



April 7, 2015

Re: Reconsideration of Policy Advisory 37 - Interpretation of Utility and Telephone Company Exemptions

In February 2015, the Texas Board of Professional Engineers (TBPE) approved and issued Policy Advisory Opinion #37 (PAO 37) concerning utility and telephone company exemptions. This advisory opinion was posted on the agency website and distributed to stakeholders along with a set of Frequently Asked Questions (FAQ). The purpose of PAO 37 was to provide clarification concerning exemptions related to certain utility and telephone company employees and operations (Texas Occupations Code §§1001.058 and 1001.061); it also addressed when and if a professional engineer is needed in relation to these exemptions or operations.

Since PAO 37 and the FAQ have been released, there has apparently been some confusion concerning the interpretation and implementation of the advisory opinion. This confusion has led to difficulties for both municipalities and utility companies concerning the exemptions and professional engineer participation, such as signing and sealing plans. Stakeholders have contacted TBPE with concerns about changes to standard practice, questions about scope of the opinion, and other issues that can impact day-to-day activities. Some of the concerns are related to the PAO itself, while others are related to interpretations of the FAQ document.

TBPE has also received two formal requests for suspension and reconsideration of PAO 37 to address these issues. In acknowledgement of the urgency of the situation, and in order to more completely address the concerns set out by stakeholders, TBPE is taking the following actions:

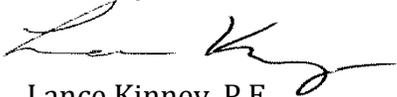
- Removal of the FAQ document from distribution. The FAQ was intended to be clarifying in nature and not an official part of the PAO. Confusion arising from the FAQ warrants reconsideration and clarification of its content. Until such time as an FAQ is reposted, the FAQ dated February 12, 2015, should not be relied upon in any decision-making or permitting process.
- TBPE has scheduled an interim Policy Advisory Opinion Committee meeting on April 14, 2015 at 11am in the TBPE conference room in Austin, TX to process the formal request for suspension and reconsideration of PAO 37. This meeting and the agenda have been posted in the Texas Register and on TBPE's website, and will be distributed to stakeholders.
- TBPE considers PAO 37 to be actively under reconsideration and encourages all parties, including municipalities and utility companies, to suspend actions or changes to procedures based on the advisory opinion until such time as the reconsideration process is completed. TBPE will keep all parties and the public informed of the status and results of the process of reconsideration and when a revised or new PAO becomes available should the TBPE determine in its discretion that such action is warranted.

TBPE does not and has never intended PAO 37 to modify, expand, or restrict the current exemptions set forth in the Texas Engineering Practice Act (TEPA) (§§1001.058 and 1001.061), nor to require professional engineering licensure for activities that are exempt or are not the practice of Professional Engineering covered under TEPA. This includes not requiring the signing or sealing of documents by a Professional Engineer that are covered under the exemptions as written or that are not considered the practice of engineering. PAO 37 was also not intended to expand the scope of the practice of engineering beyond what is defined in TEPA; for example, emergency repairs, maintenance activities, the work of technicians, installers, etc.

The goal of the Advisory Opinion process is to clarify provisions of the TEPA and the TBPE's Board Rules, if the TBPE determines such action is warranted. The TBPE is working diligently with stakeholders to develop a clear and informative interpretation of the statute and rules within the framework of the current law.

We thank you for your patience during this process.

Sincerely,

A handwritten signature in black ink, appearing to read "Lance Kinney", written over a horizontal line.

Lance Kinney, P.E.
Executive Director