

**MINUTES**  
**POLICY ADVISORY OPINION COMMITTEE MEETING**  
**TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS**  
**VIA VIDEOCONFERENCE**  
**November 18, 2020—10:30 AM**

**Discuss and Possibly Act on the Following Agenda Items:**

**1. Preliminary Matters:**

**A. Call to Order.**

Mr. Lamberto Ballí, P.E., Acting Chair, called the Policy Advisory Opinion Committee meeting of the Texas Board of Professional Engineers and Land Surveyors to order at 10:30 a.m. via Videoconference. (NOTE: all votes are unanimous unless noted.)

**B. Roll Call.**

Ms. Bodden called the roll. It was noted for the record that a quorum was present.

**The following Committee members were present:**

Lamberto Ballí, P.E.	Acting Chair
Ademola Adejokun, P.E.	Member
Catherine Norwood, P.E.	Alternate Member

Veena Mohan, Assistant Attorney General and General Counsel for the Board, was present via Videoconference to provide legal counsel to the Board.

**The following staff members were present:**

Lance Kinney, Ph.D., P.E.	Executive Director
Michael Sims, P.E.	Director of Compliance and Enforcement
Rick Strong, P.E.	Director of Licensing and Registration
Elissa Mazza	Staff Attorney
Janet Sobieski	Director of Operations
Mason Schoolfield	Lead Systems Developer
Clif Bond	Senior Investigator
Debbie Trevino	Compliance and Enforcement Administrator
Cristabel Bodden	Executive Assistant

**C. Excuse absent Committee members.**

**The following Committee members were absent:**

Rolando Rubiano, P.E.	Chair
Kiran Shah	Public Member

It was MOVED/SECONDED (Ballí/Norwood) to excuse Mr. Rubiano and Mr. Shah from the Policy Advisory Opinion Committee meeting. A vote was taken and the MOTION PASSED.

**D. Welcome Visitors.**

Jibrael Ahmad, R.P.L.S; Edmundo Gonzalez, P.E., R.P.L.S., Advisory Member; Coleen Johnson, R.P.L.S., Board Member; Richard Mendez, R.P.L.S.; Peyton McKnight, American Council of Engineering Companies – Texas (ACEC); Dr. Sina K. Nejad, P.E., P.Eng., Board Member; Mark Neugebauer, R.P.L.S., L.S.L.S., Board Member; Brittany Richard, Texas Department of Transportation and R. Kyle Womack, P.E., Retired, Advisory Member, were present via Videoconference.

**E. Public Comment.**

There were no public comments.

**2. August 19, 2020 Policy Advisory Opinion Committee Meeting Minutes.**

It was MOVED/SECONDED (Norwood/Ballí) to approve the August 19, 2020, Policy Advisory Opinion Committee minutes as submitted. A vote was taken and the MOTION PASSED.

**3. Policy Advisory Opinion Request Regarding whether the Installation of Fiber Optic Lines by a Telecommunications Provider Qualifies for the Public Works or Telephone Company Exemptions in the Texas Engineering Practice Act (Policy Advisory Request No. 53).**

Mr. Sims discussed Policy Advisory Request No. 53 regarding whether the installation of fiber optic lines by a telecommunications provider qualifies for the public works or telephone company exemptions in the Texas Engineering Practice Act.

The request was originally submitted by Mr. David Magaña, P.E., City of Fort Worth on December 17, 2019. Mr. Michael Owen, P.E., P.M.P., Acting Senior Capitals Project Officer with the City of Fort Worth is now the contact person for this request.

Board staff has engaged with staff members at the Public Utility Commission to better understand how telecommunication providers are regulated in the state and how the term "the art and science of telephony" that is used in the Act fits into the regulatory framework and if it is used or defined at the Public Utility Commission.

Based on these discussions, the Board feels that the Act addresses the questions posed by the City of Fort Worth. A draft response has been prepared and included in the Board materials for this meeting.

Mr. Sims requested the Committee allow the draft to be published in the Texas Register and on the Board’s website to solicit feedback from all interested stakeholders.

After weighing any feedback, the proposed plan is to present an official response for adoption at the next Committee meeting.

It was MOVED/SECONDED (Norwood/Adejokun) to publish the draft letter submitted by staff as amended to the Texas Register and the agency website for public comment and feedback and proceed with next steps recommended by staff. A vote was taken and the MOTION PASSED.

**4. Policy Advisory Opinion Request Regarding the Application of the Exemption for Employees of Certain Utilities or Affiliates to the Crossing of Transit Corridors (Policy Advisory Request No. 55).**

Mr. Sims discussed Policy Advisory Request No. 55 regarding the application of the exemption for employees of certain utilities or affiliates to the crossing of transit corridors.

The request was originally submitted by Mr. José Castellanos, P.E., Metropolitan Transit Authority of Harris County Metro Houston on September 16, 2020. Mr. Castellanos seeks guidance from the Board on how the exemption for the employees of certain utilities or affiliates covered under section 1001.058 of the act applies to a utility company seeking to have its infrastructure cross a transportation easement.

Based on the request, Mr. Sims understands that Metro owns a transit corridor that is 500 feet wide and approximately 26 miles long. In addition, Metro intends to one day build a light transit system within this corridor.

When utilities or cable companies need to cross a corridor via underground or aerial crossings, Metro establishes lease agreements with the various companies. Metro further requires that the plans for such crossings be signed and sealed by a professional engineer licensed in the state of Texas.

It is staff's understanding that a utility company has argued that section §1001.058 of the act relating to employees of certain utilities or their affiliates exempts a utility from having to provide plans signed and sealed by a professional engineer.

Board staff feels that the questions posed by this request are adequately addressed by the existing language in the Act. However, staff is still researching other associated statutes and rules and gathering information from other governmental entities.

As such, a proposed response is not finalized as of yet but staff plans to continue to work this request and have a formal proposed response available at the next Committee meeting.

No action was required on this agenda item.

**5. Policy Advisory Opinion Request Regarding the Application of the Texas Engineering Practice Act to Predominant Use Studies Involving the Use of Natural Gas or Electricity by a Business Entity (Policy Advisory Request No. 56).**

Mr. Sims discussed Policy Advisory Request No. 56 regarding the application of the Texas Engineering Practice Act to predominant use studies involving the use of natural gas or electricity by a business entity.

The request was originally submitted by Mr. John Turner, P.E., on October 4, 2020. Mr. Turner seeks guidance from the Board on various questions.

The first question is if non-licensed engineering graduates from accredited colleges are able to legally perform predominant use studies for their employers as indicated in the Texas Comptroller rules 3.295.

The second question is if non-licensed engineering graduates from accredited colleges are precluded by the Texas Engineering Practice Act from performing predominant use studies for firms they are not employed by.

The third question is if an engineer performing or offering to perform a predominant use study for a company that the engineer is not employed by is performing or offering to perform engineering services for the public.

The fourth question is whether a company can offer to perform predominant use studies if it is not a registered engineering firm and does not employ at least one full-time engineer.

The fifth question is it precluded by the Texas Engineering Practice Act or is it misleading for an engineer to stamp a productive study that says it was performed by a company that is not a registered engineering firm even if the registered engineering firm actually performed the work.

Mr. Sims provided background information stating that predominant use studies are discussed specifically in 34 Texas Administrative Code 3.295 relating to natural gas and electricity. 34 Texas Administrative Code 3.295 is contained in Title 34 relating to Public Finance, Part 1 relating to the Comptroller of Public Accounts, Chapter 3 relating to Tax Administration, Subchapter O relating to state and local sales and use taxes of the Texas Administrative Code.

Predominant use is not directly defined in the Comptroller's rules but it is discussed specifically in 34 Texas Administrative Code 3.295(f) and (g). Predominant use studies are conducted to determine the taxability of natural gas or electricity used by business entity and the potential eligibility for sales tax exemptions.

The referenced rules do stipulate who can conduct a predominant use study. Part 34 Texas Administrative Code 3.295 (g)(1)(C) requires the kilowatt rating or BTU rating duty factor and electrical or natural gas computations of a predominant use study must be certified by a registered engineer or a person with an engineering degree from an accredited engineering

college. Further, the owner of the business and the engineer must certify the study per the Texas Administrative Code 3.295 (g)(1)(D).

Board staff feels that the questions posed by this request are adequately addressed by the existing language and the Act. Staff met with staff of the Comptroller's Office last week to better understand how it implements the rules related to predominant use studies.

Staff plans to incorporate this information in our proposed response but have not completed that process. As such, the proposed response is not finalized as of today, but staff plans to have a formal proposed response available at the next Committee meeting.

No action was required on this agenda item.

**6. Policy Advisory Opinion Request Regarding the Requirements of an Engineer to Sign and Seal Amended Engineering Plans and the Ability of a Governmental Entity to Accept Unsealed Revised Plans (Policy Advisory Request No. 57).**

Mr. Sims discussed Policy Advisory Request No. 57 regarding the requirements of an engineer to sign and seal amended engineering plans and the ability of a governmental entity to accept unsealed revised plans.

Although the associated complaint has been fully investigated and closed, the complainant has also requested a policy advisory opinion on the issue. Board staff feels that the issues at hand are fully addressed by the act but is still compiling a formal response which will be available for discussion at the next Committee meeting.

No action was required on this agenda item.

**7. Update on Work Group Regarding the Use of and Sealing Procedure for Digital Three-Dimensional Models (Policy Advisory Request No. 50).**

Mr. Sims provided an update on Policy Advisory Request No. 50 regarding the use of and sealing procedure for digital three-dimensional models.

The work group that has been formed and meeting regularly studying how the use of digital models or electronic transmittal of electronic files how the use of those fit into the board's mission to protect the health, safety, and welfare of the public met via Zoom on November 4, 2020.

The meeting began with a recap of the work group's first meeting in January and its second meeting in July of this year. Since the last meeting of the work group in July, Board staff has taken several actions. We reached out to Mr. Guillermo Guerrero, P.E., who is the requestor of this policy advisory opinion to provide guidance on his original questions. His questions were

specific to one type of software and we feel that they are part of a larger issue that does need to be addressed. So, we did provide some guidance to him on a specific question while also expanding it to address the use of all digital models whereas his questions were about a specific type of model.

Board staff also met with the staff of the Texas Board of Architectural Examiners to develop performance standards for sealing digital models. This framework was discussed with the work group during the November 4, 2020, meeting.

Mr. Sims has drafted a proposed response to the policy advisory request and is requesting the Committee allow the Board's staff to publish the proposed response in the Texas Register and on the Board's website for 30 days to allow interested parties to provide any comments on the draft. Staff will then evaluate those comments and come back with a proposed final response at the next Committee meeting.

It was MOVED/SECONDED (Adejokun/Norwood) to publish the draft letter submitted by staff to the Texas Register and the Texas Board of Professional Engineers and Land Surveyors website for public comment and feedback and proceed with next steps recommended by staff. A vote was taken and the MOTION PASSED.

**8. Issues for consideration for future Committee meetings.**

Mr. Adejokun stated that he believes that there will be responses to Agenda item #7.

**9. Adjourn.**

It was MOVED/SECONDED (Norwood/Adejokun) to adjourn the meeting at 11:10 a.m. A vote was taken and the MOTION PASSED.

Date Committee approved minutes:

February 25, 2021

Date Board approved minutes:

February 25, 2021