

Policy Advisory Request No. 55

Re: Formal Response to Request for Policy Advisory Request Regarding The Extent of the Utilities Exemption in the Texas Engineering Practice Act

The Texas Board of Professional Engineers and Land Surveyors Policy Advisory Opinion Committee (Committee) met in public session on February 25, 2021, and approved this draft response for solicitation of public comment through the Texas Register and the Board's website to the referenced request dated September 16, 2020. Any comments on this draft should be submitted to the Board no later than April 19, 2021 via U.S. Mail to Texas Board of Professional Engineers and Land Surveyors, Attn: Michael Sims; 1917 S Interstate 35; Austin, Texas 78741 or via e-mail to pao@pels.texas.gov

Request:

Mr. Jose Castellanos with the Metropolitan Transit Authority of Harris County (METRO) seeks guidance on the following issues:

- Does the exemption for Employees of Certain Utilities or Affiliates contained in the Texas Engineering Practice Act preclude a utility company from having to sign and seal engineering plans if sealed plans are requested by a public transportation agency?

Background:

The Policy Advisory Opinion process allows the Board to issue interpretations of the Texas Engineering Practice Act (the Act)[Texas Occupations Code, Chapter 1001] and Board Rules to address specific questions. The committee reviewed this request and determined that it can be answered by reference to the existing language of the Act does not need to go through the full Policy Advisory process.

Based on your request, it is our understanding that METRO owns a transit corridor that is 500 feet wide and approximately 26 miles long. We further understand that METRO intends to one day build a light rail transit system within this corridor.

When utility or cable companies need to cross this 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 our understanding that a utility company has argued that Section 1001.058 of the Act, relating to Employees of Certain Utilities or Affiliates, exempts them from having to provide plans signed and sealed by a professional engineer.

For reference, Section 1001.058 of the Act states:

§ 1001.058. EMPLOYEE OF CERTAIN UTILITIES OR AFFILIATES.

(a) A regular full-time employee of a privately owned public utility or cooperative utility or of the utility's affiliate is exempt from the licensing requirements of this chapter if the employee:

- (1) performs services exclusively for the utility or affiliate; and
- (2) does not have the final authority to approve, or the ultimate responsibility for, engineering designs, plans, or specifications that are to be:
 - (A) incorporated into fixed works, systems, or facilities on the property of others; or
 - (B) made available to the public.

(b) A person who claims an exemption under this section and who is determined to have directly or indirectly represented the person as legally qualified to engage in the practice of engineering or who is determined to have violated Section 1001.301 may not claim an exemption until the 10th

anniversary of the date the person made that representation.

Response:

Section 1001.058 of the Act exempts certain employees of utilities from the need to be licensed. Based on the scenario described in your request, it is our understanding that the employee of the utility submitting plans to METRO to cross its transit corridor would have ultimate responsibility for the engineering designs that are on METRO's property. As such, this employee would not meet the exemption requirements established in Section 1001.058(a)(2)(A) and would need to be licensed to provide these plans to METRO. Further, in accordance with Section 1001.401 of the Act, a licensed professional engineer is required to sign and seal final engineering works prior to releasing them from his or her control.

We further understand that METRO is establishing leases with the utility or cable companies prior to allowing them to access its property. A political subdivision can implement their own codes, ordinances, requirements, or lease conditions as long as they are not less restrictive than the requirements in the Act or Board rules. Such requirements could be added to local ordinances, franchise agreements or directly to the lease agreement. If the political subdivision requires signed and sealed design documents as part of their codes, ordinances, permitting process, franchise agreement, or other design requirements, then the professional engineer working on behalf of the utility, as required by the political subdivision, must follow the practice requirements of the Texas Engineering Practice Act and board rules.

However, please keep in mind that if political subdivisions implement a requirement within their own codes, ordinances, permitting process, franchise agreement, or other design requirements for installation of these systems in their right of ways or transit corridors, they must not be less restrictive than the requirements in the Act or Board rules. As long as these codes, ordinances, or requirements are not less restrictive than the requirements in the Act or Board rules, the Board would have no additional jurisdiction over the content or enforcement of these codes, ordinances, or requirements that regulate installation of the systems. However, the Board does have jurisdiction over the practice of engineering and said practice, including any signed and sealed engineering document, must be done in a manner consistent with the Act and Board rules.

Conclusion:

No new Policy Advisory Opinion will be developed for this request.