

SUNSET ADVISORY COMMISSION



*Final Supplement to
the Sunset Staff Report
on the Public Utility
Commission of Texas*

July 2011

Sunset Advisory Commission



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In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 12-member Commission is a legislative body that reviews the policies and programs of more than 130 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency’s operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.

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Supplement to the Sunset Staff Report on the Public Utility Commission

In its decision meeting on July 6, 2010, the Sunset Commission left pending the decision on the Public Utility Commission's continuance until completion of the staff reviews on the Railroad Commission of Texas and the Texas Commission on Environmental Quality. The purpose of the postponement was to give staff the opportunity for more complete evaluation of merger options for electric and telecommunications utility regulation at the Public Utility Commission, gas utility regulation at the Railroad Commission, and water and wastewater utility regulation at the Texas Commission on Environmental Quality. This supplement to the Public Utility Commission's staff report sets out staff findings and recommendations, Sunset Commission decisions, and legislative action on postponed issues.

The State Could Benefit From Combining Regulatory Functions Related to Gas and Water Utilities in the Public Utility Commission.

Background

The Public Utility Commission (PUC), the Railroad Commission of Texas, and the Texas Commission on Environmental Quality (TCEQ) each carry out utility regulation. One of the statutory charges to the Sunset Commission is to review the extent of overlapping programs and their potential for consolidation.¹ The concurrent Sunset reviews of these three agencies this biennium present a rare opportunity to evaluate the utility regulations at PUC, the Railroad Commission, and TCEQ for their consolidation potential. Adding further reason to review this potential, Texas is unusual in separating utility regulatory functions in three agencies. As pointed out in the PUC Sunset staff report, nearly all states have only one agency that regulates electric, telecommunications, natural gas, and water utilities.²

Public Utility Commission. PUC regulates the rates and services of electric and telecommunications companies in Texas as a substitute for competition where it does not exist or lacks robustness. Although recent legislative changes have restructured and deregulated major portions of the electric and telecommunications markets, PUC continues to have significant ratemaking and other responsibilities in areas where competition is lacking. Within the large part of the state that is open to electric competition, PUC still oversees rates of transmission and distribution utilities that operate as monopolies in the deregulated market. Outside these competitive areas, PUC is fully responsible for rates of investor-owned electric utilities that continue to generate, transport, and sell electricity to the public. PUC also has varying degrees of regulatory responsibility over local telephone service.

In setting rates for utilities under its regulations, PUC's basic mission is to determine the utility's reasonable revenue requirement for operation and how that requirement can be turned into rates paid by different customer classes. The typical course for contested rate cases is for PUC staff to prepare its case, which, along with the utility's original request and information from parties intervening in the case, goes to the State Office of Administrative Hearings (SOAH) for a neutral determination of findings and conclusions that are proposed to the PUC Commission for final decision. In addition to these rate responsibilities, PUC approves Certificates of Convenience and Necessity (CCNs), defining areas these utilities must serve; monitors service quality for rate-regulated utilities; and addresses consumer complaints about their utility service.

In fiscal year 2009, the agency operated with 189 authorized staff and a budget of \$14.2 million. Its rate responsibility covers four investor-owned electric utilities, eight transmission and distribution utilities, and 63 local telephone companies. For these utilities, PUC conducted 41 electric and 12 telephone rate proceedings. Details of PUC's operations, as well as the Sunset Commission's recommendations on its operations, can be found in the July 2010 Sunset report on the agency.³

A separate agency, the Office of Public Utility Counsel (OPUC), represents the interests of residential and small commercial consumers in rate and other matters before PUC. OPUC often intervenes as a party in PUC proceedings, and is authorized to intervene on behalf of residential consumers in appeals of gas utility rates to the Railroad Commission when asked to do so by a municipality.⁴ OPUC reports that it has participated in proceedings before the Railroad Commission twice, once in 1985 and once in 2000.

Railroad Commission of Texas. Gas utility regulation has a long history at the Railroad Commission dating to the 1920s. Today, the agency carries out rate-related regulation of about 200 investor-owned natural gas utilities to help ensure fair and equitable gas rates in the monopolistic gas utility industry. An investor-owned utility often serves customers within a city, as well as in the “environs” surrounding a city. Texas also has 84 municipally owned natural gas utilities, but the Railroad Commission does not have rate jurisdiction over them.

The Railroad Commission has original jurisdiction over investor-owned gas utility rates outside a municipality as well as rates a company can charge for transporting gas to the city limit. Cities have rate jurisdiction over investor-owned gas utilities within their boundaries, but utilities may appeal city decisions to the Railroad Commission.⁵

The Railroad Commission typically holds hearings for major contested cases in which it has original jurisdiction or cases on appeal from a city rate decision. Generally, the Railroad Commission staff presents its case before a Railroad Commission hearing examiner and technical examiner, who preside together over hearings and develop a proposal for decision for Commissioners’ consideration and ruling. In fiscal year 2009, the Railroad Commission received nine filings for full ratemaking review. Five of these cases came to the agency under its original jurisdiction, and the remaining four cases came to the Railroad Commission on appeal.

Statute allows adjustments for gas utility rates through other procedures without requiring an administrative hearing. Utilities may apply to make interim rate adjustments for designated infrastructure investments between full rate cases, subject to filing a full rate case within five years. The Railroad Commission staff may authorize a utility to make cost-of-service adjustments in tariffs that are approved by Commission order as part of a full rate case and specified in the underlying tariff. A gas utility may also apply to recover unreimbursed costs of relocating facilities to accommodate public construction projects, such as roads. Gas utilities took advantage of these adjustments 13 times in fiscal year 2009.

Among other aspects of the regulation of gas utilities, the Railroad Commission conducts audits of intrastate gas utilities to verify that utilities are billing residential and small commercial customers according to authorized rates, and that utilities are remitting the proper amount of gas utility tax. The Railroad Commission also handles utility-related consumer complaints and inquiries from residential and small commercial consumers, and business-to-businesses complaints involving negotiated rates between businesses.

The Railroad Commission’s Gas Services Division, with about 24 employees, is primarily responsible for gas utility rate-related regulation and operated with expenditures of about \$1.39 million in fiscal year 2009, not counting indirect support from administrative functions throughout the agency. Attorneys from the Office of General Counsel, totaling about two full-time equivalent employees, also participate directly in the Railroad Commission rate-related regulation.

Texas Commission on Environmental Quality. Water and wastewater rate regulations in Texas date back to 1913. In 1975, when the Legislature established the Public Utility Commission to regulate utilities, it included authority to oversee retail public utilities for water and wastewater service. In 1986, the Legislature transferred this authority to the Texas Water Commission, now part of TCEQ. At that time, 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 for huge electric and telecommunications utilities.

In fiscal year 2009, TCEQ regulated a total of 3,938 water and wastewater utilities. TCEQ is responsible for ensuring that retail public utilities' rates, operations, and services; and wholesale and submetering rates are just and reasonable. It also has the authority to grant CCNs and ensure that utilities have the financial, managerial, and technical capability to provide adequate and continuous service within their certificated areas. TCEQ has original jurisdiction for rates of investor-owned water and wastewater utilities (IOUs) outside cities and within cities that have surrendered their rate jurisdiction to the agency. TCEQ has appellate jurisdiction over rates of districts, water supply corporations, cities providing service outside their city limits, IOUs operating inside a city, and utilities owned by counties within 50 miles of the Mexico border. TCEQ also has appellate jurisdiction over the wholesale rates of potable water and wastewater service providers. TCEQ basically does not have either original or appellate jurisdiction for municipally owned water and wastewater utilities operating *inside* cities.

In a case of original jurisdiction, an IOU filing a rate change application must give notice to its customers at least 60 days before the effective date of the increase. TCEQ reviews the application and the required notice, checking for deficiencies and ensuring the utility has a CCN. If the application and the notice are sufficient, the utility is allowed to begin charging the proposed rates while the application is pending. TCEQ staff evaluates the proposed rate change, performing an audit and site visit, and reviewing complaints and compliance history. Rate evaluation staff also work with other TCEQ staff to check the utility's compliance with water and wastewater environmental requirements.

This process includes a protest mechanism by which customers may have the case referred to SOAH for a hearing and provisions for establishing interim rates if a proposed increase results in an unreasonable economic hardship on the utility's customers. Cases not protested or settled through mediation may be approved administratively by the Executive Director. Otherwise, if a case goes to a contested hearing, SOAH makes a proposal for the Commission's final decision.

Appellate cases, generally for districts, water supply corporations, and city customers outside city limits, work similarly to the protest provision for original jurisdiction cases. Customers must file a petition with TCEQ within 90 days of the effective date of a rate change to protest that change and have the case referred to SOAH for hearing. TCEQ staff then conducts cost-of-service and quality-of-service reviews, which generally require the same level of review as for cases under original jurisdiction.

At SOAH, the process for hearing the protest is the same as that described above for IOUs. In original and appellate rate cases, both TCEQ's Executive Director and the Office of Public Interest Counsel are always parties to rate cases at SOAH and before the Commission. TCEQ assists consumers and utilities with inquiries and complaints regarding customer service and protection rules, and has recently added staff to oversee the assistance function.

TCEQ has about 21 employees that conduct water and wastewater utility rate and CCN regulation and assist customers. Funding for these functions totaled about \$1.5 million in fiscal year 2009. In that year, TCEQ conducted 125 rate reviews, of which 76 were contested; of these, seven had evidentiary hearings. TCEQ also processed 287 CCN applications, referred 30 CCN cases to SOAH, and made three final Commission decisions.

Findings

With its core mission of utility oversight, PUC’s expertise and structure are focused on handling rate-related regulation efficiently and fairly.

- **Focus on Utility Ratemaking.** The Legislature established PUC in 1975 to regulate utilities, and although its operations have changed over its 35-year history, PUC still carries out ratemaking functions as one of its primary focuses. Even after the restructuring of the telecommunications and electric markets in most of Texas to encourage competition, PUC continues to have major rate-related regulatory functions, particularly in the electric industry, but also with local telephone service. PUC’s staff and its Commission are geared toward overseeing utilities and ensuring that regulated utility rates are just and reasonable.
- **Development of Expert Staff.** PUC ratemaking staff has expertise in economic regulation and is large enough to specialize on specific areas of responsibility. Rate regulation staff are largely Certified Public Accountants and other financial analysts who evaluate a utility’s cost of service and other revenue requirements, and translate that amount into a reasonable rate of return and a schedule of rates to be charged to different customer classes. Infrastructure staff, often engineers, help evaluate facilities-related questions, such as depreciation, for use in determining a utility’s revenue needs. Personnel advising PUC Commissioners have no connection with other PUC offices on ratemaking matters, developing their own separate expertise. As a separate agency, SOAH has its own expert staff of administrative law judges dealing with utility issues in its Utility Division.
- **Organizational Structure for Fair Ratemaking.** PUC’s organizational structure has evolved in large part to promote fairness in decision making. State law prohibits agency personnel involved in rendering decisions or making findings of fact and conclusions of law from communicating with parties to a case without the opportunity for all parties to participate.⁶ This requirement is aimed at ensuring that all parties have an equal, and therefore fair, opportunity to hear and persuade decision makers.

PUC is well structured for utility oversight and ratemaking.

Separation of Ratemaking Duties at PUC

Staff Acting as Party to Case	Entities Involved in Neutral Hearing and Decision Making
Legal	PUC Commissioners
Rate Regulation	State Office of Administrative Hearings
Infrastructure and Reliability	Staff Advising Commissioners

PUC’s separation of staff with party status and staff involved in decision making into physically distinct offices, as summarized in the chart, *Separation of Ratemaking Duties at PUC*, significantly reduces the possibility of inadvertent, improper communication between them. SOAH’s involvement as a separate agency, apart from PUC, further insulates the decision-making process from improper influence. Finally, PUC actively trains its entire staff on their proper role and the lines of communication they should not cross.

- **Attention to Consumer Complaints.** In response to the State’s transition toward competitive telecommunications and electric markets, PUC now gives much stronger attention than in its early days to complaint resolution. PUC has its own division of about 21 employees to manage complaints, including those involving rates, for the entire agency, helping to ensure agency-wide consistency and focus on customer protection issues. Receiving complaints at its call center and from other sources, these employees respond to all complaints, including rate-related matters; investigate jurisdictional complaints; and provide information to address inquiries.⁷
- **Extensive and Accessible Online Records.** PUC keeps all filings in docketed cases, as well as other information, available to the public online. This resource is significant, given the immense volume of records developed through PUC’s various proceedings. The online document management system contributes to the transparency of PUC operations.

PUC’s online document system makes its records easily accessible to the public.

Although ratemaking functions at the Railroad Commission and TCEQ are working, transferring these duties to PUC offers potential benefits from aligning the State’s utility regulation within one agency.

- **Gas Utility Rate Regulation.** Gas utility regulation has worked over its long history at the Railroad Commission and benefits from interconnections between rate regulation and other programs within the Railroad Commission. One important tie is the connection between pipeline safety and ratemaking. For example, the Railroad Commission staff can help inform utility staff about a utility’s degrading and dangerous pipelines and the utility’s revenue needs to fix the problem.

Despite these beneficial aspects of regulating gas utilities at the Railroad Commission, several opportunities for improving regulation by aligning it at PUC also exist, as outlined below.

More focused expertise in ratemaking at PUC. PUC has about 22 full-time equivalent employees directly involved in ratemaking, whereas the Railroad Commission has a staff of about five performing these functions. The Railroad Commission’s technical staff must multi-task in performing several ratemaking functions such as financial analysis, calculation of fair rates of return, and calculation of plant depreciation. At PUC, these functions tend to be exercised by staff specialized in each area. Consolidating duties, especially of this specialized nature, would provide a greater opportunity to develop and maintain focused expertise that is essential in ratemaking.

PUC’s larger ratemaking staff offers additional ratemaking expertise.

Beneficial separation of roles in PUC’s organizational structure. PUC’s larger ratemaking staff and more defined approach to ratemaking allows it to separate staff involved in different phases of the rate case in a way that is not possible at the Railroad Commission. Specifically, PUC’s

process clearly separates those who provide testimony and technical expertise in advocating the staff case; those who preside over hearings and develop findings of fact and conclusions of law; and those who advise Commissioners on the case. This structure improves impartial decision making by limiting opportunities for inadvertent or improper communication between advocating staff and staff involved directly in assisting the decision making process.

Greater independence in hearings through use of SOAH. Different from PUC's process for hearing utility rate cases, the Railroad Commission is authorized, but not required to contract with SOAH for carrying out administrative hearings in contested cases.⁸ The Railroad Commission relies on its own staff attorneys to preside as hearings examiners over contested rate cases. Use of SOAH for administrative hearings is now typical for most agencies unless good reasons exist to hold hearings in-house. SOAH specializes in hearings, and in fact, has a division devoted to hearing utility cases. External hearings promote independence from any potential pressures that might come from inside or outside an agency. SOAH also has the capability to conduct hearings throughout much of the state, as well as Austin.

While challenges would arise from separating interrelated functions between the Railroad Commission and PUC, the two agencies could still communicate and share information on these issues. The agencies could look to the federal government for a model on coordinating issues between pipeline safety and ratemaking. The federal government separates these two functions, with the Federal Energy Regulatory Commission regulating interstate gas rates and the U.S. Department of Transportation regulating pipeline safety. Also, in Texas, the Railroad Commission is responsible for safety of intrastate pipelines throughout the state, but cities set rates for their own municipal gas systems and, frequently, for investor-owned utilities operating within their boundaries.

- **Water and Wastewater Utility Rate Regulation.** TCEQ conducts the economic regulation of these utilities' rates and services. As with the Railroad Commission, this regulation has worked and also has benefitted from the environmental regulation of other TCEQ programs. For example, programs for ensuring public drinking water standards and protecting the environment from sewage discharges can identify problems that these water utilities need to address.

Although these strengths exist at TCEQ, oversight of water and wastewater utilities could benefit from an overall realignment and consolidation of utility regulation, as outlined below.

Improved focus on TCEQ's core mission. Measured against TCEQ's huge environmental mission, the economic regulation of utilities is a smaller function, but its effects on Texas ratepayers can be significant. Transferring the functions would allow TCEQ to better focus on its core

Gas utility ratemaking and pipeline safety functions are separated at the federal and local level.

Transferring utility functions would better focus TCEQ on its core environmental quality mission.

mission under its umbrella of ensuring environmental quality and take advantage of PUC's focus and processes, making PUC an umbrella utility regulatory agency. Much the same expertise regarding financial analysis and calculating fair rates of return already exists at PUC, where it can be further focused and enhanced. In addition, PUC's more established ratemaking and CCN processes offer benefits in regulating the increasingly larger, more sophisticated water corporations that TCEQ currently deals with.

Improved consumer assistance at PUC. In permitting and rate cases, utilities may hire consultants and lawyers who are reimbursable through rates. Consumers, however, have limited resources to pay for representation, making the need for their interest to be represented more important. PUC's consumer protection staff effectively focuses on utility consumer complaints and outreach. In addition, the Office of Public Utility Counsel (OPUC) represents residential and small commercial utility consumers in areas of PUC's jurisdiction. While TCEQ's Office of Public Interest Counsel (OPIC) represents the public interest in utility cases, and has been directed by TCEQ's Commission to assist utility customers in understanding the contested case and mediation process, it has no statutory authority to represent consumers the way OPUC does. In addition, OPIC does not employ or contract with economists or other technical specialists to provide needed expertise in rates cases, as OPUC does.

Improved funding opportunities. TCEQ funds water and wastewater utility rate and CCN regulations through a combination of statutory fees. Three statutory fees collected by TCEQ relate to applications for a CCN; application for the sale, transfer, or merger of a CCN; or application to change rates.⁹ The three fees raised only about \$28,000 in fiscal year 2009, a small fraction of the costs of rate and CCN regulation. Because these fees would have to be set at prohibitively high levels to raise the revenue needed, they are not well-suited to support the costs of water and wastewater utility regulation.

TCEQ also receives revenue from the Water Utility Regulatory Assessment to pay for costs associated with utility and district regulation. Customers of public water and wastewater utilities pay an assessment of 1 percent of their total utility charge, while customers of water supply or sewer service corporations and utility districts are assessed at 0.5 percent.¹⁰ Although TCEQ regulates the utility rates of these three categories differently, the former being original jurisdiction and two latter being appellate jurisdiction, the assessment covers TCEQ's utility regulatory costs of more than just rate regulation, including CCN regulation. In addition, since TCEQ experiences no significant difference in the amount of workload and resources needed for the rate regulation of these two categories, the inequity is not justified.

OPIC has no statutory authority to represent consumers the way OPUC does.

TCEQ's utility regulation depends on a customer fee set at different levels depending on the type of utility.

As with the Railroad Commission, TCEQ and PUC could work together to address challenges caused by separating environmental and economic regulation of water and wastewater utilities. TCEQ could easily coordinate with PUC to ensure the flow of needed information to effectively regulate these utilities. Much as TCEQ utility staff work with water quality staff in separate divisions of the agency to ensure that utilities are in compliance with environmental and drinking water requirements, a similar process could be established with PUC to ensure effective regulation, if a transfer were to occur. In addition, such a transfer would not affect either agency's ability to take enforcement against one of these entities, as each regulatory program has its own enforcement provisions.

Recommendations

Change in Statute

S 1.1 Continue the Public Utility Commission for 12 years.

The Sunset staff report on PUC, published in July 2010, concluded in Issue 3 that Texas has a continuing need to regulate the electric and telecommunications industries and oversee evolving competition in the industries. The report left pending the question of whether these regulatory functions should be continued at PUC or in other agencies until completion of the Sunset staff reports on TCEQ and the Railroad Commission. Now that these other reviews have been completed, staff recommends that PUC be continued for 12 years, with additional functions as indicated in the recommendations below.

S 1.2 Transfer gas utility regulation from the Railroad Commission to the Public Utility Commission.

This recommendation would transfer the responsibility that resides at the Railroad Commission for gas utilities to PUC. Under the recommendation, PUC would administer these regulations under the same original and appellate jurisdiction over rates as currently exists at the Railroad Commission. The transfer would include the Railroad Commission's existing efforts regarding utility rates and services, consumer complaints, reports, and audits. Generally, the same regulatory approaches that exist now in gas utilities statutes would continue to apply at PUC, including provisions for interim rate adjustments, cost-of-service adjustments, and cost-recovery surcharges. Collection of the Gas Utility Tax would also transfer to PUC.

The recommendation would provide for the transfer to be completed by March 1, 2012, and would provide for planning and coordination to occur between the Railroad Commission and PUC to implement the transfer. A transition team would be established with high-level employees of both agencies to develop plans regarding the transfer to PUC of obligations, property, personnel, powers, and duties for gas utility functions and sharing of records and information. The team would develop ways to coordinate on areas of interrelated responsibilities, such as the impact of the Railroad Commission's pipeline safety requirements on the rates of gas utilities. The recommendation would also require the agencies to develop memoranda of understanding, as needed, to implement the plans developed by the transition team. Statute would require the memoranda to be completed by February 1, 2012.

S 1.3 Require the use of the State Office of Administrative Hearings in contested gas utility cases.

This recommendation would remove the option in law to have contested gas utility cases heard at SOAH, and instead require them to be heard at SOAH, the same as all other utility cases. This recommendation would apply regardless of whether gas utility regulation is ultimately transferred to PUC. As with other agencies using SOAH, the responsible agency would maintain final authority to accept, reverse, or modify a proposal for decision made by a SOAH judge.

S 1.4 Transfer responsibility for regulating water and wastewater rates and services from TCEQ to PUC.

This recommendation would transfer TCEQ's existing authority for water and wastewater utilities regarding retail, wholesale, and submetering rates; Certificates of Convenience and Necessity; reporting requirements; and consumer assistance and complaints to PUC. TCEQ would continue to have responsibility for ensuring that utilities meet drinking water standards, sewage treatment requirements, and review of IOU Drought Contingency Plans.

Regarding rates, PUC would assume the same original and appellate jurisdiction as it currently exists at TCEQ to ensure that retail public utility rates, operations, and services are just and reasonable. To administer these regulations, PUC would have the same reporting requirements as TCEQ for these utilities, including annual service and financial reports and tariff filings, as well as information about affiliate interests. PUC would have responsibility for providing consumer assistance and resolving complaints regarding regulated water and wastewater services.

This recommendation, like for gas utilities above, would provide for the transfer to be completed by March 1, 2012, and for planning and coordination to occur between TCEQ and PUC to implement the transfer. A transition team would be established with high-level employees of both agencies to develop plans regarding the transfer to PUC of obligations, property, personnel, powers, and duties for water and wastewater utility functions and sharing of records and information. The recommendation would also require the agencies to develop memoranda of understanding, as needed, to implement the plans developed by the transition team. Statute would require the memoranda to be completed by February 1, 2012.

The transition team would develop ways to coordinate on areas of interrelated responsibilities between the two agencies, especially regarding meeting federal drinking water standards and maintaining adequate supplies of water; meeting established design criteria for wastewater treatment plants; demonstrating the economical feasibility of regionalization; and serving the needs of economically distressed areas. Ongoing efforts would also be needed to coordinate responsibilities for service standards and the sharing of information and utility data between the two agencies.

PUC would have responsibility for ensuring accuracy of meters, instruments, and equipment for measuring the utility service. TCEQ would need to maintain responsibility for quantity, quality, pressure and other conditions relating to the supply of the service. TCEQ should also continue to have the authority to appoint temporary managers for abandoned water and wastewater utilities under its responsibility to ensure adequate capacity of public water systems, but should coordinate with PUC regarding the financial aspects of these appointments. Emergency operations would need to be shared by both PUC and TCEQ to ensure adequate utility oversight and maintenance of drinking water and wastewater discharge requirements, and emergency and temporary rates for nonfunctioning systems.

S 1.5 Eliminate the existing water and wastewater utility application fees and adjust the Water Utility Regulatory Assessment Fee to pay for utility regulation at PUC.

Under this recommendation, filing fees that currently reside at TCEQ for applications for rate changes, CCNs, and the sale, transfer, or merger of a CCN would be repealed. These fees cannot adequately cover the costs associated with these regulatory actions, and statute provides that the Utility Regulatory Assessment Fee cover regulatory costs associated with utilities and districts. To ensure the fee covers all regulatory costs, the recommendation would equalize the 0.5 percent customer assessment for non-profit utilities and utility districts at 1.0 percent – the same level as for public utilities. The increased revenue would cover the cost of utility rate regulation at PUC while also paying TCEQ's ongoing costs associated with its water resource management responsibilities.

The recommendation would provide for the Legislature to appropriate revenues from the Utility Regulatory Assessment Fee collections to PUC to cover its costs for the transferred utility regulations. The Legislature would make these appropriations from the Water Resource Management Account, but only from the amounts collected from the utility regulatory assessment. Statute would continue to require TCEQ to collect the fee from water utilities. Under this recommendation, TCEQ would be required to remit funding for utility regulation to PUC, based on the level of the legislative appropriation. The transfer of funds could occur by interagency contract, and TCEQ would not be responsible for PUC's use of the funds.

This recommendation would pay for utility regulation through the Utility Regulatory Assessment Fee that was established for this purpose. The recommendation would not change the existing mechanism for TCEQ to collect the fee from water and wastewater utilities, providing an administrative efficiency that could be jeopardized if another fee or collection process were established. Having TCEQ transfer funds to PUC for utility regulation as envisioned under this recommendation may present some challenges as the agencies coordinate, but comes closest to the State's current approach to paying for water and wastewater utility regulation.

S 1.6 Require OPUC to represent residential and small commercial interests relating to water and wastewater utilities, contingent on the transfer to PUC.

This recommendation would expand the role of OPUC to represent the interests of residential and small commercial consumers in water and wastewater utilities matters, but only if regulatory oversight is transferred to PUC, as specified in Recommendation S 1.4. Under this recommendation, OPIC would not be involved in water and wastewater utility matters at PUC. If the realignment of utility regulations at PUC does not occur, OPIC would retain its existing authority to represent the public interest in water and wastewater utility matters that remain at TCEQ.

S 1.7 Require PUC to make a comparative analysis of statutory ratemaking provisions under its authority, contingent on any transfers, to determine opportunities for standardization.

This recommendation would require PUC to make a comparative analysis of its own authority and any new ratemaking or other authority transferred to PUC. PUC would report to the Legislature any recommendations about opportunities to standardize these ratemaking requirements in time for consideration in the 2013 legislative session.

S 1.8 Require PUC to analyze the staffing requirements, contingent on any transfers, and report potential changes in staffing needs to the Legislative Budget Board and the Governor’s budget office.

This recommendation would require a report to the Legislative Budget Board and the Governor’s budget office at the same time PUC submits its Legislative Appropriations Request for the 2014-2015 biennium. The report should detail any staffing changes, including reductions that the agency recommends related to savings from consolidated functions. This recommendation gives PUC the opportunity to gain first-hand knowledge about the programs transferred and the staffing required to meet program needs.

Fiscal Implication Summary

Overall, the recommendations to continue the Public Utility Commission and add to its current responsibilities the regulation of gas utilities and water and wastewater utilities would not immediately result in savings to the State. The recommendations to realign utility regulation would require the transfer of about \$3.1 million and 47.5 employees from the Railroad Commission and TCEQ. Additionally, opportunities to adjust fees and assessments for paying the costs of regulating water and wastewater utilities at PUC and other water resource management needs at TCEQ could raise an additional \$5.6 million annually.

Public Utility Commission

The recommendation to continue PUC with its current functions and existing organizational structure would continue to require the agency’s annual appropriation of about \$118.3 million. This funding includes about \$14.2 million for support operations, and about \$104.1 million in pass-through funding to electric companies to provide discounts to low-income electric customers in areas of the state open to electric competition.

The other recommendations requiring PUC to conduct a comparative analysis of ratemaking provisions and to analyze staffing requirements of any transferred functions could be performed with current resources.

Railroad Commission

Based on fiscal year 2009 expenditures, the recommendation to move gas utility regulation from the Railroad Commission to PUC would require the transfer of about \$1.39 million and 24.4 full-time equivalent employees directly associated with the Commission’s Gas Services Division. All but about \$151,000 in appropriated receipts and dedicated funds would transfer from General Revenue. Additionally, one-half an FTE directly involved in ratemaking in the Railroad Commission’s Office of General Counsel would move to PUC along with about \$36,000 in General Revenue.

The recommendation to require the use of the State Office of Administrative Hearings to conduct gas utility contested rate hearings would result in increasing SOAH’s budget and staff by about \$101,000 in General Revenue and 1.5 FTEs, with corresponding reductions from the Railroad Commission’s Office of General Counsel.

An amount for indirect support from the Railroad Commission’s administrative operations would need to be added to amounts transferred to PUC and SOAH, but that amount could not be estimated.

Texas Commission on Environmental Quality

The recommendation transferring regulation of water and wastewater utilities from TCEQ to PUC would require the transfer of about \$1.5 million and 20 employees from TCEQ to PUC to conduct rate and CCN regulation and to provide needed consumer assistance. The recommendation could also require an adjustment in PUC's contract with SOAH to pay the cost of contested case hearings related to water and wastewater utility cases, but the amount of that adjustment could not be determined.

To cover these costs at PUC without relying on General Revenue funding, a separate recommendation provides for equalizing the utility regulatory assessment for water supply corporations and districts at 1 percent. Beyond covering the costs of utility regulation at both TCEQ and PUC, ensuring all water and wastewater utilities pay the same assessment rate would increase revenue by about \$5.6 million annually.

The recommendation to transfer responsibility for representing consumer interests in water and wastewater utility matters from OPIC to OPUC would require the transfer of one employee and approximately \$81,000.

Texas Commission on Environmental Quality

Fiscal Year	Gain to General Revenue Dedicated – Water Resource Management Account No. 153
2012	\$5.6 million
2013	\$5.6 million
2014	\$5.6 million
2015	\$5.6 million
2016	\$5.6 million

1 Texas Government Code, sec. 325.011(6).

2 Sunset Advisory Commission, *Commission Decisions – Public Utility Commission, Electric Reliability Council of Texas, and Office of Public Utility Counsel* (Austin, Texas, July 2010), p. 28. Online. Available: www.sunset.state.tx.us/82ndreports/puc/puc_dec.pdf. Accessed: October 25, 2010.

3 Ibid.

4 Texas Utilities Code, sec. 101.052.

5 Texas Utilities Code, sec. 102.001.

6 Texas Government Code, sec. 2001.061.

7 Public Utility Commission, *Self-Evaluation Report*, (Austin, Texas, September 2009), p. 185. Online. Available: www.sunset.state.tx.us/82ndreports/puc/ser.pdf. Accessed: October 24, 2010.

8 Texas Utilities Code, sec. 102.006. The Legislature first made the Railroad Commission's use of SOAH mandatory in 2001, but changed the provision to be permissive in 2003.

9 Texas Water Code, sec. 13.4521 and 13.4522.

10 Texas Water Code, sec. 5.701(n)(1).

Responses

Recommendation S 1.1

Continue the Public Utility Commission for 12 years.

Public Utility Commission Response to S 1.1

PUC supports this recommendation. (Paula Mueller, Interim Executive Director – Public Utility Commission)

For S 1.1

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Stephen Minick, Vice President of Governmental Affairs – Texas Association of Business, Austin

Glenn Morris – Fort Worth

Staff Comment: All these individuals expressed support for continuing PUC for 12 years, either when responding to the full Sunset staff report on PUC earlier this year or in later responses after the Sunset hearing on the Railroad Commission and TCEQ.

Against S 1.1

Lize Burr, Coalition Coordinator – Alliance for a Clean Texas, Austin

Modification

1. Continue the Public Utility Commission for six years. (Lize Burr, Coalition Coordinator – Alliance for a Clean Texas, Austin; Tom “Smitty” Smith – Public Citizen, Austin; and Cyrus Reed, Conservation Director – Sierra Club, Lone Star Chapter, Austin)

Recommendation S 1.2

Transfer gas utility regulation from the Railroad Commission to the Public Utility Commission.

Public Utility Commission Response to S 1.2

The Public Utility Commission appreciates the Sunset Staff’s confidence in PUC’s ability to take on additional duties, and is prepared to undertake responsibility for regulation of gas utilities, should these recommendations ultimately be adopted by the Legislature. (Paula Mueller, Interim Executive Director – Public Utility Commission)

Railroad Commission Response to S 1.2

The agency as a whole did not provide a formal, written response to the Supplement to the Sunset Staff Report on the Public Utility Commission. Chairman Williams and Commissioner Carrillo provided oral and written feedback on the transfer of gas utility regulation to PUC; however, these comments were not represented as the agency's formal position but as personal positions.

Chairman Williams' Response to S 1.2

As stated in oral and written testimony, Chairman Williams opposes the transfer of gas utility regulation from the Railroad Commission to the Public Utility Commission. He says that the transfer had an allure to him at one time. Now, when he thinks of his last four or five years at the Commission, he can think of nothing worse to do. Chairman Williams points out that Texas already has a bifurcated system, with cities having the right to set rates first with appeals to the Railroad Commission. The transfer to PUC would divorce ratemaking from safety, issues of reliability, and the general welfare of the company. While at the federal level the Office of Pipeline Safety handles some matters and FERC handles others, Chairman Williams notes that the pipelines they regulate do not go to homes and small businesses, which makes a difference.

In written comments, Chairman Williams indicates that the Commissioners' cost of service decisions have properly balanced the interests of consumers and the utilities. He indicates that, since 2005, Commissioners have approved the hearing examiners' cost of service and revenue recommendations over 93 percent of the time. In one case, GUD 9670, the Commissioners reached different conclusions than the hearing examiners, but the decisions involved major and novel public policy issues. (The Honorable Michael Williams, Chairman – Railroad Commission of Texas)

Commissioner Carrillo's Response to S 1.2

Commissioner Carrillo opposes the transfer of gas utility regulation from the Railroad Commission to the Public Utility Commission. Commissioner Carrillo states that transferring gas utility rate setting could result in the re-litigation of well-established precedents at tremendous expense to all parties, and offers questionable and comparatively insignificant savings.

Also, Commissioner Carrillo notes that the Railroad Commission is responsible for assuring the safe transportation and delivery of natural gas, and safety regulations imposed by the Railroad Commission, which represent a substantial piece of the cost of natural gas delivery, could undermine the approved gas utility rates. (The Honorable Victor Carrillo, Commissioner – Railroad Commission of Texas)

For S 1.2

Lize Burr, Coalition Coordinator – Alliance for a Clean Texas, Austin

Jay Doegey and Odis Dolton, Co-Chairs – Atmos Cities Steering Committee, Arlington

Joel Foy, Atmos Energy residential customer, Dallas

T.D. and Steve Howell – Howell Oil & Gas, Inc., Marshall

For S 1.2 (continued)

Urban “Obie” O’Brien, Vice President for Governmental and Regulatory Affairs - Apache Corporation, Houston

Tom “Smitty” Smith – Public Citizen, Austin; and Cyrus Reed, Conservation Director – Sierra Club, Lone Star Chapter, Austin

Robert J. Vann II, Fort Worth

Against S 1.2

Teddy Carter, Director of Public Affairs – Texas Independent Producers and Royalty Owners Association, Austin

Ronald Kitchens – CenterPoint Energy, Austin; and Scott E. Rozzell, Executive Vice President and General Counsel – CenterPoint Energy, Austin

Patrick Nugent, Executive Director and James Mann, Attorney – Texas Pipeline Association, Austin

David J. Park, Vice President, Rates and Regulatory Affairs – Atmos Energy, Mid-Tex Division, Dallas

Mark Sutton, Executive Director and Robert Dunn, Past President – Gas Producers Association, Tulsa, Oklahoma

Ben Seabee, Vice President for Governmental Affairs – Texas Oil and Gas Association, Austin

Modification

2. If there is any effort to move any part of the regulation of gas utilities to PUC, it should exclude any regulation of pipelines. (Patrick Nugent, Executive Director – Texas Pipeline Association, Austin)

Recommendation S 1.3 _____

Require the use of the State Office of Administrative Hearings in contested gas utility cases.

Public Utility Commission Response to S 1.3

If Recommendation S 1.2 is adopted, PUC supports this recommendation, with the following modification.

PUC Modification

3. Modify the recommendation to clarify that PUC Commissioners themselves can conduct hearings on gas utility matters without using SOAH, just as they can now in areas of regulation currently under PUC. This authority is granted to PUC Commissioners in Government Code, Section 2003.049. Usually PUC Commissioners conduct hearings only when important policy questions or issues of first impression are involved, so PUC

does not anticipate that Commissioners would ordinarily conduct gas utility rate hearings. However, the ability to conduct hearings when appropriate would provide useful flexibility.

(Paula Mueller, Interim Executive Director – Public Utility Commission)

Staff Comment: PUC’s modification captures the intent of the recommendation. PUC Commissioners should maintain the same authority to hear gas utility cases that they now have for other areas of PUC regulation.

Railroad Commission Response to S 1.3

Neither the agency staff nor the Commission as a whole provided a formal, written response to the Supplement to the Sunset Staff Report on the Public Utility Commission. Commissioner Carrillo and Chairman Williams provided oral or written feedback on the use of SOAH in contested gas utility cases; however, they indicated such comments were personal and did not necessarily reflect the sentiment of other Commission members.

Chairman Williams’ Response to S 1.3

In written comments, Chairman Williams recommends maintaining all contested case hearings, including natural gas ratemaking, at the Commission. (The Honorable Michael Williams, Chairman – Railroad Commission of Texas)

Commissioner Carrillo’s Response to S 1.3

Commissioner Carrillo strongly disagrees with the recommendation to transfer contested gas utility cases to the State Office of Administrative Hearings. Commissioner Carrillo says that the Railroad Commission has enormous in-house expertise among its technical staff, attorneys, and hearing examiners that is absolutely critical to the effective and efficient administration of its various regulatory programs. Commissioner Carrillo also states that the recommendation limits the Railroad Commission’s ability to reverse or modify a SOAH decision beyond what is available to other agencies, such as TCEQ and PUC. (The Honorable Victor Carrillo, Commissioner – Railroad Commission of Texas)

Staff Comment: The Public Utility Commission and Texas Commission on Environmental Quality do have broader authority than that given in the Administrative Procedure Act to modify a finding of fact or conclusion of law made by an Administrative Law Judge of the State Office of Administrative Hearings. Both commissions have the authority to change findings that they determine are not supported by a preponderance of the evidence, a grant not included in the APA.

Affected Agency Response to S 1.3

The State Office of Administrative Hearings (SOAH) states that if the Legislature decides to transfer contested gas utility cases from the Railroad Commission to PUC, SOAH could draw on its extensive experience and knowledge in utility work to learn the Railroad Commission’s subject matter without difficulty and to be proficient in it quickly.

State Office of Administrative Hearings Modification

4. If gas utility regulation does not transfer to PUC, use one funding mechanism to fund SOAH for the Railroad Commission's enforcement hearings as well as the Railroad Commission's gas utility hearings.

(Cathleen Parsley, Chief Administrative Law Judge – State Office of Administrative Hearings)

Staff Comment: If gas utility hearings were transferred to PUC, Sunset staff has recommended for SOAH's General Revenue appropriation to pay for PUC's gas utility hearings, consistent with SOAH's funding for other PUC cases. However, if gas utility regulation stays at the Railroad Commission, it would be appropriate for the Railroad Commission to contract for SOAH to hear gas utility cases, just as Sunset staff recommended for enforcement cases, so that the Railroad Commission has one consistent method of paying for SOAH services.

For S 1.3

Lize Burr, Coalition Coordinator – Alliance for a Clean Texas, Austin

Jay Doegey and Odis Dolton, Co-Chairs – Atmos Cities Steering Committee, Arlington

T.D. and Steve Howell – Howell Oil & Gas, Inc., Marshall

Tom “Smitty” Smith – Public Citizen, Austin; and Cyrus Reed, Conservation Director – Sierra Club, Lone Star Chapter, Austin

Against S 1.3

Teddy Carter, Director of Public Affairs – Texas Independent Producers and Royalty Owners Association, Austin

Patrick Nugent, Executive Director and James Mann, Attorney – Texas Pipeline Association, Austin

Mark Sutton, Executive Director and Robert Dunn, Past President – Gas Producers Association, Tulsa, Oklahoma

Bob Thompson, Austin

Modification

5. Require the use of the State Office of Administrative Hearings for enforcement cases from the Railroad Commission as well. (Lize Burr, Coalition Coordinator – Alliance for a Clean Texas, Austin)

Staff Comment: The Sunset Staff Report on the Railroad Commission of Texas recommends transferring enforcement hearings from the Railroad Commission to the State Office of Administrative Hearings in Issue 3 of that report.

Recommendation S 1.4

Transfer responsibility for regulating water and wastewater rates and services from TCEQ to PUC.

Public Utility Commission Response to S 1.4

The Public Utility Commission appreciates the Sunset Staff's confidence in PUC's ability to take on additional duties, and is prepared to undertake responsibility for regulation of water and wastewater utility rates and services, should these recommendations ultimately be adopted by the Legislature. (Paula Mueller, Interim Executive Director – Public Utility Commission)

Texas Commission on Environmental Quality Response to S 1.4

TCEQ agrees with the recommendation to transfer responsibilities for regulating water and wastewater rates and services from TCEQ to the Public Utility Commission. If this recommendation is adopted TCEQ states it will work with PUC to assure an efficient and transparent transition, including the development of a Memoranda of Understanding. (Mark R. Vickery, P.G., Executive Director – Texas Commission on Environmental Quality)

Affected Agency Response to S 1.4

State Office of Administrative Hearings Modification

6. The State Office of Administrative Hearings (SOAH) suggests that, if water and wastewater utility cases transfer from TCEQ to PUC, SOAH's General Revenue appropriation should be increased to pay for its services to PUC, consistent with how other PUC hearings at SOAH are handled. TCEQ's current contract with SOAH for hearing services would be reduced by an appropriate amount since TCEQ would not be paying for water and wastewater hearings at SOAH.

(Cathleen Parsley, Chief Administrative Law Judge – State Office of Administrative Hearings)

Staff Comment: To fund the cost of contested case hearings for water and wastewater utilities at SOAH, the staff recommendations intend for SOAH to pay for these cases from its General Revenue appropriation, consistent with SOAH's funding for other PUC cases.

For S 1.4

Orville R. Bevel, Jr., Chairman – Texans Against Monopolies Excessive Rates (TAMER), Chandler

Gina Brown, Montgomery

Lize Burr, Coalition Coordinator – Alliance for a Clean Texas, Austin

C.A. Cockrell, Vice President – Texans Against Monopolies Excessive Rates (TAMER), Chandler

David Frederick – Texans Against Monopolies Excessive Rates (TAMER), Austin

Roger Lampman, Comfort

For S 1.4 (continued)

Kathy Nielsen, Roanoke

David W. Schumaker – Coalition for Equitable Water Rates

Tom “Smitty” Smith – Public Citizen, Austin; and Cyrus Reed, Conservation Director – Sierra Club, Lone Star Chapter, Austin

Against S 1.4

Terry Franks – Aqua Texas, Southwest Water Company, and San Jose Water

Michael R. Farrell, Vice President and General Manager – Southern Utilities Company

Kent Watson, Legislative Chairman – Texas Rural Water Association, Austin

Mark H. Zeppa, Executive Director – Independent Water and Sewer Companies of Texas, Austin

Modifications

7. If water utility ratemaking is transferred to PUC, establish either a universal interim rate or a rate hold-off period until final water rates have been approved by PUC. (C.A. Cockrell, Vice President – Texans Against Monopolies Excessive Rates (TAMER), Chandler)
8. Continue all water utility cases at TCEQ and provide the Office of Public Utility Counsel with jurisdiction to intervene in TCEQ water cases. (Kent Watson, Legislative Chairman – Texas Rural Water Association, Austin)

Recommendation S 1.5

Eliminate the existing water and wastewater utility application fees and adjust the Water Utility Regulatory Assessment Fee to pay for utility regulation at PUC.

Public Utility Commission Response to S 1.5

If Recommendation S 1.4 is adopted, PUC supports this recommendation. (Paula Mueller, Interim Executive Director – Public Utility Commission)

Texas Commission on Environmental Quality Response to S 1.5

TCEQ agrees with the recommendation, with modification.

TCEQ Modification

9. Transfer a portion of the Utility Regulatory Assessment Fee to PUC from the Water Resource Management Account and require that the fee payers remit to each agency a percentage of the Utility Regulatory Assessment Fee in proportion to the amounts appropriated to each agency by the Legislature.

(Mark R. Vickery, P.G., Executive Director – Texas Commission on Environmental Quality)

For S 1.5

Orville R. Bevel, Jr., Chairman – Texans Against Monopolies Excessive Rates (TAMER), Chandler

Lize Burr, Coalition Coordinator – Alliance for a Clean Texas, Austin

C.A. Cockrell, Vice President – Texans Against Monopolies Excessive Rates (TAMER), Chandler

Tom “Smitty” Smith – Public Citizen, Austin; and Cyrus Reed, Conservation Director – Sierra Club, Lone Star Chapter, Austin

Against S 1.5

Kent Watson, Legislative Chairman – Texas Rural Water Association, Austin

Mark H. Zeppa, Executive Director – Independent Water and Sewer Companies of Texas, Austin

Modifications

10. Deposit revenues to an account solely controlled by PUC and, if new information supports a uniform assessment for all regulated water utilities, set the Water Utility Regulatory Assessment to be revenue neutral, or at the level only required to support the current program. (Stephen Minick, Vice President of Governmental Affairs – Texas Association of Business, Austin)
11. Leave the Water Utility Regulatory Assessment Fee the same, and instead raise application fees to pay for water utility regulation. (Kent Watson, Legislative Chairman – Texas Rural Water Association, Austin)
12. Require cities to pay the Water Utility Regulatory Assessment Fee for areas where the State has appellate jurisdiction. (Kent Watson, Legislative Chairman – Texas Rural Water Association, Austin)

Recommendation S 1.6

Require OPUC to represent residential and small commercial interests relating to water and wastewater utilities, contingent on the transfer to PUC.

Public Utility Commission Response to S 1.6

If Recommendation S 1.4 is adopted, PUC supports this recommendation. (Paula Mueller, Interim Executive Director – Public Utility Commission)

Texas Commission on Environmental Quality Response to S 1.6

TCEQ supports the transfer to OPUC of responsibilities related to representation of residential and small commercial consumers in water and wastewater utility matters, if PUC is given regulatory oversight of water and wastewater utility activities. (Mark R. Vickery, P.G., Executive Director – Texas Commission on Environmental Quality)

Affected Agency Response to S 1.6

The Office of Public Utility Counsel supports this recommendation. (Sheri Givens, Public Counsel – Office of Public Utility Counsel)

For S 1.6

Orville R. Bevel, Jr., Chairman – Texans Against Monopolies Excessive Rates (TAMER), Chandler

Lize Burr, Coalition Coordinator – Alliance for a Clean Texas, Austin

C.A. Cockrell, Vice President – Texans Against Monopolies Excessive Rates (TAMER), Chandler

Tom “Smitty” Smith – Public Citizen, Austin; and Cyrus Reed, Conservation Director – Sierra Club, Lone Star Chapter, Austin

Against S 1.6

Kent Watson, Legislative Chairman – Texas Rural Water Association, Austin

Mark H. Zeppa, Executive Director – Independent Water and Sewer Companies of Texas, Austin

Modification

- 13. Provide that a fee be assessed on consumers of gas and water utilities, similar to the fee collected to fund the Office of Public Utility Counsel, to support additional funding for OPUC. (Lize Burr, Coalition Coordinator – Alliance for a Clean Texas, Austin; Tom “Smitty” Smith – Public Citizen, Austin; and Cyrus Reed, Conservation Director – Sierra Club, Lone Star Chapter, Austin)

Recommendation S 1.7

Require PUC to make a comparative analysis of statutory ratemaking provisions under its authority, contingent on any transfers, to determine opportunities for standardization.

Public Utility Commission Response to S 1.7

If Recommendations S 1.2 and S 1.4 are adopted, PUC supports this recommendation. (Paula Mueller, Interim Executive Director – Public Utility Commission)

For S 1.7

Lize Burr, Coalition Coordinator – Alliance for a Clean Texas, Austin

Tom “Smitty” Smith – Public Citizen, Austin; and Cyrus Reed, Conservation Director – Sierra Club, Lone Star Chapter, Austin

Against S 1.7

None received.

Recommendation S 1.8

Require PUC to analyze the staffing requirements, contingent on any transfers, and report potential changes in staffing needs to the Legislative Budget Board and the Governor's budget office.

Public Utility Commission Response to S 1.8

If Recommendations S 1.2 and S 1.4 are adopted, PUC supports this recommendation. (Paula Mueller, Interim Executive Director – Public Utility Commission)

For S 1.8

Lize Burr, Coalition Coordinator – Alliance for a Clean Texas, Austin

Tom “Smitty” Smith – Public Citizen, Austin; and Cyrus Reed, Conservation Director – Sierra Club, Lone Star Chapter, Austin

Against S 1.8

None received.

Modification

14. Require OPUC, as well as PUC, to report similar staffing information to the Legislative Budget Board and the Governor's budget office. (Tom “Smitty” Smith – Public Citizen, Austin; and Cyrus Reed, Conservation Director – Sierra Club, Lone Star Chapter, Austin)

Commission Decision

Adopted Recommendations S 1.1, S 1.3, S 1.4, S 1.5, S 1.6, S 1.7, and S 1.8.

Legislative Action

The Legislature considered all Sunset Commission recommendations from the *Supplement to the Sunset Staff Report on the Public Utility Commission* in three separate Sunset bills:

- Senate Bill 661, containing Sunset recommendations on PUC, ERCOT, and OPUC and addressing *Supplement* Recommendations S 1.1, S 1.4, S 1.6, S 1.7, and S 1.8;
- Senate Bill 655, containing Sunset recommendations on the Railroad Commission of Texas and incorporating *Supplement* Recommendation S 1.3; and
- House Bill 2694, containing Sunset recommendations on TCEQ and addressing *Supplement* Recommendation S 1.5.

The Legislature did not adopt the recommendations related to PUC, ERCOT, OPUC, and the Railroad Commission, as S.B. 661 and S.B. 655 failed to pass. (Recommendations S 1.3, S 1.4, S 1.6, S 1.7, and S 1.8) House Bill 2694 contains part of Recommendation S 1.5 related to funding utility regulation at TCEQ, but does not include any adjustment in the regulatory assessment fee

level. The bill repeals filing fees for applications for rate change; Certificates of Convenience and Necessity (CCNs); and the sale, transfer, or merger of a CCN. The Legislature added language to provide that assessments collected may be appropriated by rider to an agency with duties related to water and sewer utility regulation or to an agency with a duty to represent residential and small commercial consumers.

Senate Bill 661 contained a provision to continue PUC for 12 years, as recommended by the Sunset Commission in *Supplement Recommendation S 1.1*. After S.B. 661 failed, the Legislature continued PUC for two years in Senate Bill 652, and placed PUC under a limited scope Sunset review next biennium to assess the appropriateness of Sunset Commission recommendations from this biennium.

New Issues

New Issues

New issues previously contained in the *Supplement* dealt only with gas utilities. Those issues have been moved to the New Issues section of the *Sunset Commission Final Report on the Railroad Commission of Texas* and appear under the heading of “Gas Utility Regulation.”

**SUPPLEMENT TO THE SUNSET STAFF REPORT
ON THE PUBLIC UTILITY COMMISSION**

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