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State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

November 29, 2010

Hon. Glenn Hegar, Jr.
Chair, Sunset Advisory Commission
Robert E. Johnson Building
1501 North Congress Avenue, 6th Floor
Austin, Texas 78701

Hand Delivery

Re: Response to Sunset Staff Report on the Railroad Commission of Texas and
Supplement to the Public Utility Commission Report

Dear Senator Hegar:

Thank you for the opportunity to respond to the Sunset Staff Report on the Railroad Commission of Texas and the Supplement to the Public Utility Commission Report. Our comments are directed to Issue 3 of the report on the Railroad Commission and to Supplement Recommendation S1.3 that SOAH hear contested gas utility cases.

SOAH hears enforcement cases from almost every agency that refers cases to us, including, as the staff's report notes, from the Public Utility Commission (PUC) and the Texas Commission on Environmental Quality (TCEQ). In addition, both the PUC and TCEQ refer utility cases to us. Although the Railroad Commission's enforcement and gas utility cases would present new law and issues to the SOAH Administrative Law Judges, we believe that we could draw on our extensive experience and knowledge in enforcement and utility work to learn the Railroad Commission's subject matter without difficulty and to be proficient in it quickly. In addition, we are very familiar with penalty guidelines, matrices, and policies, as a number of SOAH's referring agencies have them in their rules. If the Legislature were to go forward on the Sunset staff's recommendation that the Railroad Commission adopt penalty guidelines and enforcement policies in its rules, we would be well acquainted with their function and operation.

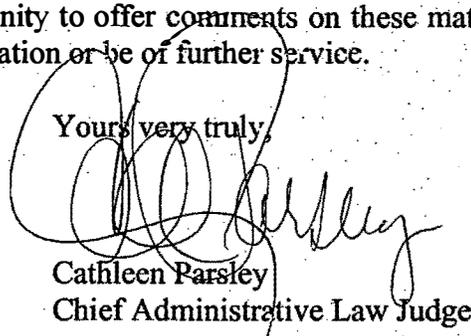
Issue 3.3 of the staff's report and the supplement's Recommendation S1.3 describe the framework for SOAH's application of the referring agency's substantive law and rules and of the authority of the referring agency to accept, modify, or reverse a SOAH proposal for decision under certain circumstances. SOAH is very familiar with this framework, which is standard for the contested case hearings we currently hear. See Administrative Procedure Act, TEX. GOV'T CODE § 2001.058.

SOAH respectfully offers this comment about the funding mechanism proposed for the Railroad Commission's hearings, should the transfer to SOAH be adopted. Issue 3.3 proposes that SOAH and the Commission enter into an interagency contract to conduct the enforcement hearings; Recommendation S1.3 contemplates that SOAH will receive an appropriation of general revenue for the gas utility hearings. As the PUC's hearings are funded by general revenue to SOAH, it would be logical for SOAH's general revenue appropriation to be increased to account for the additional work that will be referred from the PUC, *i.e.*, the gas utility hearings. If, however, responsibility for the gas utility hearings is not transferred from the Railroad Commission to the PUC, it could be unwieldy and impractical, for both SOAH and the Railroad Commission, to have an interagency contract for the enforcement hearings and general revenue for the gas utility hearings. One funding mechanism for the Railroad Commission's hearings would be more efficient and manageable, certainly for SOAH and perhaps for the Railroad Commission as well.

We also would like to clarify a funding-related matter pertaining to the proposed transfer of the water and wastewater utility cases from TCEQ to the PUC. The fiscal implication summary in the supplement states on page 66 that the recommendation to transfer the water utility cases from TCEQ to the PUC could require an adjustment in the PUC's contract with SOAH to pay the cost of those hearings. As mentioned in the preceding paragraph, SOAH receives an appropriation of general revenue to handle the PUC's cases,¹ and SOAH and the PUC do not have an interagency contract. As with the gas utility hearings from the Railroad Commission, it would be in keeping with the funding of the PUC's work to appropriate general revenue to SOAH to fund the water and wastewater utility hearings if they are transferred to the PUC. SOAH and TCEQ do have an interagency contract, however.² The amount of that contract could require a corresponding downward adjustment in the event of the transfer. (We note that any adjustment would need to consider TCEQ's potential hearing load going forward and any additions to it resulting from legislative action this session. For example, the Sunset Commission's staff has recommended that TCEQ have a role in the Desired Future Conditions (DFC) process currently at the Water Development Board and that TCEQ have the ability to refer DFC hearings to SOAH.) In the last three years, the water and wastewater utility work has amounted to 23 to 28 percent of the overall time SOAH has spent on TCEQ cases.

Thank you again for the opportunity to offer comments on these matters. We would be pleased to provide any additional information or be of further service.

Yours very truly,



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c: Mr. Ken Levine, Director, Sunset Advisory Commission – **Hand Delivery**

¹ General Appropriation Act, 2010-2011 biennium, SOAH's appropriation rider 9c(20).

² General Appropriation Act, 2010-2011 biennium, SOAH's appropriation rider 3.