
12 permit processing fee will vary depending on the number of new permits and permit renewals requested
13 in any given year. Therefore, Commission staff estimates that the annual mileage fee and the permit
14 application and permit renewals fee will generate approximately \$4,285,000 a year.

15 To consider possible fee structures, the Commission held a public workshop on November 28,
16 2017 at the Commission's Austin office. The Commission received seven informal written comments
17 after the public workshop. Atmos Pipeline – Texas, a division of Atmos Energy Corporation (APT),
18 commented generally that it supports the concept of a self-funded regulatory program administered by the
19 Commission as authorized in HB 1818. APT additionally supports the concept of a set fee per permitted
20 mile and an additional permit processing fee for T-4 permit applications and renewals. Finally, APT
21 supports revising the pipeline transfer notice period from 45 days before the transfer to within 30 days
22 following the transfer. The Commission thanks APT for its support.

23 The Texas Pipeline Association (TPA) commented that it recognizes the importance of the
24 Commission having a properly funded pipeline safety program. TPA supports the Commission's decision
25 to reduce the amount of time that Commission staff has to review an administratively complete T-4
26 permit application from 60 days to within 30 days. TPA additionally supports revising the pipeline

1 transfer notice period from 45 days before the transfer to within 30 days following the transfer. EPCOR,
2 on behalf of Hughes Gas Resources Inc., commented that it believes a set fee per permitted mile is the
3 most equitable approach to assess the T-4 permit fees and additionally agrees with TPA's submitted
4 comments. The Commission thanks TPA and EPCOR for their support.

5 ONEOK, Inc. (ONEOK) commented that it supports a fixed dollar amount per mile of permitted
6 pipeline as opposed to a fee based on pipe diameter size. Ensuring accuracy of the fees collected is best
7 accomplished by making the mileage fee collection process consistent each year. ONEOK also suggests
8 setting a specific date for permit renewals to allow operators to properly budget costs and supports a
9 single fee payment rather than multiple individual payments by permit with varying dates.

10 The Commission thanks ONEOK for its support of a set fee per permitted mile. The Commission
11 disagrees that all pipeline operators should have the same date for permit renewals. Under the proposed
12 amendments, a particular permit's renewal date after the effective date of these amendments will be the
13 date shown for the permit in the Commission's online filing system on June 29, 2018, when an operator's
14 mileage is calculated. This fixed date based on each operator's permit would remain in place even if an
15 operator files a permit amendment during the year. The Commission proposes the fixed renewal date for
16 two reasons. First, it would result in a regular, consistent renewal date for each permit, allowing the
17 Commission to better track the status of a permit. Having a fixed renewal date is also consistent with the
18 Commission's requirements for P-5 Organization Report renewals in the Oil and Gas Division. Second,
19 ^{HJC 3/20} now that the Commission is ^{authorized} ~~required~~ by §81.071 of the Natural Resources Code to fund the pipeline
20 safety program through the Oil and Gas Regulation and Cleanup Fund, the fixed renewal date for each
21 operator would ensure that the Commission's regulatory and financial burdens are met.

22 The Commission proposes a corresponding amendment in subsection (j) to state that a permit
23 renewal date will not be affected or changed by an operator requesting a permit amendment. This
24 proposed change also ensures that the Commission will meet the requirements of §81.071.

25 The Dow Chemical Company (Dow) commented that it supports a fee allocation based strictly on
26 pipeline mileage and states that the length of the pipeline should be the primary variable in calculating a

1 fee. Dow does not support a separate T-4 permit application fee for permit amendments or permit
2 renewals. Dow also stated that a pipeline mileage fee should be based on mileage reported on an
3 operator's T-4 at the end of the Commission's fiscal year or at the end of the calendar year. Finally, Dow
4 commented that it does not support revising the Commission staff review period of a T-4 permit
5 application to 30 days because a shorter period may result in poorly reviewed permits.

6 The Commission disagrees with Dow that a separate fee for permit renewals is unnecessary;
7 however, the Commission does not propose a fee for permit amendments. The annual mileage fee will
8 only accrue an estimated \$3,190,000 of the \$9,037,449 fee revenue needed to support the pipeline safety
9 regulatory program. Therefore, a fee for new permits and permit renewals is necessary to fully fund the
10 program. As stated previously, this methodology is consistent with the Commission's requirements for P-
11 5 Organization Report renewals in the Oil and Gas Division.

12 The Commission agrees with Dow that the number of permitted miles used to calculate the
13 annual mileage fee should be calculated at the end of the calendar year. With the exception of 2018, in
14 which the number of permitted miles will be determined as of June 29, 2018, the proposed amendments in
15 subsection (i)(1) and (2) specify December 31 of each year as the date the number of permitted miles will
16 be determined in order to calculate the annual mileage fee that an operator must pay. Proposed new
17 subsection (i)(5) requires fees due to the Commission for mileage transferred from one operator to
18 another operator pursuant to subsection (m) of this section to be captured in the next mileage fee to be
19 calculated on the following December 31 and paid by the new operator.

20 The Commission disagrees with Dow's comment that shortening the time for Commission staff to
21 review a T-4 permit application to 30 days will result in poorly reviewed permits. Commission staff is
22 already reviewing administratively complete T-4 permit applications within 30 days, so the current rule
23 wording allowing 45 days is unnecessary. In addition, Commission staff's review of electronically filed
24 permits using its online filing system is more efficient. The Commission also recognizes Dow's comment
25 that the online filing system needs to be fully functional before the Commission requires its use and notes
26 that enhancements are in progress to ensure the system is workable.

1 Sander Resources commented that the amendments to §3.70 should balance any assessed fees
2 between all pipeline operators and those subject to pipeline safety regulations. Sander Resources
3 additionally commented that the fees should be assessed based on the following tiers: pipes with 12
4 inches or less in diameter, pipes with a diameter between 12 and 24 inches, and pipes with a diameter
5 larger than 24 inches. The Commission agrees that the mileage fee should be balanced between all
6 pipeline operators and those subject to pipeline safety regulations; therefore, the Commission proposes a
7 different mileage fee for Group A and Group B operators. However, the Commission disagrees that a fee
8 should be assessed based on size of pipe diameter. Pipeline safety inspections are the highest cost of the
9 pipeline safety program. The Pipeline Safety Department's inspection costs increase the more miles a
10 particular pipeline operator has permitted. Inspection costs are not affected by pipe diameter. As a result,
11 an annual fee based on mileage is the most equitable way to fund the pipeline safety program.

12 CPS Energy's comments asked how the Commission foresees utilizing the funds generated from
13 the fees and what growth the Commission expects in the pipeline safety program. The Commission has
14 previously discussed the necessity for proposed pipeline fees and how the funds will be used. The
15 proposed fee structure is used to cover the costs of the pipeline safety program. The Commission
16 continues to strengthen its pipeline safety program. For example, funds collected from the proposed fees
17 will be used to hire additional pipeline safety inspectors.

18 Kari French, Director, Oversight and Safety Division, has determined that for each year of the
19 first five years the amendments will be in effect there will be fiscal implications to the Commission and to
20 the regulated industry as a result of the amendments. There will be no fiscal effect on local government.

21 The fiscal impact on the Commission as a result of administering the amendments will be a
22 maximum cost of approximately \$65,000. This cost is based on the estimated 1,150 hours of
23 programming required to modify existing programs to update the timing of review workflows, add new
24 fee codes, modify the Commission's payment portal to accommodate the new fees, and recertify the new
25 fee codes through the payment portal. As explained above, in accordance with HB 1818, the proposed
26 new fees will generate approximately \$4,285,000 in revenue to the Commission each year, and the fiscal

1 impact on the regulated industry will be \$20 per mile of pipeline permitted to a Group A pipeline
2 operator, \$10 per mile of pipeline permitted to a Group B pipeline operators, \$500 to apply for a new T-4
3 permit, and \$500 to renew a pipeline operator's T-4 permit.

4 Ms. French has determined that for each year of the first five years the proposed amendments are
5 in effect, the anticipated public benefit will be continued revenue to support public safety through the
6 Commission's Pipeline Safety Program, pursuant to HB 1818 and the General Appropriations Act.

7 Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic
8 Effect, directs that, as part of the rulemaking process, a state agency prepare an economic impact
9 statement that assesses the potential impact of a proposed rule on rural communities, small businesses,
10 and micro-businesses, and a regulatory flexibility analysis that considers alternative methods of achieving
11 the purpose of the rule if the proposed rule will have an adverse economic effect on rural communities,
12 small businesses, or micro-businesses. The proposed amendments will not have an adverse economic
13 effect on rural communities. The statute defines "small business" as a legal entity, including a
14 corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is
15 independently owned and operated; and has fewer than 100 employees or less than \$6 million in annual
16 gross receipts. A "micro-business" is a legal entity, including a corporation, partnership, or sole
17 proprietorship, that is formed for the purpose of making a profit; is independently owned and operated;
18 and has no more than 20 employees.

19 Entities that perform activities under the jurisdiction of the Commission are not required to report
20 to the Commission their number of employees or their annual gross receipts, which are elements of the
21 definitions of "micro-business" and "small business" in Texas Government Code, §2006.001; therefore,
22 the Commission has no factual bases for determining whether any persons operating a pipeline under the
23 Commission's jurisdiction classify as small businesses or micro-businesses, as those terms are defined.
24 However, based on the information available, the Commission expects that there are pipeline operators
25 that fall within the definition of a small business or micro-business.

26 In preparing the proposed rule, the Commission considered whether the purpose of the rule

1 amendment could still be achieved if (1) small or micro-businesses pay reduced fees, or (2) small or
2 micro-businesses are exempt from the fee requirements. The Commission rejected these alternatives
3 because the amendments to §81.071 of the Natural Resources Code enacted by HB 1818 were specifically
4 intended by the Texas Legislature to allow the Commission to set reasonable fees to fund its Pipeline
5 Safety Program, including recovering costs incurred in processing permit applications. The alternatives
6 would not only impact the amount of funds the Commission could collect but would also result in new
7 costs to the Commission due to the administrative burden of determining whether each operator qualifies
8 for a fee exemption or reduction. Further, the proposed fees minimize the adverse impact on small
9 businesses and micro-businesses by charging an operator based on the operator's permitted pipeline
10 mileage. As smaller pipeline operators are likely to have a lower number of pipeline mileage, the overall
11 cost to a smaller operator should be less.

12 During the first five years that the rules would be in effect, the proposed rules do not: create or
13 eliminate a government program; create or eliminate any employee positions; require an increase or
14 decrease in future legislative appropriations; create a new regulation; increase or decrease the number of
15 individuals subject to the rule's applicability; expand, limit, or repeal an existing regulation; increase or
16 decrease the number of individuals subject to the rule's applicability; or effect the state's economy. The
17 proposed amendments require an increase to the existing fee for a new permit application, create a new
18 fee for permit renewals, and create a new annual mileage fee.

19 The Commission has also determined that the proposed amendments will not affect a local
20 economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to
21 Texas Government Code §2001.022.

22 The Commission has determined that the amendments do not meet the statutory definition of a
23 major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory
24 analysis conducted pursuant to that section is not required.

25 Comments on the proposed amendments may be submitted to Rules Coordinator, Office of
26 General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at

1 www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail
2 to rulescoordinator@rrc.texas.gov. The Commission will accept comments until noon (12:00 p.m.) on
3 Monday, May 7, 2018. The Commission finds that this comment period is reasonable because the
4 proposal and an online comment form will be available on the Commission's website more than two
5 weeks prior to Texas Register publication of the proposal, giving interested persons additional time to
6 review, analyze, draft, and submit comments. The Commission cannot guarantee that comments
7 submitted after the deadline will be considered. For further information, call Kari French at (512) 463-
8 8859. The status of Commission rulemakings in progress is available at [www.rrc.texas.gov/general-](http://www.rrc.texas.gov/general-counsel/rules/proposed-rules)
9 [counsel/rules/proposed-rules](http://www.rrc.texas.gov/general-counsel/rules/proposed-rules).

10 The Commission proposes the amendments to §3.70 pursuant to Texas Natural Resources Code,
11 §81.071, enacted by the 85th Legislature (Regular Session, 2017) in House Bill 1818, which authorizes
12 the Commission to establish pipeline safety and regulatory fees to be assessed for permits or registrations
13 for pipelines under the jurisdiction of the Commission's pipeline safety and regulatory program.
14 Additionally, the Commission proposes the amendments pursuant to §81.051 and §81.052, which provide
15 the Commission with jurisdiction over all persons owning or operating pipelines in Texas and the
16 authority to adopt all necessary rules for governing and regulating persons and their operations under the
17 jurisdiction of the Commission; Natural Resources Code §81.0531, which authorizes the Commission to
18 assess a penalty for a violation of a provision of Title 3 of the Natural Resources Code, or a rule, order,
19 license, permit, or certificate that relates to pipeline safety; §85.202, which authorizes the Commission to
20 promulgate rules requiring records to be kept and reports made, and providing for the issuance of permits,
21 tenders, and other evidences of permission when the issuance of the permits, tenders, or permission is
22 necessary or incident to the enforcement of the Commission's rules for the prevention of waste; Natural
23 Resources Code §86.041 and §86.042, which allow the Commission broad discretion in adopting rules to
24 prevent waste in the piping and distribution of gas, require records to be kept and reports made, and
25 provide for the issuance of permits and other evidences of permission when the issuance of the permit or
26 permission is necessary or incident to the enforcement of its blanket grant of authority to make any rules

1 necessary to effectuate the law; Natural Resources Code §111.131 and §111.132, which authorize the
2 Commission to promulgate rules for the government and control of common carriers and public utilities;
3 Natural Resources Code §§117.001 - 117.101, which give the Commission jurisdiction over all pipeline
4 transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide
5 pipeline facilities as provided by 49 U.S.C. §§60101, et seq.; and Texas Utilities Code §§121.201 -
6 121.210, which authorize the Commission to adopt safety standards and practices applicable to the
7 transportation of gas and associated pipeline facilities within Texas to the maximum degree permissible
8 under, and to take any other requisite action in accordance with, 49 United States Code Annotated,
9 §§60101, et seq.

10 Statutory authority: Texas Natural Resources Code §§81.051, 81.052, 81.0531, 81.071, 85.202,
11 86.041, 86.042, 111.131, 111.132, and §§117.001 - 117.101; Texas Utilities Code, §§121.201 - 121.210;
12 and 49 United States Code Annotated, §§60101, et seq.

13 Cross-reference to statute: Texas Natural Resources Code, Chapter 81, Chapter 111, and Chapter
14 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

15

16 §3.70. Pipeline Permits Required.

17 (a) Each operator of a pipeline or gathering system, other than a production or flow line that does
18 not leave a lease or an operator excluded under §8.1(b)(4) of this title, ~~[(c)]~~relating to General Applicability
19 and Standards, subject to the jurisdiction of the Commission, shall obtain a pipeline permit, to be renewed
20 annually ~~[renewable annually]~~, from the Commission as provided in this rule.

21 (b) To obtain a new pipeline permit or to amend a permit because of a change of classification, an
22 operator shall file an application for a pipeline permit on the Commission's online permitting system. The
23 operator shall include or attach ~~[a form approved by the Commission which includes or is accompanied~~
24 ~~by]~~ the following documentation and information:

25 (1) the contact information for the individual who can respond to any questions
26 concerning the pipeline's construction, operation or maintenance;

1 (2) the requested classification and purpose of the pipeline or pipeline system as a
2 common carrier, a gas utility or a private line;

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

8 (4) documentation to provide support for the classification and purpose being sought for
9 the pipeline, if applicable; [;] and

10 (5) any other information requested by the Commission.

11 (c) To renew an existing permit, to amend an existing permit for any reason other than a change
12 in classification, or to cancel an existing permit, an operator shall file an application for a pipeline permit
13 on the Commission's online filing system. The operator shall include or attach ~~[a form approved by the~~
14 ~~Commission which includes or is accompanied by]:~~

15 (1) the contact information for the individual who can respond to any questions
16 concerning the pipeline's construction, operation, or maintenance; change in operator or ownership; or
17 other change including operator cessation of pipeline operation;

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

21 (3) any other information requested by the Commission.

22 (d) Upon receipt of a complete permit application, the Commission has 30 calendar days to issue,
23 amend, or deny the pipeline permit as filed. If the Commission determines that the application is
24 incomplete, the Commission shall promptly notify the applicant of the deficiencies and specify the
25 additional information necessary to complete the application. Upon receipt of a revised application, the
26 Commission has 30 calendar days to determine if the application is complete and issue, amend, or deny

1 ~~the pipeline permit as filed. [The Commission shall determine if the application is complete within 15~~
2 ~~calendar days following the date of filing of an application and shall notify the operator either that the~~
3 ~~application is complete or that the application is incomplete. The notice of an incomplete application shall~~
4 ~~specify the additional information needed to complete the application.]~~

5 (e) ~~[Once an application is determined to be complete and sufficient, the Commission shall issue,~~
6 ~~amend, or cancel the pipeline permit or deny the pipeline permit as filed.]~~ If the Commission is satisfied
7 from the application and the documentation and information provided in support thereof, and its own
8 review, that the proposed line is, or will be laid, equipped, managed and operated in accordance with the
9 laws of the state and the rules and regulations of the Commission, the permit may be granted. The
10 pipeline permit, if granted, shall classify the pipeline as a common carrier, a gas utility, or a private
11 pipeline based upon the information and documentation submitted by the applicant and the Commission's
12 review of the application. ~~[The Commission's decision on issuance of a pipeline permit shall be~~
13 ~~completed within 45 calendar days following the Commission's determination that an application is~~
14 ~~complete.]~~

15 (f) This rule applies to applications made for new pipeline permits and to amendments, renewals,
16 and cancellations of existing pipeline permits ~~[which are submitted to the Commission on or after the~~
17 ~~effective date of this rule]~~. The classification of a pipeline under this rule applies to extensions,
18 replacements, and relocations of that pipeline.

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

20 (h) The pipeline permit, if granted, shall be revocable at any time after a hearing, held after 10
21 days' notice, if the Commission finds that the pipeline is not being operated in accordance with the laws
22 of the state and the rules and regulations of the Commission, including if the permit is not renewed
23 annually as required in subsection (a) of this section.

24 (i) Each pipeline operator shall pay an annual fee based on the pipeline operator's permitted
25 mileage of pipeline by August 31, 2018, for the initial year that the requirement is in effect, and by April
26 1 for each subsequent year.

1 (1) For purposes of calculating the mileage fee, the Commission will categorize pipeline
2 operators into two groups.

3 (A) Group A includes transmission and gathering pipelines that are required by
4 Commission rules to have a valid T-4 permit to operate and are subject to the regulations in 49 CFR Parts
5 192 and 195. Group A pipelines include natural gas transmission and storage pipelines, natural gas
6 gathering pipelines, hazardous liquids transmission and storage pipelines, and hazardous liquids gathering
7 pipelines.

8 (B) Group B includes gathering pipelines that are required by Commission rules
9 to have a valid T-4 permit to operate but are not subject to the regulations in 49 CFR Parts 192 and 195.
10 Group B pipelines include intrastate production and gathering pipelines leaving a lease.

11 (2) A pipeline operator in Group A shall pay an annual fee of \$20 per mile of pipeline
12 based on the number of miles permitted to that operator as of June 29, 2018, for the initial year that the
13 requirement is in effect and as of December 31 for each subsequent year.

14 (3) A pipeline operator in Group B shall pay an annual fee of \$10 per mile of pipeline
15 based on the number of miles permitted to that operator as of June 29, 2018, for the initial year that the
16 requirement is in effect and as of December 31 for each subsequent year.

17 (4) Any pipeline distance that is a fraction of a mile will be considered as one mile and
18 will be assessed a \$20 or \$10 fee, as appropriate.

19 (5) Fees due to the Commission for mileage transferred from one operator to another
20 operator pursuant to subsection (m) of this section will be captured in the next mileage fee to be
21 calculated on the following December 31 and paid by the new operator.

22 (j) Each pipeline operator shall pay a \$500 permit processing fee for each new permit application
23 and permit renewal, beginning on the effective date of this amendment. The permit renewal date for a
24 pipeline operator who has an existing, valid permit in the Commission's online filing system will be the
25 date shown in the online filing system on June 29, 2018, when the pipeline mileage is calculated for

1 purposes of paying the mileage fee. A permit renewal date will not be affected or changed by an operator
2 requesting or receiving a permit amendment.

3 (k) A pipeline operator who fails to renew a permit on or before the permit expiration date shall
4 pay a late-filing fee as follows:

5 (1) \$250, if the renewal application is received within 30 calendar days after the
6 expiration date;

7 (2) \$500, if the renewal application is received more than 30 calendar days and no more
8 than 60 calendar days after the expiration date; and

9 (3) \$700, if the renewal application is received more than 60 calendar days after the
10 expiration date.

11 (4) If the renewal application is not received within 90 calendar days of the expiration
12 date, the Commission may assess a penalty and/or revoke the operator's permit in accordance with
13 subsection (h) of this section.

14 (l) A pipeline operator who fails to pay the annual mileage fee shall pay a late-filing fee as
15 follows:

16 (1) \$250, if the fee is received within 30 calendar days of August 31 for the initial year
17 that the requirement is in effect and April 1 for each subsequent year;

18 (2) \$500, if the fee is received more than 30 calendar days and no more than 60 calendar
19 days after August 31 for the initial year that the requirement is in effect and April 1 for each subsequent
20 year; and

21 (3) \$700, if the fee is received more than 60 calendar days after August 31 for the initial
22 year that the requirement is in effect and April 1 for each subsequent year.

23 (4) If the fee is not received within 90 calendar days of August 31 for the initial year that
24 the requirement is in effect or April 1 for each subsequent year, the Commission may assess a penalty
25 and/or revoke the operator's permit in accordance with subsection (h) of this section.

1 (m) A pipeline operator who has been issued a permit and is transferring the pipeline or a portion
2 of the pipeline included on the permit to another operator shall file a notification of transfer with the
3 Commission within 30 days following the transfer. An operator may file a fully executed Form T-4B as a
4 notification of transfer. The Commission may use a fully executed Form T-4B to remove the pipeline that
5 is the subject of the transfer from the transferor operator and assign the mileage to the transferee operator
6 for calculation of the annual mileage fee. The operator to which the pipeline has been transferred shall
7 amend its permit to include the pipeline or portion of the pipeline within 30 days following the transfer or
8 the operator may be subject to a penalty for operating without a permit pursuant to subsection (n) of this
9 section.

10 (n) A pipeline operator who operates a pipeline without a permit, with an expired permit, or who
11 otherwise fails to comply with this section, may be assessed a penalty as prescribed in §8.135 of this title,
12 relating to Penalty Guidelines for Pipeline Safety Violations.

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

15 Issued in Austin, Texas on March 20, 2018.

16 Filed with the Office of the Secretary of State on March 20, 2018.



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