



Changes To The Rules Governing Petroleum Pipeline Certificates Rules 672-13-.01 to 672-13-.09

Matthew E. Cline, Esq.
General Counsel

March 14, 2018

PURPOSE FOR CHANGES

- Statutory changes - O.C.G.A. §§ 22-3-80 to 22-3-85
- **Opportunity to make changes for clarification and to reflect the statutory changes in the code**
 - DOT already has rules in place; EPD promulgating new rules
- No later than **July 1, 2018** GDOT shall promulgate rules and regulations as are necessary and reasonable for purposes of enforcement of this Code section, including but not be limited to:
 - submission of an application for a certificate of public convenience and necessity
 - nonrefundable application fee
 - reasonable public notice for public meetings

Board Action

- Open the rules for public comment
- After 30 day comment period, board considers changes at the April meeting
- Upon approval, published with Secretary of State's office and rule becomes final



DEFINITIONS

- Updated and added definitions to reflect changes to O.C.G.A. Sec. 22-3-80 (from Title 12)
- Some examples:
 - **"Expansion"**-modification within the existing easement or right of way that increases the supply of petroleum by:
 - (A) Increasing the diameter; or
 - (B) Constructing a parallel petroleum pipeline.
 - **"Extension"**-modification that increases the length or footprint of the existing petroleum pipeline by a distance greater than one linear mile



Definitions continued

- **“Maintenance”**:
 - (1) The care or upkeep of an Existing Petroleum Pipeline and its appurtenances;
 - (2) The replacement of an Existing Petroleum Pipeline within the same easement or right of way; or
 - (3) The relocation of an Existing Petroleum Pipeline for repair within one linear mile of the existing petroleum pipeline's alignment.
- **“New Petroleum Pipeline”** means a petroleum pipeline that was not constructed and in use prior to January 1, 2016. The term “New Petroleum Pipeline” shall not include an Expansion, Extension, or any Maintenance.



EXERCISING THE POWER OF EMINENT DOMAIN

- Authorizes eminent domain for:
 - **Expansion** – No Certificate Required
 - **Extension** – Certificate Required
 - **Maintenance** – No Certificate Required
 - **New construction** – Certificate Required
- Eminent domain CAN be used for **maintenance / expansion** but no Certificate needed (still need EPD permit)
- No Certificate shall be required when not exercising power of eminent domain to acquire property (i.e. negotiated sales of easements or property)



CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

- Code change: only issued by Commissioner (not designee)
- Rule Change: Now submitted electronically to GDOT
- Code and Rule Change: Establishes fees
 - When New Petroleum Pipeline or Extension is expected to be in 5 or fewer Georgia counties - **\$5,000.00 Fee**
 - When more than 5 Georgia counties, additional **\$1,000.00** per county
 - Fee covers costs associated with the processing/ review of the application and scheduling of public meetings



Submission of information by Applicant

- Legal name, state where organized, principal place of business, all States where authorized to do business, and description of existing business, operations and properties with reference to petroleum transportation by pipeline
- Notice Information
- Description of the proposed project with its siting information and map
- Description of the public convenience and necessity that supports the proposed location
- Width of the proposed Petroleum Pipeline corridor up to a maximum of 1/3 mile
- Eminent domain may be necessary for construction
- Public convenience and necessity justifies the use of eminent domain
- Any additional information requested by the Commissioner



NOTICE BY APPLICANT – (1) PUBLIC NOTICE

- Within 10 days of filing complete application for Certificate, notice of the application and the proposed route must be published by the Applicant in the legal organ of each county through which the proposed route is to be located (code)
- Proof of publication shall be filed with the Commissioner no later than 10 days following publication (rule)
- Very specific language from statute

PUBLIC MEETINGS

- **Hearing** are no longer required, now **public meetings**
- Code gives GDOT latitude regarding public meetings and requires reasonable number
- Rule established no fewer than **2** public meetings
- Notice of the public meetings in the legal organ of each county through which the proposed route is to be located or through other means of communication Department deems necessary and appropriate



COMMISSIONER'S DETERMINATION

- Law now establishes what the commissioner shall consider in making a determination
- Seven factors to review
- Not an exhaustive list of factors to consider

COMMISSIONER'S DETERMINATION

- Commissioner's decision shall be based on the record
- Record includes, but not be limited to:
 - Applicant's submissions
 - Documents submitted to GDOT
 - Any research the Commissioner may conduct on his/her own
 - Note – public comments not listed in code



- Applicant shall bear the **burden of proof** to demonstrate that a Certificate should be issued (code)
- Application review process shall not **exceed 120 days**. If Application is not acted upon within 120 days from filing date, Application shall be deemed to be approved by operation of law (code)



REVIEW OF COMMISSIONER'S DECISION

- Issuance or denial may be reviewed by **superior court** of the county in which the pipeline company has an agent and place of doing business
- Review shall be by petition filed within **30 days** of the date of approval or disapproval of the application
- Shall be determined on the basis of the record before the Commissioner
- Action of the Commissioner shall be affirmed if supported by **substantial evidence**

AUTHORIZES EMINENT DOMAIN

- The Certificate from Department authorizes the use of eminent domain
- Separate approval required from EPD

QUESTIONS?

