

MINUTES
POLICY ADVISORY OPINION COMMITTEE MEETING
TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS
Hyatt Regency Lost Pines
575 Hyatt Lost Pines Road
Lost Pines, Texas 78612
May 26, 2021—1:00 PM

Discuss and Possibly Act on the Following Agenda Items:

1. Preliminary Matters:

A. Call to Order

Mr. Rolando Rubiano, P.E., Chair, called the Policy Advisory Opinion Committee meeting of the Texas Board of Professional Engineers and Land Surveyors to order at 1:18 p.m. at the Hyatt Regency Lost Pines at 575 Hyatt Lost Pines Road, Lost Pines, TX. (NOTE: all votes are unanimous unless noted.)

B. Recitation of the Pledge of Allegiance

Mr. Rubiano led the recitation of the Pledge of Allegiance.

C. Roll Call

Dr. Kinney called the roll. It was noted for the record that a quorum was present.

The following Committee members were present:

Rolando Rubiano, P.E.	Chair
Lamberto Ballí, P.E.	Member
Catherine Norwood, P.E.	Alternate Member
Kiran Shah	Public Member

Veena Mohan, Assistant Attorney General and General Counsel for the Board and Madeline Bergstrom from the Office of the Attorney General, were present 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

D. Excuse absent Committee members

The following Board member was absent:

Ademola Adejokun, P.E. Member

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

E. Welcome Visitors

Albert Cheng, Board Member; Edmundo Gonzalez, P.E., R.P.L.S., Advisory Member; Coleen Johnson, R.P.L.S., Board Member; Dr. Sina K. Nejad, P.E., P.Eng., Board Member; Mark Neugebauer, R.P.L.S., L.S.L.S., Board Member; and R. Kyle Womack, P.E., Retired, Advisory Member, were present

F. Public Comment

There were no public comments.

2. February 25, 2021 Policy Advisory Opinion Committee Meeting Minutes

It was MOVED/SECONDED (Ballí/Shah) to approve the February 25, 2021, Policy Advisory Opinion Committee meeting minutes as submitted. A vote was taken and the MOTION PASSED.

3. 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.

Mr. Sims stated that this request was received from John Turner, P.E., seeking guidance on issues involving predominant use studies which are discussed in Texas Administrative Code Chapter 34, relating to Natural Gas and Electricity.

Mr. Sims stated that at the February 2021 Policy Advisory Opinion meeting, the Committee approved a publication of a draft response to solicit feedback from interested parties. The draft was published in the Texas Register and on the Board's website and no comments were received.

Mr. Sims recommends that the Committee formally adopt staff's response. The response will be sent to Mr. Turner and also posted on the Board's website.

Mr. Sims read a summary of the draft response to the Committee.

It was MOVED/SECONDED (Ballí/Norwood) to adopt staff's recommendation of the draft response and recommend to the full Board to adopt the staff's response to 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. A vote was taken and the MOTION PASSED.

4. 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 provided an update on 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.

Mr. Sims stated that the complaint associated with Policy Advisory Request No. 57 has been fully investigated and closed but the complainant has requested a Policy Advisory on the issue.

Mr. Sims stated that the draft response is in the Board material reciting the rules that state that engineering work has to be sealed and that a political subdivision or the state that has rules dealing with engineering should only accept sealed plans.

Mr. Sims stated that they did not accept it as a formal Policy Advisory as the existing Act and Board rules adequately address the questions on hand. The drafted response letter has been proposed and if adopted, will be sent to the requestor, and posted on the Board's website.

It was MOVED/SECONDED (Shah/Ballí) to recommend to the full Board to adopt staff's response, send the draft letter to the requestor, and post on the Board's website. A vote was taken and the MOTION PASSED.

5. 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.

Mr. Sims stated that this Policy Advisory had been tabled at the last Committee meeting. Staff have drafted a response and it is ready for the Committee to adopt, send the response to the City of Fort Worth, post the response on the Board's website, and recommend to the full Board to adopt staff's response.

Mr. Sims read a summary of the draft response to the Committee.

It was MOVED/SECONDED (Norwood/Ballí) to adopt staff's response letter, recommend to the full Board to adopt staff's response letter, provide the response letter to the City of Fort Worth, and post on the Board's website. A vote was taken and the MOTION PASSED.

6. 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 this happens, Metro establishes agreements with various companies and requires that the plans for such crossings be signed and sealed by a professional engineer licensed in this state.

It is staff's understanding that a utility company has argued that section §1001.058 of the act exempts them from having to provide plans signed and sealed by a professional engineer.

Staff published a draft response and feel that questions posed are adequately addressed by the existing language in the act.

Board staff sought feedback from stakeholders in February and based on stakeholder feedback and following-up with Metro, the issue at hand does not seem to be related to the exemption for certain employees of utilities but more about contracting and agreements to gain access.

Mr. Sims stated that updates were made to the draft letter posted in February and the new letter was provided to the Committee in the Committee material.

It was MOVED/SECONDED (Ballí/Norwood) recommend to the full Board that we accept staff's response. A vote was taken and the MOTION PASSED.

7. Issues for consideration for future Committee meetings

No issues were presented or addressed for future consideration at the next Committee meeting.

8. Adjourn

It was MOVED/SECONDED (Ballí/Norwood) to adjourn the meeting at 2:56 p.m. A vote was taken and the MOTION PASSED.

Date Committee approved minutes:
Date Board approved minutes:

August 26, 2021
August 26, 2021