



RRC ADOPTS NEW PIPELINE PERMIT RULE

The Texas Railroad Commission (“RRC”) recently adopted amendments to the rule governing the pipeline permitting process. The rule now requires a sworn statement and documentation as proof that a pipeline is a “common carrier” as part of the application for a T-4 Permit to Operate an Intrastate Pipeline. Previously, an operator could merely “check the box” to indicate its status as a common carrier on the permit application. This additional proof applies only to new pipeline permit applications; T-4 renewals are not required to provide the additional documentation and attestation. The new version of the rule requires more information and effort from pipeline operators, but the adopted rule will, in practice, not have much impact.

BACKGROUND

The RRC began this rulemaking in response to the Texas Supreme Court’s 2012 decision in *Texas Rice Partners v. Denbury Green Pipeline*,¹ which held that the RRC’s classification of a pipeline as a common carrier did not preclude a landowner from challenging the pipeline’s status as a common carrier in an eminent domain case. This decision was based, in part, on the “check the box” procedure by which a pipeline operator could register as a common carrier, and effectively gain the power of eminent domain. The amended T-4 permit rule was the RRC’s attempt to strengthen the procedure.

Notably, the RRC’s explanation for the rule repeatedly says that its ability to investigate whether a pipeline operator is a common carrier is limited.² Because the RRC does not have the power to investigate a pipeline’s use, the T-4 permit is limited solely to determining which regulatory classification applies to a pipeline.³ The preamble to the rule explains that parties still have the right to challenge an operator’s eminent domain authority on the basis that it is not a common carrier.

THE NEW RULE

The new version of the rule goes into effect on March 1, 2015. It requires T-4 permit applicants to submit more information than was previously required, including the following information:

- Contact information for a person who can respond to questions regarding construction, operation, or maintenance of the pipeline;
- A sworn statement from the applicant that states the requested classification (common carrier, gas utility, or private line) and the factual basis for that classification, including the purpose of the pipeline;

¹ 363 S.W.3d 192 (Tex. 2012).

² The RRC quoted from the *Denbury* decision, in which the court explained that “the parties point to no regulation or enabling legislation directing the RRC to investigate and determine whether a pipeline will in fact serve the public.” *Denbury*, 363 S.W.3d at 200.

³ Adoption of Amendments to 16 TAC § 3.70, Docket No. 10366, Order at 2 (Dec. 2, 2014).

- For common carriers, documentation to support the classification and purpose from the applicant's sworn statement, such as a contract or tariff for third-party transportation; and
- For common carriers, acknowledgement of Texas's eminent domain laws and the Texas Landowner's Bill of Rights.

The new rule provides for notice to the applicant within 15 days regarding whether the application is complete or needs additional information. The RRC will then issue or deny the T-4 permit within an additional 45 days. Thus, at the longest, the T-4 application process will take 60 days, though the RRC expects it will take less than that in most cases.

For renewal or amendments of T-4 permits that do not request a classification change (*e.g.*, for extensions, replacements, and relocations), operators need only submit the regular form along with contact information for a person who can respond to questions and a statement that the current classification is still accurate.

Lastly, the amendment clarifies that the RRC may revoke the T-4 permit, after a hearing with 10-days notice to the operator, if the RRC finds that the pipeline is not being operated lawfully (*e.g.*, it is permitted as a common carrier, but does not actually transport or allow third parties to transport the gas or oil).

REGULATORY IMPACTS ON YOUR BUSINESS

Despite the controversy caused by the *Denbury* decision and comments from stakeholders such as the Sierra Club and South Texans' Property Rights Association asking the RRC to develop a much tougher permitting process, the impact of this rule change is limited. It will require additional information for new pipelines, most notably for operators who will seek eminent domain powers to build the line. Pipelines already operating with a T-4 permit will not need to submit the additional information for renewals, unless the T-4 renewal is seeking a change in status.⁴

If you have specific concerns, please contact the Thompson & Knight attorney with whom you regularly work or any of the attorneys listed below. We will keep you informed of any new developments in the permitting process. If you would like to read the RRC's preamble and text of the new rule, you can do so here: <http://www.rrc.state.tx.us/media/25385/adopt-amend-3-70-common-carrier-120214-sig.pdf>.

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⁴ Docket No. 10366, Order at 14.