

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes new §7.125, Memorandum of Understanding (MOU), among the Office of the Secretary of State (SOS), Railroad Commission of Texas (RRC), Texas Historical Commission (THC), Texas General Land Office (GLO), TNRCC, and Texas Public Utility Commission (PUC) regarding the permitting of natural gas pipelines that cross the border between Texas and Mexico. The SOS, RRC, THC, GLO, TNRCC, and PUC are collectively referred to as “the agencies.”

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

During the past year, the RRC and the Mexican Comisión Reguladora de Energía (CRE) discussed issues relating to the development of cross-border projects. Based on comments solicited from companies that had business dealings in Mexico, the RRC focused on two issues in its discussions with the CRE: 1) difficulty in obtaining rights-of-way; and 2) delays in the permitting process. The RRC and CRE agreed to work on two initiatives: 1) a “single window” approach to permitting, with the RRC and CRE serving as “lead agencies” in assisting applicants; and 2) a “corridor concept” under which the two agencies would establish routes for future energy projects that included pre-approvals. The MOU proposed in this rulemaking reflects an agreement among Texas agencies to establish the single window concept. The intent is to provide prospective applicants a single package containing all the necessary permit information with respect to Texas agencies, with RRC as the intermediary in dealing with those agencies. The RRC, in its role as the provider of the single window, will not usurp any of the powers of the other agencies or prevent necessary discussions between individual agencies and the applicant, but will simply serve as a guide for applicants.

## SECTION BY SECTION DISCUSSION

New §7.125 describes the roles and responsibilities that the SOS, RRC, THC, GLO, TNRCC, and PUC will or may have in permitting natural gas pipelines that cross the border between Texas and Mexico. The role of the SOS is to assist the other agencies in organizing a permitting process in a manner that reduces the number of agency contacts a potential permittee must make and ensures that the applicant is aware of all the necessary Texas permits. The role of the RRC is to issue hydrostatic test water discharge permits, issue opinions to the United States Army Corps of Engineers (USACE) concerning Clean Water Act, §401, water quality certification; and review of requirements under USACE, Section 10, for navigability clearance. The role of the THC, as the state historic preservation office, is to ensure that adverse effects on historic properties are avoided or minimized. The role of the GLO is to issue easements for portions of the Rio Grande River that have not been deeded to the United States government. The role of the TNRCC is to issue permits to withdraw water, owned by the United States, from the Rio Grande River, its tributaries, and any other Texas stream for hydrostatic testing, and to issue permits for operations of certain pipeline facilities which emit air contaminants. The role of the PUC is to participate in the permitting process if necessary; however, it does not issue permits with respect to building natural gas pipelines that cross the border between Texas and Mexico.

The RRC, THC, GLO, and TNRCC have agreed to prepare an inventory of the various permits each agency may require with respect to building natural gas pipelines that cross the border between Texas and Mexico. The inventory will include a list of each agency's permits identified by name and/or number, and identify the appropriate staff contact person by name, phone number, and e-mail address for each permit.

The RRC, THC, GLO, TNRCC, and PUC have agreed that the RRC should be designated as the distributor for applicable state permit applications, initial screener of completed applications for completeness, and facilitator among the other parties to the MOU for applicants who wish to build natural gas pipelines that cross the border between Texas and Mexico.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for units of state and local government as a result of administration or enforcement of the proposed rule. The proposed rule would adopt an MOU among the TNRCC, SOS, RRC, THC, GLO, and PUC regarding the permitting of natural gas pipelines that cross the border between Texas and Mexico.

The proposed rule specifies each agency's responsibilities under the MOU, outlines coordination procedures for review of individual permit applications, registration applications, and notices of intent to be covered under a general permit, and establishes the operating procedures and scope of the MOU. The MOU is an interagency agreement under which the cooperating agencies would provide to the RRC all their permitting requirements, forms, and information relating to natural gas pipelines that cross the border between Texas and Mexico, and the RRC would establish a single point of contact where a prospective permit applicant could obtain all state permitting requirements in a single package.

The proposed rule only sets forth procedures for an MOU between the cooperating agencies and does not impose additional regulatory requirements on units of state and local government. Additionally, the

commission does not anticipate that any units of state or local government would seek a permit for a natural gas pipeline that crosses the border between Texas and Mexico; therefore, no additional fiscal implications are anticipated for units of state and local government as a result of the proposed rulemaking.

#### PUBLIC BENEFIT AND COSTS

Mr. Davis also has determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the implementation of the rule will be the establishment of a process for interagency coordination of permitting issues related to the permitting of natural gas pipelines that cross the border between Texas and Mexico, which is intended to ensure timely reviews of permit and registration applications, and notices of intent to be covered under a general permit.

The proposed rule specifies each agency's responsibilities under the MOU, outlines coordination procedures for review of individual permit applications, registration applications, and notices of intent to be covered under a general permit, and establishes the operating procedures and scope of the MOU. The MOU is an interagency agreement under which the cooperating agencies would provide to the RRC all their permitting requirements, forms, and information relating to natural gas pipelines that cross the border between Texas and Mexico, and the RRC would establish a single point of contact where a prospective permit applicant could obtain all state permitting requirements in a single package.

The proposed rule only sets forth procedures for an MOU between the listed agencies and does not impose additional regulatory requirements; therefore, the commission anticipates there will be no

additional costs to individuals and businesses seeking permits for a natural gas pipeline that crosses the border between Texas and Mexico. The consolidation of permit information with the RRC could result in minor cost savings for applicants by reducing time required to research permit requirements, and decreasing the number of trips to individual agencies to obtain the required information.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse economic effects are anticipated to any small or micro-business as a result of the implementation of the proposed rule because the creation of this MOU is an administrative action that has no anticipated fiscal impact.

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The proposed rule only sets forth procedures for an MOU between the listed agencies and does not impose additional regulatory requirements; therefore, the commission anticipates there will be no additional costs to small or micro-businesses seeking permits for a natural gas pipeline that crosses the border between Texas and Mexico. The consolidation of permit information with the RRC could result

in minor cost savings for applicants by reducing time required to research permit requirements and decreasing the number of trips to individual agencies to obtain the required information.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the proposed rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rule is not subject to §2001.0225. Section 2001.0225 only applies to rules that are specifically intended to protect the environment, or reduce risks to human health from environmental exposure. This proposed rule is purely procedural. The intent of the rule is to formalize the procedures for cooperation among the TNRCC, SOS, RRC, THC, GLO, and PUC regarding permitting of natural gas pipelines that cross the border between Texas and Mexico, not to protect the environment or human health. Protection of human health and the environment may be a by-product of the proposed rule, but it is not the specific intent of the proposed rule. Furthermore, the proposed rule will not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Thus, the proposed rule does not meet the definition of a “major environmental rule” as defined in Texas Government Code, §2001.0225(g)(3), and does not require a full regulatory impact analysis.

#### TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for this proposed rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this proposed rule is to set forth the procedures by which the TNRCC, SOS, RRC, THC, GLO, and PUC

coordinate on issues related to permitting, licensing, or registration of natural gas pipelines that cross the border between Texas and Mexico. The proposed rule will substantially advance this specific purpose by setting forth detailed procedures for such interaction including initial notification, document exchange, comments, and meetings. The proposed rule does not constitute a takings because it will not burden private real property.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rule and determined that the rule is neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC § 505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will it affect any action/authorization identified in the Coastal Coordination Act Implementation Rules, 31 TAC § 505.11(a)(6). Therefore, the proposed rule is not subject to the CMP.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments must be received by 5:00 p.m. on July 30, 2001 and should reference Rule Log Number 2001-020-007-AD. For further information, please contact Debra Barber, Policy and Regulations Division, at (512) 239-0412.

#### STATUTORY AUTHORITY

The new section is proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties. Additionally, the new section is proposed under TWC, §5.104, which authorizes the commission to enter into an MOU with any other state agency but requires the MOU to be adopted by rule.

The new section implements TWC, §5.104, relating to Memoranda of Understanding.

**Chapter 7: MEMORANDA OF UNDERSTANDING**

**§7.125**

**§7.125. Adoption of Memorandum of Understanding among the Office of the Secretary of State, Railroad Commission of Texas (RRC), Texas Historical Commission (THC), Texas General Land Office (GLO), Texas Natural Resource Conservation Commission (TNRCC), and Texas Public Utility Commission (PUC).**

(a) This rule contains the memorandum of understanding (Memorandum) made and entered into among the Office of the Secretary of State, the Railroad Commission of Texas (RRC), the Texas Historical Commission (THC), the Texas General Land Office (GLO), the Texas Natural Resource Conservation Commission (TNRCC), and the Texas Public Utility Commission (PUC) regarding the permitting of natural gas pipelines that cross the border between Texas and Mexico.

(1) Whereas, the Office of the Secretary of State recognizes, with respect to building natural gas pipelines that cross the border between Texas and Mexico, that the energy needs of the citizens of Texas and Mexico can be met more efficiently if the permitting process in the State of Texas were organized in a manner that reduces the number of agency contacts a potential permittee must make and assures that the potential permittee secures all appropriate permits.

(2) Whereas, the Office of the Secretary of State, on the advice and consent of the other parties to this Memorandum, further recognizes the RRC is particularly well-equipped to serve as

the central state agency that reduces the number of agency contacts a potential permittee must make and assures that the potential permittee secures all appropriate permits for building natural gas pipelines that cross the border between Texas and Mexico.

(3) Whereas, the RRC is responsible for issuing hydrostatic test water discharge permits, issuing opinions to the United States Army Corps of Engineers (USACE) concerning Clean Water Act, §401, water quality certification, and assuming responsibility for reviewing USACE, Section 10, navigability clearance, with respect to building natural gas pipelines that cross the border between Texas and Mexico.

(4) Whereas, the THC in its role as the state historic preservation office, is responsible for ensuring that adverse effects on historic properties are avoided or minimized with respect to building natural gas pipelines that cross the border between Texas and Mexico.

(5) Whereas, with respect to building natural gas pipelines that cross the border between Texas and Mexico, the GLO is responsible for issuing easements for portions of the Rio Grande River that have not been deeded to the United States government.

(6) Whereas, the TNRCC is responsible for issuing permits to withdraw United States-owned water from the Rio Grande River, its tributaries, and any other Texas stream for hydrostatic testing and permits for operations of certain pipeline facilities which emit air contaminants with respect to building natural gas pipelines that cross the border between Texas and Mexico.

(7) Whereas, the PUC does not issue permits with respect to building natural gas pipelines that cross the border between Texas and Mexico, but may in some instances play a role in such projects.

(8) Whereas, the RRC, THC, GLO, TNRCC, and PUC recognize that, with respect to building natural gas pipelines that cross the border between Texas and Mexico, the permit requirements from the various state agencies are necessary to protect public health and safety and cultural resources.

(9) Whereas, the RRC, THC, GLO, TNRCC, and PUC fully concur with the Office of the Secretary of State that, with respect to building natural gas pipelines that cross the border between Texas and Mexico, the energy needs of the citizens of Texas and Mexico can be met more efficiently if the permitting process in the State of Texas were organized in a manner that reduces the number of agency contacts a potential permittee must make and assures that the potential permittee secures all appropriate permits.

(10) Now, therefore, in consideration of the benefits to the State of Texas, the Office of the Secretary of State, the RRC, THC, GLO, TNRCC, and PUC enter into this Memorandum and hereby agree as follows.

(A) The RRC, THC, GLO, and TNRCC shall prepare an inventory of all known permits each agency may require with respect to building natural gas pipelines that cross the border between Texas and Mexico. The inventory shall include a list of each agency's permits

identified by name and/or number, and identify the appropriate staff contact person by name, phone number, and e-mail address for each permit.

(B) The RRC, THC, GLO, TNRCC, and PUC mutually agree the RRC is designated as the distributor for applicable state permit applications, initial screener of completed applications for completeness, and facilitator among the other parties to this Memorandum for applicants who wish to build natural gas pipelines that cross the border between Texas and Mexico. The RRC, THC, GLO, TNRCC, and PUC further agree to encourage other relevant state and federal agencies to engage in this process as the necessity for and convenience provided by their participation becomes apparent.

(C) Within 30 days of the effective date of this Memorandum, RRC shall implement a system and designate personnel to distribute all notices of permit requirements, permit applications, and instructions for permit submission to persons who wish to build natural gas pipelines that cross the border between Texas and Mexico.

(b) This Memorandum shall be effective as of the date of the last signature on the document. Any party may withdraw from this Memorandum at any time upon 30 days written notice to the other parties.