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Arguments Against the Transfer of CCN and Rate Jurisdiction from Texas Commission on Environmental Quality to Public Utility Commission as Recommended by the Sunset Advisory Commission's Staff Report:

- The Sunset Report acknowledges that TCEQ's economic regulation of water and wastewater utilities "has worked and also has benefited from the environmental regulation of other TCEQ programs." Sunset Staff Report at p. 80. As the primacy agency for the federal Safe Drinking Water Act program, TCEQ understands what it takes to comply with these standards and can relate that understanding to whether a rate increase is warranted or a Certificate of Convenience and Necessity ("CCN") should be granted.
- Water issues are very different from electric and telephone issues. The staff at TCEQ are experts and understand all the aspects of running a water system. Setting water rates is not just about crunching numbers.
- As the report points out, the Legislature transferred these programs from the PUC to the Water Commission (now TCEQ) in 1986 because the Legislature "considered the Water Commission a better fit for water utility regulation because of its familiarity with the special issues of small water systems prevalent in the water industry compared to PUC's orientation toward complex ratemaking of huge electric and telecommunication utilities."
- The report states that the TCEQ is now regulating increasingly larger more sophisticated water corporations, but these large systems are a very small percentage of the total number of water and wastewater systems regulated by the TCEQ. As the report points out, the TCEQ regulates almost 4,000 water and wastewater utilities. TCEQ conducted 125 rate reviews of which 76 were contested; of these 7 had evidentiary hearings. TCEQ also processed 287 CCN applications, referred 30 CCN cases to SOAH, and made 3 final commission decisions.
- The transfer of these programs would constitute a major shift in the type of cases and issues that the PUC is accustomed to dealing with. In contrast with the TCEQ, PUC's caseload includes only four investor-owned electric utilities, 8 transmission and distribution utilities, and 63 local telephone companies. For these entities, the PUC conducted 41 electric and 12 telephone rate proceedings.
- The proposed bifurcation in duties between the two agencies will be burdensome and cause confusion for water systems having to deal with two regulatory agencies for the same program. Texas Rural Water Association members have experienced communication and coordination problems between different departments at the TCEQ, such as between the

region inspectors and the central office staff; but under common management, these issues are able to be resolved. It will be much more difficult for the regulated community to obtain that coordination between the two separate agencies. There is a greater likelihood for inconsistencies in rule-making and policy determinations as well.

- There will likely be confusion and delay in the processing of applications due to the necessity of constant coordination between the two agencies, as acknowledged by the Report; and even more so during the transition period.
- The report does not dispute that the TCEQ is effectively managing the regulation of rates and CCNs. The main criticism regards the lack of adequate consumer representation for ratepayers. If this is determined to be true, this issue can be resolved in a less disruptive manner by providing the Office of Public Utility Counsel with jurisdiction to intervene in TCEQ cases. The CCN and rate programs do not have to be moved to the PUC in order to implement this change. On the issue of consumer representation, the key question to consider is whether state funds should be used to pay for the legal representation of private individuals who are opposing a rate increase? What if their position is unfounded?
- The report recommends that there be a fee increase for water supply corporations and districts from 0.5 percent to 1 percent. This would create an inequity because most of the current caseload at the TCEQ in the rate and CCN area pertains to the investor-owned (private) utility companies. The WSCs and Districts would be subsidizing programs that do not benefit them. If WSCs and Districts are required to contribute a greater share, shouldn't cities also be required to pay this fee? Many cities have CCNs and seek to take over existing CCN areas. Cities are also involved in CCN disputes. Additionally, the TCEQ has appellate jurisdiction over rates for investor-owned utilities within city limits and for city customers outside the city limits, so cities are involved in rate cases at the TCEQ.
- Finally, the report recommends that application fees be eliminated because they do not generate enough revenue. Shouldn't the water systems that are creating the workload pay their way to some degree through application fees? Shouldn't application fees be part of the solution in paying for these programs instead of "taxing" systems across the board, whether or not they generate work for the agency? Instead of increasing fees to WSCs and Districts, application fees could be raised so that those who are utilizing the services are paying for the services.