



May 13, 2016

The Honorable Larry Gonzales, Chairman
Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78711-3066

RE: 2016 Sunset Staff Report on the Railroad Commission of Texas

Dear Chairman Gonzales,

On behalf of the GPA Midstream Association, I submit the following comments on the Sunset Staff Report (Staff) on the Railroad Commission of Texas (Commission).

Founded in 1921, the GPA Midstream Association is a trade organization with nearly 100 corporate members of all sizes, 40 of which operate in Texas, engaged in the gathering and processing of natural gas, commonly referred to as "midstream activities" in the energy sector. Raw natural gas is one of the world's primary energy sources and much of it must be purified, or "processed," to meet quality standards and regulations and to make useful everyday products for homes, factories, and businesses. Gas processing includes the removal of impurities from the raw natural gas stream produced at the wellhead, as well as the extraction for sale of natural gas liquid products (NGLs) such as ethane, propane, butane, and natural gasoline. GPA Midstream members account for more than 90 percent of NGLs produced in the United States from natural gas processing. GPA Midstream members also operate hundreds of thousands of miles of domestic gas gathering pipelines, in addition to pipelines involved with storing, transporting, and marketing natural gas and NGLs.

GPA Midstream appreciates the opportunity to submit comments. We have limited our comments to those recommendations in the Staff's Report that affect our member companies. We plan to have a member company offer testimony at the Sunset Commission's public hearing when scheduled.

Issue 1 – Continue the Railroad Commission of Texas for 12 Years With a Name That Reflects the Agency's Important Functions.

Staff Recommendation 1.1 – Change the name of the Railroad Commission of Texas to the Texas Energy Resources Commission and continue the agency for 12 years.

GPA Midstream supports reauthorization of the Commission for 12 years. Texas is the leading energy producer in the United States. The Commission has provided the leadership necessary to ensure that our state's natural resources are produced in the most efficient manner consistent with protecting correlative rights, preventing waste, and protecting the environment. New exploration and production techniques have dramatically increased the oil and gas activity in the state. The Commission has effectively balanced the need to protect the environment and to protect the safety of citizens and their land as these natural resources are produced. The Commission has followed the

Legislature's direction and provided the consistent and predictable regulatory environment necessary for the investment of hundreds of millions of dollars in energy infrastructure. Policies and rules for energy production have provided the stability necessary for the energy success enjoyed by the state.

GPA Midstream takes no position on the name change in theory. However, we caution exchanging one misnomer for another. The Railroad Commission of Texas has no jurisdiction over any aspect of geothermal, nuclear (except uranium mining exploration), solar, or wind energy resources. Thus, Staff's recommendation for the name "Texas Energy Resources Commission" is merely urging the adoption of a new misnomer – one that is neither steeped in Texas history nor recognized worldwide within the industry, as is the current name. The possibility of changing the name of the Commission has been a discussion point long before the Staff began reviewing the agency. If in fact, the Legislature determines that this is the time to change the name, we urge careful consideration for a name that makes the change worthy of such a historic alteration, and certainly not one left to the narrow perspective of Staff.

Issue 2—Contested Case Hearings and Gas Utility Oversight Are Not Core Commission Functions and Should be Transferred to Other Agencies to Promote Efficiency, Effectiveness, Transparency, and Fairness.

GPA Midstream continues to strongly oppose these recommendations as we have already stated in the 2010 and 2012 Staff reviews of the Commission. In their 2016 review, Staff states three reasons for this recommendation; (1) overlapping programs that warrant consolidation; (2) the fact that the PUC is already providing state-level regulation of all utilities; and (3) questions over fairness due to “ongoing ex parte concerns.”

Because Staff is charged with identifying government redundancy and possible consolidations, we can understand their one-dimensional approach. However, we urge your Committee to seek a more universal dynamic that includes industry perspective – perspective that has clearly been ignored after three sunset reviews. The oil and gas industry continues to be the economic driver of the State of Texas and as such, this type of sweeping overhaul must be examined for economic impact to the industry. Contested case hearings and rate cases are already expensive in both time and money. The Staff offers no real assurance that cases will be determined in the timely manner done so presently by the Commission. The Staff offers no real assurance that cases will be examined with the level of expertise currently existing at the Commission. The Staff offers no evidence that the PUC offers state regulation that is superior to that currently at the Commission. Without those assurances, you can surely understand how our member companies loathe to support a new environment of regulatory uncertainty. Finally, if the Staff wants to assert the presence of ex parte, then the recommendation should address those concerns specifically, rather than dissect the Commission and impact the industry unnecessarily. These same issues have been argued extensively. It is time to put these ideas to rest.

Staff Recommendation 2.1 – Require use of the State Office of Administrative Hearings for contested gas utility cases.

Staff Recommendation 2.2 – Require the Railroad Commission to use the State Office of Administrative Hearings (SOAH) for all other contested case hearings.

Staff Recommendation 2.3 - Transfer gas utility regulation from the Railroad Commission to the Public Utility Commission.

The Gas utility and legal enforcement cases heard by the Commission are very specialized and require examiners that have specialized gas utility and energy expertise. The Commission hearings examiners only hear Commission cases. As a result, their ability to apply consistent recommendations based on the statutes, Commission rules, and policy is second to none. Industry terms, practices, and dialog are well known and common to them. Hearings require no additional time to educate the examiner on these unique issues. They are trained and ready to conduct an efficient and fair hearing and make recommendations to the Commissioners in their Proposal for Decisions that not only follow the law and rules but also follow existing Commission precedent. The education of SOAH examiners in energy issues and terms could result in less efficient hearings and additional costs.

Gas utility rate cases are funded by ratepayers. Stated another way, ratepayers pay costs of the proceeding including the attorneys' fees for all parties, expert witnesses fees, lodging, travel, and expenses. Cases generally involve multiple parties each with their own counsel and experts. These costs can run in the millions of dollars. The Commission examiners do an outstanding job of conducting these hearings in a fair and efficient manner. Issues are narrowed based on Commission policy and precedent, parties and issues are consolidated where possible and hearings are conducted in a timely fashion. The net result of this efficiency is less expense to ratepayers. Rulings by the hearings examiners are predictable based on prior decisions and policy. As a result, cases require less time than they did 5 or 10 years ago. A further benefit of this predictable regulatory environment is the fact that parties are now settling many issues and even entire rate cases instead of litigating the case which results in an even greater reduction in rate case expenses paid by the ratepayer.

Enforcement cases require hearings examiners with the same legal and technical expertise. A thorough knowledge of how wells are drilled, connected, and operated or how facilities operate is often necessary to understand whether a violation occurred and the severity of the violation. The current hearings examiners have that expertise. Transferring that expertise to SOAH provides no benefit, and while the recommendation states that "SOAH should give consideration to hiring existing Railroad Commission Hearings Division staff to the extent that additional employees are needed to handle this caseload," there is no guarantee that this would be the procedure, thus, subjecting these complicated cases to administrative law judges and examiners not versed in this area of expertise leading to a lengthier process for industry.

The Commission transferred hearings examiners from the Office of General Counsel to a separate division headed by the Executive Director in response to a 2010 Staff evaluation of the hearings section. We believe that this change addresses any ex-parte or neutrality issues raised by Staff. Any further refinement of the hearings examiners' staff should be directed to the Commission to make changes rather than transferring the examiners to SOAH.

In 2014, the Commission's Hearings Division created its first-ever memorandum on ex parte communications. GPA Midstream believes this memorandum circulated to staff along with staff training would address any additional ex-parte or neutrality issues raised by the Sunset Commission Staff.

Finally, the hearings examiners were transferred to SOAH by the legislature in 2001. The results were less than satisfactory. It resulted in additional costs without improved efficiency. Hearings were transferred back by the legislature in 2003. Our member companies believe that no benefits would accrue by making another transfer.

Issue 3 –Oil and Gas Monitoring and Enforcement Need Improvements to Effectively Ensure Public Safety and Environmental Protection.

GPA Midstream takes no position on the recommendation.

Issue 4 – Insufficient and Inequitable Statutory Bonding Requirements Contribute to the Large Backlog of Abandoned Wells.

GPA Midstream takes no position on the recommendation.

Issue 5 – Improved Oversight of Texas’ Pipeline Infrastructure Would Help Further Ensure Public Safety.

Staff Recommendation 5.1-Authorize the Railroad Commission to enforce damage prevention requirements for interstate pipelines.

GPA Midstream strongly supports this recommendation. Texas has more than 366,000 miles of pipeline transporting gas, oil, and other liquids. Approximately 44,000 of those are regulated interstate pipelines. The Commission has long been recognized as a leader in pipeline safety by the U.S. Department of Transportation and is quite capable of assessing administrative penalties against operators and excavators that violate damage prevention rules on interstate as well as intrastate pipelines. The Commission is expressly suited to oversee and enforce damage prevention requirements having already proven to provide a top notch program. GPA Midstream would want reassurance that the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Commission are aligned and there be opportunity for stakeholder input and adequate time to address both state and federal regulatory and statutory changes.

Staff Recommendation 5.2 – Authorize the Railroad Commission to create a pipeline permit fee.

Our members understand that additional funds will be needed to address this regulatory gap and to assess the size of the problem of interstate pipeline damage. Under the heading, “Fiscal Implication,” Staff suggests that in 2016 a \$1.8 million shortfall will occur and this should be offset by a \$425 per pipeline permit fee assessment. Staff bases this shortfall on the “estimate” of \$4,153,000 collected from pipeline safety fees. This fee collection is a dynamic number each year. The number of pipeline permits is also a yearly dynamic. Therefore, Staff is asking industry to pay for an uncertain shortfall spread across an uncertain amount of permits, so that each year the cost of a pipeline permit fee could vary from the year prior. Conversely, we think it completely reasonable that the Commission request that the Legislature appropriate the funds from General Revenue to cover this shortfall.

However, rather than sacrifice pipeline safety concerns, if the Legislature refuses to entertain that important appropriation, our members will certainly agree to continue the discussion of a permit assessment, if and only if, the fee is solely used for the administration of pipeline safety, gas pipeline regulatory programs, and educational programs promoting pipeline safety awareness concepts to help prevent pipeline excavation incidents. Further, we would want to ascertain definite program costs and alternative methods for fee assessment before agreeing to a blanket \$425 permit fee.

Staff Recommendation 5.3– Modify language in the Appropriation Act to further ensure that the Railroad Commission collects, and is appropriated back, fee amounts to offset the costs of administrating its Pipeline Safety program, including administrative costs.

GPA Midstream strongly agrees with this recommendation. The pipeline permit fee should be used expressly for the administration of pipeline safety.

Issue 6.1 – The Railroad Commission’s Contracting Procedures Are Improving, but Continued Attention is Needed.

GPA takes no position on this recommendation.

Issue 7.1 – The Railroad Commission’s Statute Does Not Reflect Standard Elements of Sunset Reviews.

GPA takes no position on this recommendation.

Again, GPA Midstream appreciates the opportunity to express the interests of our member companies and look forward to discussing these issues when your Committee meets to formally hear these recommendations.

Sincerely,

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GPA Midstream Association
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