



Fort Bend County Engineering
FORT BEND COUNTY, TEXAS

Richard W. Stolleis, P.E.
County Engineer

March 27, 2015

**RE: Engineering Advisory Opinion Request Number 37: Policy Advisory Regarding
Utility & Telephone Company Exemptions
Fort Bend County, Texas**

To whom it may concern:

Beginning April 15, 2015, the Fort Bend County Engineering Department will require all construction plans submitted as part of a permit application for proposed cable, conduit, and pole line activity in, under, across, or along roads, streets, highways, and/or drainage ditches to be signed and sealed by a Texas licensed professional engineer. This includes plans and specifications for the engineering aspects of the construction of the utility improvements including, but not limited to, trenching plans, backfill, compaction, pavement design, traffic plans, culverts, drainage design, and tower design. The Policy Advisory and Frequently Asked Questions developed by the Texas Board of Professional Engineers Policy Advisory Opinion Committee related to this matter is attached for your reference.

Please feel free to contact me at 281-633-7510 or clay.forister@fortbendcountytexas.gov if you would like to discuss this matter further.

Sincerely,

Clay A. Forister, P.E.
Assistant County Engineer – Development

CAF/mjs

Enclosures

cc: File

EAOR 37, Policy Advisory Regarding Utility & Telephone Company Exemptions

February 12, 2015

Background: The agency regularly receives inquiries regarding §1001.058 and §1001.061 of the Texas Engineering Practice Act (TEPA) and the applicability or nature of the exemption. By authority of Subchapter M of TEPA, the Board hereby issues this policy advisory to educate the public of Texas regarding these exemptions and the practice of engineering.

§ 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.

§ 1001.061. Telephone Companies

(a) An operating telephone company, an affiliate of the company, or an employee of the company or affiliate is exempt from this chapter with respect to any plan, design, specification, or service that relates strictly to the science and art of telephony.

(b) This exemption includes the use of a job title or personnel classification by a person included under Subsection (a) if the person does not use:

- (1) the title or classification in connection with an offer to the public to perform engineering services; and
- (2) a name, title, or word that tends to convey the impression that a person not licensed under this chapter is offering to the public to perform engineering services.

Analysis: The §1001.058 utility exemption applies to the regular, full time employees of the utility or its affiliates as defined in §1001.058(a). It is an exemption from licensure of the employees that are not responsible nor have the final authority for the engineering designs, plans and specifications that are to be incorporated into fixed works, facilities or systems that are on the property of others or made available to the public. Those individuals that are responsible or have the final authority for the engineering designs, plans, and specifications that are to be incorporated into fixed works, facilities, or systems that are on the property of others or made available to the public must be licensed as Texas professional engineers.

This exemption does not apply to entities (companies, firms or individuals) that are providing engineering services to a utility or affiliate as defined in §1001.058(a). All sections of the TEPA apply to these individuals and firms, including professional engineering licensure, firm registration, and sealing requirements. Engineering services provided to a utility or affiliate, as defined in §1001.058(a), for projects located in Texas must be provided by a Texas licensed professional engineer directly or in responsible charge. All requirements regarding firm registration (Chapter 135) and sealing and signing (§§ 137.31, 137.33, 137.35 and 137.37) apply.

This exemption also is not a blanket exemption for an entire industry, area of practice, or type of engineering work. The §1001.058 utility exemption applies only to licensure requirements

for individuals who meet the specific criteria of the TEPA, and is not applicable to all engineering work done for a utility, all utility work in general, or simply anything done for a particular utility.

Section §1001.061, relating to Telephone Companies, is also an exemption from licensure for the employees performing engineering related *“strictly to the science and art of telephony”* ONLY. Unlike §1001.058, this section also applies to firms involved in engineering work related to telephony. In this case, ‘telephony’ is related to the engineering design of the telephone cables, switches, relays, and other components in the telephone system. These activities can be performed by unlicensed employees of the telephone company. However, the engineering necessary to install these systems is not part of the exemption. Texas licensed professional engineers must prepare the plans and specifications for the engineering aspects of the construction of the telephone systems including, but not limited to, trenching plans, backfill, compaction, pavement design, traffic plans, culverts, drainage design and tower design.

EAOR 37, Policy Advisory Regarding Utility & Telephone Company Exemptions

February 12, 2015

Frequently Asked Questions

1) (A) A utility/telephone company is installing piping/cable that will pass through private property (not owned by the utility). Do the plans need the seal of a Texas licensed engineer?

(B) A utility/telephone company is installing piping/cable in a city's right of way (ROW). Do the plans need the seal of a Texas licensed engineer?

Yes, a licensed Professional Engineer is required for both scenarios.

For the utility project, the law states that there must be a Texas licensed engineer in responsible charge of the work performed on the property of others. The city street and/or ROW are not the property of the utility and they are available to the public.

For the telephone project, the telephone company exemption allows the telephone company to perform the engineering associated strictly with the telephone equipment with their own unlicensed employees. The engineering associated with any construction including, but not limited to, the excavation plan, fill and compaction specification, pavement and reinforcing design, drainage, trench safety, and traffic plan must be designed by a Texas licensed professional engineer.

2) A city in Texas wants to impose engineering requirements on a utility or telephone project that go above and beyond the requirements of the TEPA. Can they do that?

Yes, cities and other governmental entities in Texas may impose extra engineering requirements on projects in their jurisdiction including utility and telephone projects. The minimum requirements for engineering projects as stated in the TEPA may not be waived or reduced, however.

3) Would the employee of a utility owned by a political subdivision of the state of Texas be exempt from licensure?

No. Section §1001.058 specifically references "privately owned" and a subdivision of the state is "publically" owned and public works engineering projects are only exempted below the limits listed in §1001.053.

Approved by the Texas Board of Professional Engineers on February 12, 2015