

SUNSET ADVISORY COMMISSION

STAFF REPORT

on the

RAILROAD COMMISSION OF TEXAS

1982

FOREWORD

Over the past several years, there has been a sustained interest among the states in a new concept in legislative review popularly described as sunset. Since 1976, more than half the states have enacted legislation which embodies the primary element of sunset, the automatic termination of an agency unless continued by specific action of the legislature.

The acceptance of this concept has been aided by a general agreement that the normal pressures of the legislative process tend to prevent a systematic review of the efficiency and effectiveness with which governmental programs are carried out. The sunset process is, then, an attempt to institutionalize change and to provide a process by which a review and redefinition of state policy can be accomplished on a regular systematic basis.

The Texas Sunset Act (Article 5429K, V.A.C.S., as amended) was enacted by the 65th Legislature in 1977. Under the provisions of the Act, agencies are automatically terminated according to a specified timetable, unless specifically continued by the legislature.

To assist the legislature in making the determination of whether an agency should be continued and, if continued, whether modifications should be made to its operations and organizational structure, the Act establishes a ten-member Sunset Advisory Commission composed of eight legislative members and two public members. The commission is required to evaluate the performance of the agency in accordance with specific criteria set out in the Act and to recommend necessary changes resulting from the findings of the evaluation.

The process by which the commission arrives at its recommendations moves through three distinct phases beginning with a self-evaluation report made by the agency to the commission. The second phase involves the preparation of a report to the commission by its staff, evaluating the activities of the agency, and proposing suggested changes for commission consideration. The final phase involves public hearings on the need to continue or modify an agency and the development of commission recommendations and legislation, based on the agency self-evaluation, staff report, and public testimony.

The Sunset Commission's findings, recommendations, and proposed legislation are then required to be transmitted to the legislature when it convenes in regular session.

INTRODUCTION AND ORGANIZATION OF AGENCY REVIEW

The Texas Sunset Act abolishes this agency on September 1, 1983 unless it is re-established by the 68th Legislature.

The staff reviewed the activities of this agency according to the criteria set out in the Sunset Act and has based its conclusions on the findings developed under these criteria.

Taken as a whole, these criteria direct the review of an agency to answer four primary questions:

1. Does the state need to perform the function or functions under review?
2. Could the public still be adequately served or protected if the functions were modified?
3. Is the current organizational structure the only practical way for the state to perform the function?
4. If the agency is continued and continues to perform the same functions, can changes be made which will improve the operations of the agency?

The report is structured to present the performance evaluation of the agency. The application of the across-the-board recommendations developed by the commission to deal with common problems are presented in a chart at the end of the report and are not dealt with in the text except in one instance. When the review develops a position which opposes the application of a particular recommendation, the rationale for the position is set forth in the text.

SUMMARY OF STAFF FINDINGS AND CONCLUSIONS

SUMMARY

The Railroad Commission was created in 1891. Although the commission was originally established to regulate railroads, its areas of responsibility have increased significantly since that time. Currently, the commission's regulatory activities can be grouped into five major areas: 1) oil and gas; 2) transportation; 3) natural gas utilities; 4) liquefied petroleum gas; and 5) surface mining and reclamation. These areas are regulated through commission operations which perform licensing, compliance, enforcement, rate setting, and general assistance functions.

The results of the review showed that the commission is generally operated in an efficient and effective manner. The review also examined the need for each of the commission's responsibilities and determined that there is a continuing need for state involvement in these areas.

The review included an analysis of the need to continue these functions in their current organizational setting. The review determined that the need to perform the functions of the commission still exists; however, the review showed that there are organizational alternatives to the responsibilities currently being carried out by the commission that could be considered. The review also indicated that if the commission is continued, several modifications should be made which would improve the efficiency and effectiveness of commission operations.

Approaches for Sunset Commission Consideration

I. MAINTAIN THE COMMISSION WITH MODIFICATIONS

A. Overall Administration.

1. The statute should be amended to require natural gas pipeline companies which owe monthly gas utilities gross receipt taxes in excess of \$750 to pay the tax on a monthly rather than quarterly basis. (statutory change)
2. The commission should establish an appropriate system of indexing future commission orders by subject category. (management improvement - non-statutory)
3. The statute should be amended to reimburse employee travel expenses as provided in the General Appropriations Act. (statutory change)

B. Evaluation of Programs

1. Licensing

- a. The commission should develop a system to identify oil and gas operators that have a history of well plugging violations and should require those operators to post a well plugging bond before being issued a drilling permit. (management improvement - non-statutory)
- b. The statute should be amended to authorize the LP-gas division and the transportation division to stagger license and registration renewals. (statutory change)

2. Compliance

- a. The oil and gas division and the LP-gas division should develop a system which documents dates of completed field inspections and uses the compiled information to schedule future inspections. (management improvement - non-statutory)

3. Enforcement

- a. The oil and gas division and the transportation division should improve the documentation and accountability of complaint procedures. (management improvement - non-statutory)
- b. The statute should be amended to provide the LP-gas and transportation divisions authority to probate license or certificate suspensions. (statutory change)
- c. The statute should be amended to authorize the commission to order administrative fines not to exceed \$5,000 per violation for pollution and safety violations. (statutory change)
- d. The statute should be amended to make the possession of unidentified oil a felony. (statutory change)
- e. The commission should designate a staff attorney as a hearings examiner-at-large to conduct show cause hearings when necessary to comply with APA ex-parte prohibitions. (management improvement - non-statutory)

- C. Recommendations for Other Sunset Criteria
 - 1. Open Records/Open Meetings
 - a. Written policies for locating and copying documents held by the divisions should be developed and made available upon request. (management improvement - non-statutory)
 - b. The agency should discontinue the practice of permitting the removal of original records from the agency's custody. (management improvement - non-statutory)
 - 2. Conflicts of Interest
 - a. The statute should be amended to require the agency to provide new employees a copy of conflict-of-interest constraints. (statutory change)

II. ALTERNATIVES

- A. Agency Reorganization
 - 1. **Transfer the Texas Petroleum Research Committee (TPRC) to TENRAC as a statutory advisory committee, or if it is determined that an advisory committee to the Railroad Commission is necessary, then statutorily designate TPRC for that purpose and strengthen its membership.**

Much of the research performed by TPRC is related to TENRAC's responsibility for the development of the state's energy and natural resources policies. Coordination of similar research efforts could improve the overall effectiveness of the research programs. If, however, it is decided the Railroad Commission needs an advisory committee, then TPRC could be statutorily designated for that purpose, thereby giving the commission control over the projects undertaken. The membership could be made more effective through the addition of public members to provide a useful public viewpoint.

- 2. **Transfer the tax collection responsibility for the gas utilities gross receipts tax and the associated auditing responsibility to the Comptroller of Public Accounts.**

The comptroller has general responsibility for tax collection in the state and was recently given responsibility for collection of a similar tax imposed on utilities regulated by the Public Utility

Commission. Because the comptroller currently collects oil related taxes, such a transfer would consolidate the collection of taxes related to commission regulation.

B. Change in Method of Regulation

1. **Simplify the methods used in setting production allowables for oil wells.**

Most of the producing wells in the state are marginal wells with limited production and do not require a monthly allowable in order to properly control production. A simplified allowable procedure could be used in these cases. One method would be to set the allowable equal to the well's production rate. Another method would be to reduce the frequency that allowables are set for these wells. Either of the simplified procedures would reduce agency staff time, computer time, and postage related to setting oil allowables.

II. OTHER ISSUES

During the review issues concerning various aspects of the agency were identified. Most of these issues have been the subject of continued debates without clear resolution on one side or the other. This section sets out these issues and summarizes the arguments for and against presented by various groups contacted during the review. The major issue(s) identified the following:

1. **Establish an Executive Director for the Agency**

Currently, agency administration is carried out directly by the three commissioners as the agency does not have an executive director. Creation of the position would centralize responsibility for day-to-day administration and relieve commissioners of many details in managing the agency, thus allowing them to focus on agency policy decisions. On the other hand, the commissioners have traditionally been responsible for administrative matters and have adequately administered the agency.

2. **Transfer Underground Injunction Control to the Department of Water Resources**

The Railroad Commission protects water supplies from pollution through the issuance of permits for injection and disposal wells and underground hydrocarbon storage. This responsibility could be trans-

ferred to the Texas Department of Water Resources (TDWR) which has primary responsibility for protection of water supplies in the state. TDWR has in place the staff and procedures capable of performing the regulatory activities currently provided by the commission. Opponents argue that duplication of effort could occur because TDWR personnel would be inspecting the same oil and gas leases that commission personnel are required to inspect for compliance with other commission regulations.

3. Change in Intrastate Trucking Regulation

Texas regulates all phases of the intrastate motor carrier industry. Three issues were identified related to changing the regulation.

a. **Easing the Entry Requirements of Carriers**

A carrier must currently show that a needed service is not being provided in order to obtain operating authority. This authority, once granted, requires the carrier to provide service upon request. Proponents of deregulation argue that the current system restricts entry into the industry and limits competition. Opponents argue that easing entry requirements would result in carriers reducing services to the less profitable smaller cities which are currently entitled to equal service.

b. **Zone of Variation from Established Rates**

The commission currently prescribes the rates to be changed industry-wide for intrastate shipment of all commodities. An argument can be made for adopting the system used for interstate rates which allows changing rates within a range above or below the established rate. This would provide for limited competition between carriers and encourage efficient operations necessary to offer discounts. On the other hand, it is argued that the safety of the industry would be affected because maintenance would be reduced in efforts to cut costs, and smaller carriers would be forced out of business through price cutting.

c. **Exemption of Agricultural Commodities**

The commission currently prescribes rates for all commodities transported intrastate. An argument can be made that

agricultural products and livestock should be exempted from specified rate requirements through a system similar to that in place for interstate shipping. Because interstate rates are not regulated, higher quality products are sometimes being shipped out of state because interstate rates are often lower than intrastate rates. On the other hand, it can be argued that the interstate rates are not appreciably less than those charged intrastate because the rates are not being related to round trip expenses.

4. Transfer Regulation of Gas Utilities

The commission currently regulates natural gas utilities by setting rates, collecting taxes, and conducting safety inspections and financial audits. Rate regulation could be transferred to the Public Utility Commission, and the tax collection could be performed by the Comptroller of Public Accounts. Responsibility for pipeline safety evaluations could be transferred to the Railroad Commission's oil and gas division, while independent financial audits could review rates charged. Proponents for the transfer emphasize that benefits could be realized through the consolidation of utility regulation at PUC. Opponents argue that the Railroad Commission's long history of natural gas utility regulation coupled with its expertise in natural gas related areas support maintaining gas utility regulation within the Railroad Commission.

5. Establishment of Drilling Permit Fee

Revenues from a regulatory tax designed to cover the cost of oil and gas regulation is not currently sufficient to fund the oil and gas division. A \$100 drilling permit fee applied to all drilling permit applications would provide enough revenue to balance division expenditures. Proponents for the application of the fee point out that the fee is an appropriate method to fund oil and gas regulatory operations because it is directly related to regulatory activity. Opponents argue that the oil industry is already heavily taxed and an additional fee is not justified.

6. **Standing for Public Protest in Permit and License Hearings**

The commission has no uniform policy toward standing to protest the issuance of permits and licenses. Although different policies exist for the various licenses subject to protest, the ability of the general public to protest license issuances is generally limited. Public advocates argue that standing requirements should be relaxed to allow greater public participation. Opponents point out that the additional participation would add considerable expense and delay to proceedings, yet be of questionable benefit to the outcome.

7. **Public Representation in Gas Utilities Rate Cases**

The Railroad Commission is charged with protecting the "public interest" in the regulation of gas utility rates and services. It is argued that one segment of the public, residential rate-payers, does not have adequate input in the rate determination because there are fewer intervenors, with less funding, working in their behalf. It has been argued that the representation of residential rate-payers could be strengthened through the establishment of a public counsel or through provision of intervenor funding. The creation of a public counsel would make available a full-time professional advocate for the residential rate-payer. It is also argued, however, that establishment of a counsel is unnecessary since intervenors on behalf of residential consumers are already admitted and the commission has not been unduly preferential or discriminatory. With respect to intervenor funding, other intervenors already have the opportunity to pass the cost of rate cases on in some fashion, but intervenors for residential customers do not. This proposed funding method would help put this rate-payer group equal with other parties. In opposition to this position, it is argued that there would be no fair way to determine what groups or individuals would be funded, thereby making the intervenor funding method unworkable.

8. **Application of PUC Two-Year Employment Rule to RRC**

PUC has in its statute a two-year post-employment restriction which prevents PUC commissioners or employees from obtaining subsequent employment with any utility or business entity which does a significant portion of business with a public utility. It has been suggested that the rule should also be extended to other major

regulatory agencies such as the Railroad Commission. The Railroad Commission also has extensive regulatory authority, and the two-year rule would keep its employees from being influenced in their decisions by promises of employment from the regulated industry. However, as PUC has claimed, application of the rule could cause serious recruitment problems because it closes future job opportunities through its overly broad approach to eliminating potential conflicts-of-interest.

AGENCY EVALUATION

The review of the current operations of an agency is based on several criteria contained in the Sunset Act. The analysis made under these criteria is intended to give answers to the following basic questions:

1. Does the policy-making structure of the agency fairly reflect the interests served by the agency?
2. Does the agency operate efficiently?
3. Has the agency been effective in meeting its statutory requirements?
4. Do the agency's programs overlap or duplicate programs of other agencies to a degree that presents serious problems?
5. Is the agency carrying out only those programs authorized by the legislature?
6. If the agency is abolished, could the state reasonably expect federal intervention or a substantial loss of federal funds?

BACKGROUND

Organization and Objectives

The Railroad Commission of Texas was created in 1891 and is currently active. Initially the commission's authority was limited to the regulation of railroads but was expanded in 1917 to include the regulation of oil and gas. When the legislature declared the sale of natural gas a public utility in 1920, responsibility for regulatory control of natural gas utilities was attached to the commission. By 1929, the commission's jurisdiction had reached another part of the transportation industry through the designation of both trucks and buses as common carriers with the commission as the regulator. In 1951, regulation of liquefied petroleum gas was placed in the commission to ensure that LP-gas was stored and transported safely. The most recent expansion of commission authority occurred in 1975 with assignment of the regulation of surface mining to the commission.

The commission is composed of three commissioners who are elected by popular vote to serve overlapping six-year terms. Commission members must be Texas residents, qualified voters, and at least 25 years of age, while having no direct or indirect financial interest in any railroad or any railroad's securities or earnings. Also, no commissioner may hold any federal or other state office and may not engage in any occupation or business inconsistent with the duties of a commissioner. Agency operations are conducted by a staff of 841 persons and are supported in fiscal year 1983 by appropriations by approximately \$25 million funded through \$22.4 million from general revenue and an estimated \$2.6 million in federal funds and other revenue.

The Railroad Commission's areas of current responsibility encompass several major sections of industrial activity related to the production of energy-related natural resources and to commercial ground transportation in Texas. These areas generally include: 1) the regulation of oil and gas production and exploration; 2) the regulation of natural gas pipelines and utilities; 3) the regulation of commercial intrastate ground transportation; 4) the regulation of transportation and storage of liquefied petroleum gas; and 5) the regulation of coal and uranium surface mining. Each of these areas of regulation is performed through a separate division within the agency and is briefly summarized in the following material.

Oil and Gas Division. The regulation of oil and gas production and exploration by the commission's largest division is designed to prevent the waste of oil and

gas resources, to provide for the equitable production among oil and gas operators, to prevent pollution that might result from oil and gas operations, to ensure public safety, and to maintain resource data useful in developing new oil and gas production. To accomplish these objectives, the division has implemented a regulatory operation that issues permits for various oil and gas production-related activities, establishes rules and production allocations for leases and operators, and enforces these established production and pollution regulations through field inspections and comprehensive reporting procedures. Although the issuance of drilling permits is the most significant permitting activity performed by the division, a variety of other permits are issued, ranging from saltwater hauler permits which license trucking companies that transport saltwater (a byproduct of oil production) to injection well permits which authorize the use of special enhanced oil production techniques. The division also develops and recommends for commission approval statewide and special lease rules which control the spacing and drilling of wells, along with production requirements once a well is completed. Each producing well in the state is assigned a monthly production allowable through a system of proration and allocation which controls the rate oil or gas may be produced from a particular well. Conservation, pollution, and safety regulations are enforced by a field operations unit that maintains 10 district offices across the state and employs field enforcement personnel to monitor and inspect oil and gas operations. The division is also responsible for the classification of natural gas wells into categories designated by the federal Natural Gas Policy Act which controls the wellhead price of natural gas.

Natural Gas Utilities Division. The regulation of natural gas utilities is structured to ensure a continuous, safe supply of natural gas at a reasonable price for Texas consumers. To meet these regulatory goals, the division conducts operations which regulate the transmission, distribution and sale of natural gas by Texas gas utility companies. This regulation essentially controls the sale and safety aspects of natural gas from the wellhead to the burnertip. In unincorporated areas of the state, the commission approves rates for both transmission companies and distribution companies. Although the commission may generally review city rates on appeal, municipalities may approve their own rates for distribution companies within their incorporated boundaries. The division maintains a legal unit which is staffed by hearings examiners who hold hearings regarding rate matters and make rate recommendations to the commission. Financial audits of

utility companies are also performed by the division to verify that rates charged to consumers are proper and that gross receipts tax payments by the utility are correct. In addition, the division monitors and evaluates natural gas pipeline facilities through on-site inspections to ensure compliance with minimum safety requirements. The auditing and inspection field work is carried out by field personnel located in eight district offices.

Transportation Division. Regulation provided by the transportation division is designed to assure that Texas citizens and industry have a sound, safe transportation system available at a reasonable price. The scope of this regulation encompasses motor carriers, motor bus operators, railroads, and transportation brokers operating in the Texas intrastate market. In addition, certain safety and insurance requirements are imposed upon certified interstate carriers and exempt interstate carriers when they are operating in Texas. Division responsibilities are carried out through the implementation of certification, rate-setting, and enforcement operations. Certificates of public convenience and necessity are required to operate legally as a motor carrier for hire in the state. Aside from the demonstration of public need for the service to receive a certificate as a truck or bus carrier, proof of insurance and registration of vehicles are required. Once certified, a carrier must charge commission-approved rates which are set industry-wide for the particular transportation service provided. These tariffs are published by the commission and are subject to change upon application and hearing by the division. Audits of companies to monitor rates charged and complaint investigations are conducted by the division's audit section located in field offices around the state.

Because of recent federal legislation preempting state authority regarding railroad regulation, the commission no longer sets rates for railroad companies. Currently, railroad rates may be set by the company and are subject to commission suspension only in extraordinary circumstances. The division also operates a rail planning unit which selects sections of track to receive federal grants for rehabilitation purposes.

Liquefied Petroleum Gas Division. The liquefied petroleum gas division regulates the safe handling of LP-gas to protect the public from improper storage and highway transportation of butane and propane gas. Division efforts to ensure LP-gas safety include licensing, enforcement, and training activities. Companies operating in the LP-gas business are required to be licensed by the commission, and

trucks that move LP-gas must be registered. Also, the division approves plans and specifications for LP-gas equipment and installations in public facilities. Field personnel located around the state routinely inspect LP-gas companies and installations throughout Texas and participate in the investigation of LP-gas accidents.

The safety training and education section of the division conducts extensive seminars to train dealers and employees in the handling of LP-gas. LP-gas accident training is also provided to fireman and law enforcement personnel.

Surface Mining and Reclamation Division. The surface mining and reclamation division regulates all coal and uranium mining in Texas along with the reclamation of lands disturbed by mining operations. This regulation is accomplished by the division through permitting and enforcement operations. Mining companies must have a permit for each mining or exploration site they operate within the state. Applications for such permits require the submission of extensive technical data concerning the proposed operation and subsequent reclamation. In addition, a bond is required to fund reclamation not finally performed by the company. Permits are issued only after notification and an opportunity for hearing is given to residents within the area. Unreasonable degradation of land and water resources is prevented through control of surface mining activities. This control is achieved by placing conditions on the issuance of permits and by inspecting active mining operations. Two field offices as well as laboratory to analyze soil, water, and ground cover samples are operated by the division.

The review of the agency indicated that the commission generally has been effective in carrying out its responsibilities. However, various areas were identified and are discussed in the report where modifications can be made which would increase the efficiency and effectiveness of commission activities.

REVIEW OF OPERATIONS

The evaluation of the operations of the agency is divided into general areas which deal with: 1) a review and analysis of the policy-making body to determine if it is structured so that it fairly reflects the interests served by the agency; and 2) a review and analysis of the activities of the agency to determine if there are areas where the efficiency and effectiveness can be improved both in terms of the overall administration of the agency and in the operation of specific agency programs.

Policy-making Structure

In general, the structure of a policy-making body should have as basic statutory components specifications regarding the composition of the body and the qualifications, method of selection, and grounds for removal of the members. These should provide executive and legislative control over the organization of the body and should ensure that the members are competent to perform required duties, that the composition represents a proper balance of interests impacted by the agency's activities, and that the viability of the body is maintained through an effective selection and removal process.

The Railroad Commission of Texas is composed of three members who are elected to serve staggered six-year terms. One commissioner is elected every two years in a general election for state officers. To be eligible for election, a person must be a resident of Texas, a qualified voter, and at least 25 years of age. In addition, members of the commission may not have a direct or indirect financial interest in any railroad or any railroad's securities or earnings. Once elected and while serving a term, a commissioner may not hold another office and may not engage in any occupation or business inconsistent with duties of the commissioners. While the Railroad Commission itself was established by statute, the commissioner's method of selection and terms of office are constitutionally prescribed.

The review showed that the composition of the commission, the method of selecting the members, and the grounds for removal are generally appropriate for this agency.

Overall Administration

In the Railroad Commission, the agency administration is accomplished through participation from the three commissioners, a central administrative division, the automatic data processing division, and program management sections

in each of the agency's divisions. Other administrative support sections are located in the agency, including an aircraft operations section, an oil and gas library, and a mapping and graphics section.

The evaluation of the overall agency administration focused on determining whether the management policies and procedures of the agency, its monitoring of management practices, and its reporting requirements were adequate and appropriate for its internal management of time, personnel, and funds.

The results of the evaluation indicated that the agency's administrative operations generally function adequately. However, several areas were identified where improvements could be made to enhance the administrative system. These improvements relate to the agency's ADP capability, agency funding, gas utilities gross receipts tax collection, commission order indexes, and employees' travel expenses.

Automation of Division Processes. During the review of the regulatory procedures performed by different divisions, many processes and operations were identified which could be improved through automation. In general, these processes involve the regulation of large numbers of operators, licensees, or facilities and can best be handled through automated procedures. As expanding industry activity increased the need for automation, the automatic data processing section has been approaching an operational level which taxed the capacity of the computer's central processing unit. Heavy usage has caused slowdowns in nearly all of the agency's computer operations. Recently, however, the commission has acquired a replacement unit which is scheduled for installation in November. The replacement unit will process information four times as fast as the present unit and, according to agency estimates, will accommodate the commission's data processing needs for several years. With this additional capacity, the agency should be able to automate many outdated manual procedures.

Agency Funding. Historically, funding for the operations of the Railroad Commission has been provided by the legislature through the use of a special operating fund. During the 67th Legislative Session, the commission's funding mechanism was changed so that all of the funds collected by the agency were placed in general revenue, and all of the funds appropriated for the agency's operation were financed from the general revenue fund. In evaluating the agency's funding structure, the review focused on the balance between revenues generated and actual expenditures of state funds for each division. As a general rule,

revenues generated by regulatory type agencies should at least equal the expenditures for that agency. The following exhibit was prepared which outlines revenues and expenditures, by division, for fiscal years 1978 through 1981. As shown in this exhibit, revenues generated by the transportation and LP-gas divisions generally cover division expenditures. The gas utilities division generates considerably more in revenues than is expended by the division. However, the surface mining division, even with the use of federal funds, does not generate revenue sufficient to cover the cost of its operations. An evaluation of the division's fee structure and of the possibility of increasing these fees to cover the cost of operation, showed that such an increase would place an unreasonable burden on the regulated mining industry. Permit fees of \$10,000 to \$20,000 would be required in order to balance revenues with expenditures. With the current number of mining operations in the state, it would be unrealistic to require these operations through permit fees to support the cost of regulation.

In the oil and gas division, the expenditures for the division's operations are more than three times greater than the revenues collected. The revenues attributable to the division are generated by the Oil and Gas Regulation Tax collected by the comptroller to be used for the administration of Texas' oil and gas conservation laws. Currently, the tax rate is 3/16 of one cent per barrel of crude oil. This tax has been insufficient to cover the cost of the division since the 1950s. For example, between 1978 and 1981, the revenues generated by the tax were equivalent to 31 to 40 percent of the division's appropriations. The inability of the tax to keep pace with the division's expenditures is related to the lack of correlation between the production of crude oil in Texas and the cost of oil and gas regulation. The tax per barrel is related to production which has been decreasing over time. The workload of the division is more related to drilling activity which fluctuates from year to year but generally has been increasing. As the industry is essentially drilling more to produce less, the regulatory demands are increasing while the revenue to support the regulation is decreasing.

One method which can be used to increase the revenues associated with the oil and gas division and increase the relationship between the revenues collected and the division's workload is to charge a fee for the issuance of a drilling permit. For example, a \$100 drilling permit fee would have provided over \$5,000,000 in fiscal year 1981 which when combined with the regulatory tax would have nearly

**SUMMARY OF DIFFERENCES BETWEEN EXPENDITURE OF STATE FUNDS AND STATE REVENUE
COLLECTED BY OPERATING DIVISIONS FISCAL YEARS 1978 THROUGH 1981**

<u>Fiscal Year</u>	<u>Division</u>	<u>Total Expenditures</u>	<u>Federal Funds</u>	<u>Expenditure of State Funds</u>	<u>State Revenue Collected</u>	<u>Expenditure of State Funds Over or Under State Revenue Collected</u>	
1978	Oil and Gas	\$5,378,301	0	\$5,378,301	\$ 2,115,935	\$ 3,262,366	Over
	Transportation	1,759,090	504,346	1,254,744	2,161,023	906,279	Under
	Gas Utilities	1,305,425	0	1,305,425	14,652,933	13,347,508	Under
	Liquefied Petroleum Gas	480,977	0	480,977	342,279	138,698	Over
	Surface Mining and Reclamation	452,957	0	452,957	116,506	336,451	Over
1979	Oil and Gas	\$5,536,092	0	\$5,536,092	\$ 2,378,460	\$ 3,157,632	Over
	Transportation	1,922,492	620,739	1,301,753	2,185,751	883,998	Under
	Gas Utilities	1,525,620	0	1,525,620	15,778,195	14,252,575	Under
	Liquefied Petroleum Gas	490,466	0	490,466	360,736	129,730	Over
	Surface Mining and Reclamation	594,725	174,287	420,438	142,166	278,272	Over
1980	Oil and Gas	\$6,607,597	89,922	\$6,517,675	\$ 2,176,968	\$ 4,340,707	Over
	Transportation	3,131,879	1,559,674	1,572,205	2,441,518	869,313	Under
	Gas Utilities	1,497,861	0	1,497,861	20,374,474	18,876,613	Under
	Liquefied Petroleum Gas	725,160	0	725,160	369,278	355,882	Over
	Surface Mining and Reclamation	834,427	302,816	531,611	37,562	494,049	Over
1981	Oil and Gas	\$8,987,028	\$ 572,883	\$8,414,145	\$ 2,525,311	\$ 5,888,834	Over
	Transportation	3,338,770	1,719,037	1,619,733	2,862,126	1,242,393	Under
	Gas Utilities	1,727,607	0	1,727,607	28,823,626	27,096,019	Under
	Liquefied Petroleum Gas	706,040	0	706,040	702,336	3,704	Over
	Surface Mining and Reclamation	896,916	415,584	481,332	25,070	456,262	Over

covered the cost of the division's operation for that year. This option is discussed in more detail in the section of the report dealing with other issues.

Gas Utilities Gross Receipts Tax. Gas pipeline or transmission companies pay a tax of one-fourth of one percent of their gross receipts to the commission's gas utilities division under the current statute. Currently, all payments under this tax are remitted to the state on a quarterly basis. The Oil and Gas Regulation Tax, however, is paid by crude oil producers on a monthly basis. In general, taxes imposed by the state should be paid using a method that maximizes the state's return without placing an unreasonable responsibility on the paying entity. Under current interest rates, a system which requires more frequent collections similar to that used in the collection of the Oil and Gas Regulation Tax would increase the state's revenues from the gas utilities tax. The review showed that the 85 largest transmission companies pay approximately 99 percent of the total tax collected, and that the interest earned from deposits accruing to the state could be increased substantially if these larger transmission companies were required to pay the tax monthly instead of quarterly. For example, if transmission companies with gas utilities gross receipts tax of more than \$750 per month were required to pay the tax monthly instead of quarterly in fiscal year 1983, the state would benefit by receiving an additional \$1.3 million in interest during the year. The state would not benefit by requiring the 173 small transmission companies, who pay one percent of this total tax, to make payments monthly instead of quarterly because collection expenditures for a relatively small amount of tax would not be cost effective. To improve the revenues from taxes collected, the statute should be amended to require larger transmission companies to pay the gas utilities gross receipts tax on a monthly rather than quarterly basis.

Indexing of Commission Orders. The Railroad Commission conducts all of its official activities through the issuing of commission orders. The review showed that these commission orders are not currently indexed. Originals of commission orders and related documents are maintained in each of the commission's operating divisions. A central file of commission orders, meeting minutes, hearing notices and related documents is maintained chronologically in the office of the secretary of the commission for each commission meeting, with items in order of appearance on the agenda. A separate file is also maintained which contains orders, hearing notices and related documents. This file is maintained chronologically on a

calendar year basis and items are separated by operating division with items within each division arranged numerically. Both files are available for public inspection.

Since no agency-wide indexing of commission orders exists, no method is available to representatives of regulated industries or the general public to locate commission orders on a specific subject. Commission orders are a major part of the commission's actions in administering the statutes and regulating the industries under its jurisdiction, making access to commission orders important for these industry and public representatives.

Another state agency which has similar regulatory type responsibilities is the Public Utility Commission (PUC). A review of PUC's method for indexing orders showed that the Public Utility Commission has a system which appears to provide easy access to its decisions. On a monthly basis, the Public Utility Commission publishes its orders and memorandum decisions in its Bulletin which is divided into areas of jurisdiction. An index of cases by docket number order and utility type in the Public Utility Commission Bulletin is also published annually. In addition, the Public Utility Commission publishes a precedent manual annually, containing synopses of PUC decisions which are arranged by precedent categories, including procedure, certification, rate making and quality of service. Subdivisions are listed within each category.

In view of the volume and significance of orders of the Railroad Commission in its broad areas of jurisdiction, the commission should establish an appropriate method of indexing future commission orders.

Travel Expense Provisions. A provision in the commission's current enabling statutes provides for commissioners and agency employees to receive actual necessary travel expenses when traveling on commission business. This provision has been part of the commission's statutory authority since the commission was established in 1891. However, the provision does not conform to the general travel regulations contained in the General Appropriations Act. Those regulations, which are presently followed by the commission, do not allow state employees to receive actual and necessary expenses when travelling, but rather, provide an alternative form of reimbursement. To clarify the inconsistency, the statute should be amended to authorize the commission to reimburse employee travel expenses in accordance with the General Appropriations Act provisions.

Evaluation of Programs

The programs of the Railroad Commission were divided into seven main functional areas for purposes of evaluation: Licensing, Compliance, Enforcement, Rate Setting, Technical Assistance, Research and Development, and Well Plugging and Reclamation Funding.

Licensing

A significant regulatory responsibility related to the Railroad Commission's regulation of energy-related natural resources and ground transportation is the licensing, permitting, and certification of various aspects of the industries involved. These licensing-type operations are conducted in activities contained in four of the commission's divisions. In the oil and gas division, permits are required before an operator can drill a well, commingle oil or gas from different wells, haul saltwater, dig and use certain saltwater pits, inject fluids into wells for disposal or enhanced recovery purposes, or perform other activities related to oil and gas production. Certificates and permits issued by the transportation division are related to the authorization to operate as an intrastate carrier and the registration of all vehicles operated by trucking or bus companies in Texas. Licensing functions conducted in the LP-gas division license companies operating in the LP-gas industry, register trucks that move LP-gas, and approve certain LP-gas equipment and installations. The surface mining and reclamation division regulates surface mining of coal and uranium within the state through the issuance of surface mining and exploration permits.

For purposes of the review, the evaluation of these licensing, permitting, and certificating activities focused on two areas. First, the review evaluated the application and issuance of the licenses to determine whether the application requirements impose an unreasonable burden upon the industry, whether processing procedures are designed to handle applications in a reasonable amount of time, and whether renewal processes are appropriate. Second, an evaluation of the licensure application protest procedures was performed to determine whether existence of a formal protest process is appropriate for a particular license, whether notice and standing requirements for the process are fair and reasonable, and whether hearings conducted are in compliance with the Texas Register and Administrative Procedures Act.

Application and Issuance. Over 29 different types of licenses, permits, and certifications are issued by the Railroad Commission. In general, the authoriza-

tions are required by the commission to prevent waste of oil and gas resources, to protect correlative rights of oil and gas operators and royalty owners, to protect the environment from freshwater pollution and mining surface damage, to protect the public safety, and to maintain quality service in the ground transportation industry. A comprehensive list, by division, of all licenses issued by the commission is provided in the exhibit on the following pages. The chart also contains information concerning the number of licenses or permits issued, the approximate time to process and issue a license under routine circumstances, and the fees currently charged for the issuance.

As shown in the exhibit, 14 permits are issued by the oil and gas division. Among these permits, the most significant are for drilling, disposal and injection wells, saltwater hauling, and saltwater pits. The issuance of drilling permits by the rulemaking and interpretation section is the major permitting activity of the division. Before any operator can begin to drill, deepen, or plug back an oil or gas well in Texas, the operator must apply and receive a drilling permit. The permit is designed to ensure that the well is in compliance with appropriate spacing and density rules in effect where the drilling is to occur. By controlling the spacing and density of oil and gas wells, the commission not only protects the correlative rights of nearby leaseholders but also prevents waste of oil and gas resources by ensuring efficient reservoir drainage. Once an application is received by the division, it is checked to verify that the operator has a current organization report on file and that the proposed well meets the appropriate spacing and density requirements. If both of these requirements are met, the permit can be issued administratively. Should an exception to applicable rules be requested, a hearing is required. A permit issued without the need for an exception is valid for one year while permits issued under an exception are valid for only six months. Agency estimates indicate that only 60 to 70 percent of the drilling permits issued are ever drilled.

The division also issues a significant number of disposal well and injection well permits. These permits are necessary if an operator desires to inject fluids into an existing well for the purposes of disposing of saltwater or enhancing oil recovery. Disposal wells allow an operator to inject saltwater produced in a drilling operation into an underground zone as long as freshwater strata are shielded from that zone. Injection wells, however, are used to enhance production by injecting a fluid into an oil producing reservoir thereby flooding the zone and

RAILROAD COMMISSION

Licenses/Permits/Certification/Approvals

	Total No. Active as of August 31, 1982	Approx. Time to Process Unprotected Applications	Fee (\$)
OIL AND GAS			
1. Drilling permit	47,170*	3-5 days	None
2. Pipeline permit	2,228	1 day	None
3. Saltwater hauler permit	932	1 day	None
4. Reclamation plant permit	71	2-3 months	None
5. Commingling permit			
a. Above ground	6,950	1 day	None
b. Below ground	0	-	None
6. Carbon black permit	1	1 day	None
7. Disposal well permit	9,020	18 days	None
8. Injection well permit	35,030	18 days	None
9. Underground hydrocarbon storage permit	505	18 days +	None
10. NGPA application approval	53,778	3-5 days	None
11. Plant effluent disposal permit	247	2 weeks	None
12. Tidal disposal permit	316	2-3 weeks	None
13. Pit permits			
a. Saltwater pit	4,958	2-3 weeks	None
b. Lined pit	682	2-3 weeks	None
c. Unlined pit	4,276	2-3 weeks	None
14. Off-lease disposal permit	4,757	1 day	None
TRANSPORTATION			
1. Common carrier certificate	117	45 days	25
2. Specialized motor carrier certificate	1,694	45 days	25
3. Contract carrier certificate	300	45 days	10
4. Seasonal agricultural carrier permit	30	1 day	25
5. Transportation broker license	106	1 day	5
6. Registration of ICC carrier/exempt authority	4,448		
	ICC		
	6,622	5 days	25
	Exempt		
7. Motor bus certificate	119	45 days	25
8. Vehicle registration			
a. Intra-state carrier & motor bus	94,343	1 day	11**
b. Inter-state carrier	460,950		
	ICC		
	35,352	1 day	11
	Exempt		

*Number issued in fiscal year 1982.

**Motor buses pay an additional \$1 per seat.

	<u>Total # Active as of August 31, 1982</u>	<u>Approx. Time to Process Unprotected Applications</u>	<u>Fee (\$)</u>
LPG ENFORCEMENT			
1. LPG company license	2,165	1 week	50-500***
2. LPG vehicle registration	4,022	2 days	100-150
3. LPG equipment and installation plans approval	1,783	1-7 weeks	None
SURFACE MINING			
1. Surface mining permit			
a. Coal	12	75 days	1,000
b. Uranium	2	75 days	200+ 10/acre
2. Exploration permit			
a. Coal	128	2 weeks	None
b. Uranium	34	2 weeks	None
3. In-situ gasification permit	0	75 days	500
4. Unsuitability designation	1	-	None
	Pending		

***Varies according to type of company licensed.

forcing the oil toward other producing wells in the reservoir. Federal guidelines require that these operations be controlled to prevent contamination of freshwater supplies. Applications for these permits require the submission of technical information about the project and the issuance of proper notice. If the application is not protested, the permit can be issued administratively. There were 459 disposal well permits and 499 injection well permits issued during fiscal year 1982.

The disposal of saltwater is a major problem in oil field operations. Aside from the disposal well operations, other permitted activities related to the handling of saltwater include permitting saltwater haulers and saltwater pits. Any person hired to haul saltwater which is produced by a drilling operation must first be issued a permit by the commission. To receive such a permit, the applicant must show the ability to properly dispose of the saltwater and file a \$5,000 bond with the commission. Saltwater pits are generally used in connection with disposal well operations. The commission, through the regulatory enforcement section of the oil and gas division permits two types of saltwater pits - an unlined pit and a lined pit. The unlined pit is merely an earthen pit to be used only for emergency purposes during disposal operations. Lined pits are used in the routine operation of some disposal wells to allow the settling of solids from the saltwater before pumping into the wells. Before either pit permit can be issued, the division performs an on-site inspection to check soil conditions and pit construction. Permits are issued administratively upon staff recommendations. Hearings are held only when permits are denied at the staff level. The commission issued 140 unlined pit permits and 45 lined pit permits in fiscal year 1982.

The transportation division issues eight different certificates and registrations which include various certificates of authority to operate as intrastate motor carriers for hire and the registration of for hire trucks and buses operated in Texas. Aside from motor bus certificates, three different types of carrier certificates are issued: common carrier, specialized motor carrier, and contract carrier. Common carriers are those trucking companies which transport general commodities over regular routes on specified schedules and whose services are available to the general public. Specialized motor carriers are trucking companies which transport commodities requiring specialized equipment in the loading or transporting over irregular routes on irregular schedules. Those trucking companies which are limited to perform transportation services under contract for a maximum of five shippers are designated contract carriers by the commission. While the contract

carrier certificate is actually a permit, the common carriers and specialized motor carriers require a showing of public convenience and necessity. Following an application to the commission and a notice of hearing, a hearing is held for common carriers and specialized motor carriers to determine: 1) if the service is needed; 2) if other licensees in the area are not meeting the need; and 3) if the applicant will be able to provide reliable and consistent service. In addition, insurance and commission vehicle registration requirements must be met. Once issued, a certificate is valid until revoked or modified and requires the holder to provide quality service in the designated service area without discrimination. Applicants for motor bus certificates follow a similar procedure.

Certificated carriers are required to register their company trucks and buses annually with the transportation division's vehicle registration section. Although interstate carriers who have authority from the Interstate Commerce Commission or who haul federally exempt commodities are not required to be certificated in Texas, these carriers must obtain Railroad Commission registration for those vehicles which operate in Texas. Annual registration cards for a particular carrier's vehicles are issued upon the filing of an equipment report and an \$11 fee per vehicle.

To ensure the safe handling of liquefied petroleum gas, the LP-gas division licenses companies that engage in LP-gas operations and qualifies the company's manager and employees who handle LP-gas. In addition, the division registers vehicles transporting LP-gas and approves plans for storage tanks and equipment installations. The LP-gas division issues 12 different categories of licenses for different types of business operation, including manufacturing companies, transporters, installers, retail and wholesale dealers, and service stations. Aside from the payment of an original license fee that ranges from \$50 to \$500, depending on the business to be licensed, the business representative, managers, and employees of the business must pass an examination to demonstrate a working knowledge of LP-gas safety. All licensees are also required to carry workmen's compensation and general liability insurance with special insurance requirements placed on companies using vehicles to transport LP-gas. Vehicles equipped with an LP-gas cargo tank or used principally for transporting LP-gas in portable containers must be registered. The registration fee is \$150 for a transport and \$100 for a bobtail or bottle delivery unit.

The surface mining division issues permits for coal and uranium surface mining and exploration. The regulation is federally mandated for coal mining activities and is designed to protect the environment from the adverse effects of unregulated surface mining operations. To be issued a mining permit by the commission, an applicant must file extensive documentation which demonstrates the suitability of the area to be mined, the intention and ability of the applicant to mine and reclaim according to the conditions of the proposed permit, and evidence of appropriate personal injury and property damage insurance coverage. In addition, the company must submit a bond to ensure its performance of mining and reclamation responsibilities. Once applications are submitted, they are referred to ten other state agencies for comment, and newspaper notifications are placed in local newspapers by the applicant. Lignite mining permits are issued for a five year period upon the payment of a \$1,000 fee, and uranium mining permits are valid for ten years with a permit fee of \$200 plus \$10 per permitted acre.

The review of the licensure issuance and application processes of the commission indicated that fees and application requirements for the various licenses do not impose an unreasonable burden upon the regulated industries and that licenses and permits are generally issued in a reasonable time. However, one area was identified where an additional licensure requirement under certain circumstances could assist the state in controlling pollution.

A major problem facing the commission is the growing number of unplugged or improperly plugged wells around the state. Wells, once abandoned, must be properly plugged to prevent groundwater contamination. Currently, the legal section in the oil and gas division is experiencing a sizable backlog of well plugging cases. When a well is discovered that has not been plugged or is leaking, the case is referred to the legal section which attempts to locate the responsible parties. If the parties cannot be located, the state eventually pays for the plugging. Although the current backlog is largely attributable to the discovery of wells abandoned years ago, a portion of the problem can be tied to wells that have been recently abandoned by operators who are either insolvent or cannot be located. Often, even if the responsible party can be located, commission plugging orders must be taken to the attorney general for judicial enforcement. Interviews with agency personnel indicate that many of the recent plugging problems are caused by operators who have previously left a well unplugged. Because operators are not licensed in Texas, the drilling permit system does not currently have a mechanism to preclude

operators with a history of plugging violations from obtaining a new drilling permit. The commission does currently have the authority to require a plugging bond in situations where the circumstances warrant the protection, but no procedure has been developed to identify those operators who habitually cause plugging problems. To reduce the expenditure of state resources to plug abandoned wells, the commission should develop a system to identify operators that have a history of well plugging violations and should require those operators to post a well plugging bond before being issued a drilling permit.

Another area of concern relating to license renewals was identified in the review of the transportation division and the LP-gas division. Both divisions have licenses or permits that require annual renewal. Each of these divisions has experienced difficulty in the timely processing of renewals without the assistance of additional personnel during the period that renewals become due. The transportation division renews vehicle registrations on an annual basis with interstate registrations due on January 31 and intrastate registrations on July 1. In past years, the division employed part-time help to assist in the processing of over 450,000 registrations. The LP-gas division has at times relied upon assistance from field personnel to process renewals of licenses and registrations. By staggering the due dates for renewals, both of these divisions could make the workload more uniform and reduce the need for additional assistance. To reduce staff needs at peak renewal periods, the statutes should be amended to authorize the LP-gas division and the transportation division to stagger license and registration renewals.

Protested Applications. The opportunity to protest the issuance of a license, certificate, or permit controlled by the commission is present in three of the commission's five regulatory divisions. The remaining two regulatory divisions either do not issue permits or licenses, or they issue licenses that traditionally have not been subject to protest, such as occupational licenses. Protest opportunities currently offered by the oil and gas division, the transportation division, and surface mining division are designed to give notice of a pending application to the interested parties and to provide those parties an opportunity to participate in a hearing and submit evidence against the issuance. Although the criteria for deciding which licenses or permits should have procedures allowing protests are not well established, licenses granting a person authority to conduct an activity which

may directly affect another's legal right are generally issued only after the affected person has an opportunity to protest.

In the oil and gas division, several permits issued include protest procedures in the issuance process. The most significant area where protests are involved is the issuance of drilling permits. Although applications for drilling permits which comply with field spacing and density rules are not subject to protests and are issued administratively, drilling permit applications that request an exception to a field rule may be protested. The commission has ruled that all affected persons have standing to protest the application. In most cases involving exceptions to oil or gas field rules, standing has been limited to offset operators (those on contiguous leases). Recently, standing to protest drilling applications requesting spacing exceptions has been further limited to only those operators who have leases that are closer to the proposed drilling site than the minimum distance set in state-wide rules.

Once the application for an exception is filed with the division, a hearing date is set. Notice is sent by mail to offset operators or mineral owners if a spacing exception is requested. When a density exception is requested, notice is sent to all operators in fields with fewer than 20 operators; otherwise, only offset operators are notified. When certain operators cannot be located, the applicant must publish a newspaper advertisement in a local paper once a week for four consecutive weeks. If the applicant can secure waivers from all interested operators, the hearing is cancelled and the permit is issued.

Hearings are generally set 16 days from the date of application. Should no one protest prior to the fifth day preceding the hearing, the hearing is dropped from the contested docket and held informally. However, if a valid protest is filed, the hearing becomes contested and could required as much as six months to complete. Of the 47,000 drilling permits issued in 1982, approximately 3,500 required an exception to field rules.

While reclamation plant permits and below surface commingling permits also have protest procedures, the other major area where protests are significant for the oil and gas division is in the area of disposal and injection well permits. For both of these permits, the commission has identified those who have standing to protest the permit issuance as those who have suffered or will suffer actual injury or economic damage other than as a member of the general public, specifically including surface owners of the property where the well is located and adjoining

offset operators. After filing an application with the commission, the applicant must give notice to: 1) the surface owner of the tract, 2) each adjoining operator, and 3) appropriate city and county clerks. In addition, the applicant must publish a notice in a local newspaper with county circulation. After a 15-day waiting period, the permit may be issued administratively if no valid protest is received. If a protest is received, then a hearing date is set and notice is sent to all interested parties.

Certificates of public convenience and necessity that are granted by the transportation division to motor carriers and buses are also subject to protest before issuance. In these transportation matters, standing to protest is not limited to a particular class of persons and is generally open to all that wish to participate. Notice of the filed application is published in the division's bi-monthly notice of hearing publication which is sent to approximately 4,500 carriers and subscribers. Applications are docketed to be handled under an expedited procedure or on the uncontested docket unless a notice of protest is filed with the commission within 15 days after the publication of notice. If a protest is received, then the application is docketed as a contested case and notice of hearing is mailed to all parties and other persons requesting notification. Protests are effected by requiring the protestant to file a motion with the division. This motion is evaluated by the staff to determine the validity of the motion before accepting it as a protest.

The final area where opportunity to protest is a part of a licensing procedure occurs in the surface mining division. Both coal and uranium surface mining permits are subject to protest. Any person having an interest that is or may be adversely affected by the mining operation, as well as any federal, state or local authority may protest an application. Extensive notification provisions require that the applicant publish in local newspapers once a week for four consecutive weeks. Also, the commission mails notice to surface owners within the proposed or contiguous acreage, to ten specific state agencies for comment, and to local governmental entities. Written objections to the issuance of the permit must be filed during the 30-day period immediately following the publication of the last newspaper notice. Although the division usually holds a hearing on each initial permit, renewals or extensions of existing permits generally go to hearing only if a protest is filed. Should a protest be filed, a notice of hearing is published in the

newspaper for another three consecutive weeks and is mailed to interested persons and governmental entities.

The review of these commission protest procedures indicated that the procedures which the different divisions use to provide opportunity for protest are generally appropriate and in compliance with the Texas Register and Administrative Procedure Act. However, two concerns were identified in the oil and gas division regarding standing to participate in proceedings and procedural guidelines for hearings conducted.

First, the commission has generally taken the position that only affected persons may join commission proceedings as protestants. By controlling who is included in the definition of an interested or affected party, participation in commission hearings and the standing to appeal commission orders is regulated. Control over this definition is exercised through the combined effect of statutory guidelines, commission regulations, and judicial opinions. Currently, in the proceedings before the oil and gas division, participation is generally limited to those persons who have a financial interest in the outcome. Members of the general public would normally not be allowed to participate as a party in the hearings. However, standing to participate in surface mining permit hearings extends to a much wider range of persons and governmental bodies. Although the differences between the two approaches stems from the nature of the industries involved, the historical development of the body of law controlling the separate mineral interests, and the degree of federal involvement, the commission does not have a uniform policy regarding the standing of the general public to participate in license or permit hearings. This topic is discussed in further detail in the Other Issues section of the report.

A final concern identified during the review of the oil and gas division's hearings process relates to the coordination of procedural guidelines between hearings examiners. The division conducts hearings which involve both the technical aspects of petroleum engineering and geology, and the legal principles of oil and gas law. As a result, the division employs attorneys, engineers, and geologists as hearing examiners. Until recently, however, the division has not formalized the informal policies and procedures which are necessary to ensure that all hearings are conducted in as uniform fashion as possible. With hearings examiners from such divergent backgrounds, formalized hearings procedures become even more important. Currently, the division is in the process of

developing a hearings procedure manual which should improve the procedural consistency of the hearings.

Compliance

In all five regulatory divisions, the commission performs monitoring activities which are designed to ensure that statutes and commission rules are followed in each of the areas of the commission's regulatory responsibility. Activities in the oil and gas division are designed to monitor production and transportation of oil and gas in the state and to oversee the various drilling and field production activities to prevent pollution and waste. In the surface mining division, mining operations are monitored to ensure that plans established for the mining operation are adhered to, that adequate protection for water and land is provided, and that the land is properly reclaimed after mining has ceased. In the transportation division, compliance activities involve checking motor carriers' records to ensure that the companies are charging proper rates and providing adequate service. In the gas utilities division, compliance operations include a financial audit which checks gross receipts tax payments and rates charged by utilities, and a safety inspection of distribution and transmission companies. Compliance activities in the LP-gas division focus on the safe handling of LP-gas by monitoring both the personnel that work with it and the equipment used to store and transport it.

For the purposes of review, these compliance activities have been divided into two areas: report audits and on-site inspections and audits. Report audits can be used efficiently to monitor certain aspects of the regulated industry through the filing of periodic reports with the commission. On-site inspections and audits are necessary to discover violations that cannot be detected through reporting techniques and to verify the quality of information in reports submitted.

To evaluate the effectiveness of the report audits performed in the various divisions, the review focused on whether the information provided in the reports is adequate to show compliance without imposing an undue burden on the reporting company, whether the frequency of the audits is adequate to ensure compliance, and whether monitoring activities actually detected discrepancies or violations which were acted on by the commission.

The effectiveness of the on-site inspections and audits was evaluated to determine whether the frequency of inspections is adequate to ensure a reasonable level of compliance, whether the method of scheduling is efficient and provides consistent contact with the affected companies, whether standard inspection

procedures for inspection are followed, and whether the inspections actually detect violations that receive commission attention.

Report Audits. Report audits are performed in three of the agency divisions -- oil and gas, gas utilities, and surface mining. In the oil and gas division, monthly reports are required from every phase of the oil and gas industry. Producers, gatherers, transporters, purchasers, refineries, and those involved in the reclamation of "waste" oil submit reports detailing their activities. These reports are used by the production allocation section of the division to monitor oil and gas production and transportation once it leaves the wellhead. To accomplish this, the submitted monthly reports are audited by the audit and permit section for correctness and compared with past reports to discover discrepancies. The information contained in the reports is then entered into the computer, where several cross-checking and evaluative operations are performed. Problem areas are printed out and forwarded to the production allocation section for review. For example, discrepancies in the amount of oil produced on a lease and the amount of oil transported from the lease would be disclosed in the automated evaluation. When discrepancies are discovered, follow-up inquiries are conducted to resolve the differences, thereby ensuring that actual production does not exceed allowed production for a particular well. Over 2.3 million monthly reports were audited in fiscal year 1982 by this division.

In the gas utilities division, utilities subject to the gross receipts tax are required to file, along with the quarterly payment of the tax, a report which substantiates the amount of tax paid. In addition, an annual report which provides the division with detailed financial information is submitted by all utilities. These reports are examined for correctness and completeness by personnel in the division's auditing section. The tax reports provide information that is useful in determining how the utility computed the tax and whether the payments are correct. The annual reports provide the division with information concerning the tariffs charged by the utilities as well as gas purchases, sales and the utilities' financial position. The report is then used by the division's auditors in preparation for on-site audits. Both of the reports are also used for maintaining statistical information on the gas utility industry. Reports received and audited by the division in 1982 included 1,053 quarterly tax reports and 298 annual reports.

In the surface mining division, an annual progress report is required for each permitted mining operation. The report details the land disturbed, the amount of

coal or uranium recovered, and the reclamation efforts during the year covered by the report. Estimates of the next year's planned activity are also included in the report. This information is first reviewed by personnel in the division's technical services section for accuracy and then used by the division's inspectors in field work, planning efforts, and responses to public inquiries. During fiscal year 1982, 48 reports were received and reviewed by the division.

The review of the report audits performed by the oil and gas, gas utilities and surface mining divisions indicated that the reports submitted provide information useful in monitoring regulated operations without placing an unreasonable burden on the regulated companies. The frequency of the reports submitted is appropriate for the different types of operations being monitored. Finally, the information provided generally is helpful in directly revealing discrepancies or in providing support information to be used in field audits.

On-site Inspections and Audits. Each of the agency regulatory divisions is active in conducting on-site inspections and audits. These activities provide another mechanism to ensure compliance with statutes and commission rules. As shown in the following exhibit, each division uses field personnel located around the state to perform these functions.

RAILROAD COMMISSION FIELD OFFICES

CITY	OIL & GAS	GAS UTILITIES	TRANSPORTATION	LP-GAS ¹	SURFACE MINING
Abilene	X	X	X		
Albany				X	
Austin		X	X	X	
Center				X	
Corpus Christi	X	X	X		
Dallas		X	X		
Floresville					X
Fort Stockton	X				
Gainesville				X	
Houston	X	X	X	X	
Kilgore	X	X	X		
Laredo	X				
Lubbock	X	X	X	X	
McAllen				X	
Midland	X	X	X		
Pampa	X				
Panhandle				X	
San Angelo	X			X	
San Antonio	X		X	X	
Tyler				X	X
Victoria				X	
Wharton				X	
Wichita Falls	X				

¹ LP-gas inspectors work out of their homes.

With the exception of LP-gas, each division maintains field offices to perform field activities. In those instances where divisions have located offices in the same city, the offices are usually located in the same building and share support staff. Because of the greater rural use of LP-gas, field inspectors in the LP-gas division are generally located in less populated areas and work out of their homes.

The oil and gas division has staffed ten district offices and two sub-district offices to enable the division to perform inspections and monitor the operations of the oil and gas industry. The number of persons employed in these offices ranges from 12 to 29 and include a district director, a technical staff, field inspectors, and support staff. These offices operate under the supervision of the division's field operations section located in Austin.

Activities performed by field personnel include monitoring the various stages of oil and gas operations which include drilling operations, well completions, production capability testing, actual production, and well plugging once production has ceased. Field personnel perform investigations of complaints, oil spills, and blowouts while also conducting routine inspections of oil and gas leases. These activities are designed to ensure compliance with statutes and commission rules regarding production, pollution, safety, and protection of property rights.

The division performed over 163,000 inspections and investigations in 1982. Although all districts perform routine inspections on a daily basis, scheduling, inspection and investigation procedures may vary between districts. For example, some districts use a standardized form for inspections and others do not. Other policies, however, appear to be uniform throughout the division. All districts use a standardized daily report for detailing field activities. In addition, certain priorities are set division-wide. Complaint investigations and well plugging observations are first priority, while monitoring well completions, surface casing placements, and production tests also receive priority. In general, an inspector will perform routine inspections in a particular area when routed to that area for a priority activity. When violations are detected during an inspection, the district office will issue a letter requesting compliance to the operator. As necessary, re-inspections may occur to ensure compliance. Although the division does not have a system in place to monitor the frequency of inspections for a particular lease, division estimates indicate that about 60 percent of the inspections necessary to ensure compliance have been performed.

On-site auditing and inspection activities in the gas utilities division are performed by field personnel located in eight cities around the state. A staff of one to five persons is located in each office and reports to the auditing and safety/engineering sections of the division. These compliance activities include audits of the financial records and the quality of service of regulated gas utilities and safety evaluations of the pipeline systems operated by natural gas transmission

and distribution companies. The audits performed by the division cover the sales and purchases of the utility, the rules regarding quality of service, the rates charged the customers and the payment of applicable gross receipts tax. The audit serves as a verification of information provided in the reports the utility makes to the division. A standard form is used to document the audit findings which are then reviewed with a utility representative and forwarded to the Austin office. When discrepancies are reported, a letter which outlines the violations detected and requests timely reply is sent to the utility. The division completed 138 audits of gas utilities in 1982. Audit histories of utilities are maintained in an automated system that is used to schedule subsequent audits. Although the actual frequency of audits depends on the size of the utility, most utilities are audited approximately every two years.

The division's jurisdiction to perform safety evaluations extends to all transmission and distribution companies except rural gathering operations. Evaluations emphasize public safety and focus on the condition and maintenance of the system. Priority is given to control of lost and unaccounted for gas and the existence of cathodic protection which helps prevent pipeline corrosion. Violations detected during the evaluation are recorded on a standard evaluation form. The company is notified of the violations by a letter from the district office and is required to respond to the violations with a plan of correction. Next, the district office reviews the plan and, if acceptable, notifies the company by letter. Once the corrections have been made, the company is required to notify the district office and a re-inspection may be scheduled. In 1982, the division made 915 safety evaluations.

A manual system is used at the district offices to record the history of evaluations and to schedule upcoming inspections. Larger utilities are usually evaluated every two years while smaller ones are normally reviewed annually. Transmission companies are evaluated every three to four years.

In the transportation division, the financial and operating records of motor carriers regulated by the commission are reviewed during on-site audits which are conducted to determine compliance with the rates and rules established by the commission. These audits are performed by division personnel located in nine cities around the state. One to six auditors are located in each office and report to the auditing and complaints section of the division. Records audited include freight bills, driver's logs and weight tickets along with accounting ledgers and

journals. A standard form is used to document the audit findings, and violations detected during the audit are reviewed during an exit interview with a carrier representative.

After the on-site audit is complete, an audit report which details violations and recommends appropriate action is sent to the Austin office, which then notifies the carrier of the results of the audit and the action necessary to correct any violations. A re-audit may be scheduled if necessary to ensure compliance. Division personnel performed 1,283 audits in 1982. An automated system is used to maintain the audit history of the carrier and to schedule future audits. Carriers are normally audited every two years.

The surface mining division conducts on-site inspections of lignite and uranium mining and exploration operations in the state. These activities are carried out by six personnel located in the division's two field offices under the direction of the division's enforcement section. Inspections are made to ensure compliance with rules and statutes which regulate the full range of mining operations, from exploration activities through reclamation operations. Activities performed include monitoring of the water quality on and around the mining site, checking the methods used to prevent erosion of the overburden removed while mining, and inspecting required back filling operations. Reclamation activities conducted after mining also are monitored closely. A standard report form is used to document the findings of the inspections. Depending on the severity of the violation, a violation notice may be issued on-site during the inspection. Otherwise, a listing of the violations will be included in the report sent to Austin. The operator is notified of problems identified and is instructed to make any necessary corrections. Federal coal mining statutes require at least a partial inspection of coal mining operations on a monthly basis with a full inspection occurring at least quarterly.

Every coal and uranium mining site usually receives a routine visit every two weeks. In addition to performing 2,428 inspections in 1982, district office staff is responsible for tracking and scheduling inspections.

In the LP-gas division, inspections are made of LP-gas transportation, storage, and distribution facilities. Under the direction of the division's enforcement section, these inspections are performed by fifteen field personnel working out of thirteen cities across the state. The primary emphasis of the inspections is compliance with safety rules which requires the monitoring of distances between

buildings and property lines, and the condition of pipe, fittings, and containers. Inspectors also check to determine if businesses and employees handling LP-gas are properly licensed or registered. In their respective districts, inspectors are responsible for scheduling their activities. Standard report forms are used to document inspections. Once the inspection is completed, these reports are sent to Austin, where a letter specifying a time period for making corrections is written and mailed to companies with violations. Re-inspections are scheduled to ensure compliance. The division conducted 8,247 inspections in 1982. The frequency of inspections ranges from one to three years depending on the type of facility inspected.

The review of the on-site audits and inspections performed by the different regulatory divisions indicated that, while inspection procedures generally are adequate in all divisions, the frequency of inspections performed in three of the divisions could be improved. In addition, two divisions need improvement in techniques used to document audit histories and to schedule subsequent audits.

Three of the commission's divisions have experienced difficulty in auditing or inspecting regulated operations as frequently as the division indicates is necessary to substantially ensure compliance. For example, the oil and gas division estimates that it performed only 60 percent of the inspections that are needed to oversee the oil and gas industry. The gas utilities division has only 25 safety inspectors to audit over 5,500 distribution and pipeline systems, resulting in inspection intervals that exceed four years in some cases. Finally, the LP-gas division uses 15 field inspectors to inspect all licensed companies and all public buildings that have LP-gas installations on the premises. While the audit frequencies for these three divisions have resulted in inspection intervals which cannot always ensure compliance, the divisions have made a maximum effort with the number and experience of the staff allocated for these activities. Two of the divisions have requested additional funding for the next biennium to increase the number of field personnel. If approved by the legislature, the additional staff should be able to reduce the period of time between inspections for those divisions. The gas utilities division has recently experienced safety inspection staff increases which should eventually enable the division to shorten the inspection intervals.

Aside from the inspection frequency problem, audit scheduling problems were identified in two divisions--the oil and gas division and the LP-gas division. Currently, no standard system of recording audit histories and re-scheduling

subsequent inspections in in place in either division. Without such a system, routine inspections cannot be scheduled in a systematic manner which ensures that all locations are reviewed on a regular basis. The other divisions in the commission use a manual or automated system which documents the dates of completed audits in a central file and provides a history that allows the scheduling of upcoming audits to be based on accurate information. To improve their systems for scheduling inspections, the oil and gas division and the LP-gas division should develop a system which documents dates of completed audits and uses the compiled information to schedule future audits.

Enforcement

A major statutory responsibility related to the commission's regulation of energy-related natural resources and ground transportation is the enforcement of statutes and commission rules designed to control activity in these areas. These commission enforcement activities are conducted by all five agency regulatory divisions. Enforcement activities in the gas utilities division and the transportation division generally are designed to enforce regulations relating to rates charged customers and the quality of service delivered, and to protect the public from unsafe practices or conditions. While both the oil and gas division and the surface mining division enforce regulations concerning pollution control and environmental protection, the oil and gas division has the additional responsibilities of preventing waste of oil and gas resources and protecting the public safety. Finally, the LP-gas division enforcement activities generally are related to protecting the public from the unsafe handling of LP-gas.

For the purposes of review, these enforcement activities have been divided into two basic parts: complaint investigations and imposition of sanctions. Enforcement processes generally begin with the investigation of a complaint which may be generated by the agency itself or by sources outside the agency and conclude with the imposition of a sanction if a serious violation is discovered. To determine the effectiveness of the agency's complaint investigation, the review focused on three areas considered critical in an effective complaint procedure. First, the division must have a system to receive and process complaints which includes a reliable method of detecting violations and which involves a consistent method for logging and maintaining current status on complaints received. Second, the investigation of complaints received should be conducted according to clear procedures which ensure that documentation is complete, that investigations are

conducted in a reasonable period of time, and that serious complaints are given priority. Finally, coordination between division offices in Austin and field offices should be sufficient to monitor field complaint investigations and reports for timeliness and uniformity.

To evaluate the effectiveness of the agency's imposition of sanctions, the review focused on whether sanctions are clearly defined in statute, whether sanctions imposed conform to the seriousness of violations discovered, and whether the procedures followed to impose sanctions are in compliance with the Texas Register and Administrative Procedure Act (APA) and other applicable statutes.

Complaint Investigation. The Railroad Commission has no formal agency-wide policy or procedures regarding the handling or investigation of complaints. Each division has developed procedures to investigate and reply to complaints over which it has jurisdiction.

In the oil and gas division, all complaints are referred to the field operations section for investigation. Complaints received by the division generally relate to pollution of land and fresh water associated with drilling operations, as well as to concerns of property and royalty owners related to production. The investigation of these complaints is a significant part of the routine activities performed by the division's field inspectors. Excluding any inquiries generated by commission personnel, the division received over 3,000 complaints during fiscal year 1982.

Investigations currently are conducted according to recently implemented general written procedures. Complaints are received by the central office in Austin as well as the district offices located across the state. When received by the Austin office, the complaint is logged in and forwarded to the appropriate district office. There, an investigation, which usually includes an on-site inspection, is initiated. When initially received at the district office, notification to Austin of the receipt of the complaint may be delayed up to 15 days if the investigation can be quickly resolved. Once the investigation is complete, a report is prepared by the inspector and filed with the district office. The district office then notifies the operator by letter of any violations mentioned in the report and works with the operator to achieve compliance. The complainant is generally informed of the complaint status by copies of correspondence between the district office, the operator, and headquarters in Austin. If the operator fails to correct a problem, the district office requests enforcement action to be taken by headquarters.

Documentation of complaints is maintained in files located both in Austin and in the district offices where the complaints are investigated. Information maintained in these files varies with each complaint and generally includes inspector reports, correspondence, and a recently developed complaint form. Although a card file is maintained on all active complaints, information related to necessary future action on active complaints is monitored in Austin through a bi-monthly manual system requiring review of files.

In the gas utilities division, coordination of complaint activities is performed by the statistics and economic analysis section. Most of the complaints received by the division are directed toward the rates charged or the quality of service provided by the utility as well as unsafe distribution systems. In order to process efficiently the more than 2,400 complaints received in fiscal year 1982, complaint information and status were maintained in an automated system.

While complaints may be received by the central office in Austin or by field personnel located around the state, a detailed complaint procedure followed by the division requires that the complaint first be referred to the statistics section for computer entry. Although many consumer complaints can be handled in the statistics section by telephone, complaints requiring more investigation are referred to the auditing section or the safety/engineering section for further review. After the appropriate investigations have been conducted, the statistics section notifies the complainant by letter of the results. If informal resolution is not possible, the complaint is referred to the division's legal section for further action. Detailed documentation of complaint information and status is maintained in a combination of document files and data stored in the computer.

In the transportation division, complaints are routinely referred to the audit and complaints section unless the complaint relates to a rate issue requiring a hearing for resolution. A large part of the 510 complaints received in fiscal year 1982 were related to rates charged, lost or stolen merchandise, or poor service by a carrier. Because of federal preemptions and state legislative spending prohibitions, complaints regarding railroad safety are referred to the Federal Rail Administration.

No formal complaint investigation procedures have been established by the transportation division. Generally, a complaint is assigned to an auditor in the audit section for investigation. While most of the information gathered to resolve the complaint is collected through telephone calls, on-site investigations are

conducted where necessary. After a complaint is investigated, a report detailing the findings and recommended action is completed by the auditor. The complainant is notified by telephone of the results of the investigation. Complaint documentation generally consists of a complaint form and any correspondence received during the investigation. This information is filed by carrier along with reports of audits performed.

In the surface mining and reclamation division, most complaints are received in the two field offices. The most common types of complaints received by the division deal with pollution of surface and ground water and air pollution around mining sites. Because fewer than a dozen complaints are usually received each year, complaint investigation is not a major division function.

Although no formal written complaint procedures have been developed by the division, investigative procedures have been established for field personnel. As in other divisions, complaints are referred to the field for investigation, resulting in a report to the Austin office. The complainant is informed by letter of the results of the investigation. Documentation on complaints is maintained in the Austin office with the same information kept at the respective field offices. The information, which includes a standard complaint form, investigative reports, laboratory analysis, and related correspondence is placed in the project files and also is filed according to complainant name for cross-reference purposes.

In the liquefied petroleum gas division, most complaints are received by telephone in the Austin office. An assistant to the division director acts as the coordinator on complaints. Of those complaints received, most relate to various aspects of safety and to pricing which is outside the agency's jurisdiction. The division received approximately 358 complaints in fiscal year 1982.

Although complaints are resolved by letter from the Austin office if possible, complaints requiring investigation are forwarded to field inspectors who make an inspection and file a report with the Austin office. Letters requesting compliance are sent when violations are discovered, and follow-up inspections are conducted to determine if corrections have been made. Complaint documentation is maintained in the Austin office and consists of a standard form used to log complaints, correspondence, and any investigative reports prepared.

The review of these complaint processes indicated that complaints are handled adequately in three of the five divisions. Automated complaint procedures used by the gas utilities division provide detailed, accessible complaint information

in an efficient manner. Procedures used by the surface mining division and the LP-gas division are less sophisticated but maintain adequate control and documentation in consideration of the relatively small number of complaints received. However, the review did identify several concerns in the complaint processes of the oil and gas division and the transportation division.

The oil and gas division responds to more complaints than any other division in the Railroad Commission. This volume of complaints could be handled more efficiently through the use of an automated complaint system. While the division has plans to develop such a system, certain improvements could be made in the existing manual procedures to enhance the division's ability to document complaints received, monitor complaint status, and coordinate complaint operations between the field offices and the Austin office.

Although the division has recently developed written complaint procedures, district office implementation of the new requirements has not been consistent. Some district offices use the division's complaint receipt form and assign a tracking number to the complaint while other offices do neither. When a complaint is received by a field office, that office may delay notifying the Austin office for up to 15 days if the complaint is expected to be resolved within that time. In general, complaint procedures should include the documentation of certain standard information at the time the complaint is received. Also, complaints should be assigned numbers that can be used to track complaints and improve the accountability of the complaint system. It is especially important when field offices perform complaint investigations that a central file exist which can be used to monitor complaint status and to respond to inquiries. To improve the documentation and accountability of the division's complaint process, the division should require that its standard complaint form be completed for all complaints when received. In addition, all complaints should be assigned a number and a copy should be forwarded to Austin without delay. Complaint status could be monitored more effectively through the use of a card file to index by month and day the date of the next action required on active complaints.

The transportation division has no written procedures to guide division personnel in the handling of complaints. The review of this division indicated that improvements are needed in the methods used to record complaints received and to monitor the status of complaints.

With regard to the receipt of complaints, the information recorded is not consistent, since no standard complaint form is used. Once received, monitoring the status of complaints is hampered by the lack of written documentation maintained. In general, complaint procedures should provide consistent documentation of the complaint and the actions taken and a method to monitor the status of complaints should be used. To process complaints more effectively, the transportation division should adopt a formal written complaint procedure which should include a standard form for recording complaints and action taken during the investigation. Telephone conversations with the complainant should be supported by written correspondence to provide documentation, and a number should be assigned to each complaint when received to provide a method for tracking the status of complaints.

Imposition of Sanctions. As shown in the following exhibit, a variety of enforcement sanctions are available to the agency which allow the commission to prevent violations of statutes and rules and to penalize violators. These sanctions are grouped into categories and information is provided regarding the frequency of imposition by division. The figures presented represent fiscal year 1981 estimated commission activity, and the absence of a figure for a particular division indicates that the sanction does not apply or is not available to that division.

RAILROAD COMMISSION SANCTIONS
Fiscal Year 1981 Estimated

	<u>Oil & Gas</u>	<u>Gas Utilities</u>	<u>Trans- portation</u>	<u>LP- Gas</u>	<u>Surface Mining</u>
ADMINISTRATIVE - STOP ACTION					
1. zero allowable	1,830				
2. severance	2,366				
3. well plug	9,145				
4. well seal	250				
5. permit/license revocation	0		1	0	0
6. permit/license suspension	145		2	0	0
7. warning tag				592	
8. cessation order					0
ADMINISTRATIVE - PENALTY					
1. administrative fine					0
JUDICIAL - STOP ACTION					
1. TRO or injunction	*	0	0	0	0
2. receivership	*	0			
JUDICIAL - PENALTY					
1. civil penalty - \$1,000/day	*	0			0
2. misdemeanor	*			2	0
3. felony	*				

*Data was not available.

The enforcement tools which are considered most effective, and which are most often used by the agency, are those included in the administrative-stop action category. These sanctions are used by the divisions to limit an operator's or licensee's activity in a certain area, thereby compelling the operator to correct situations causing pollution, waste of natural resources, or unsafe conditions. In the oil and gas division, enforcement personnel may recommend that an oil or gas pipeline be severed or that an operator receive a zero allowable when compliance with commission statutes or rules cannot be otherwise obtained. Both of these sanctions are performed administratively without hearing. A pipeline severance is essentially a directive to the pipeline company to not take any oil or gas from a particular lease. While a severance only prohibits the removal of the product from the lease, a zero allowable prohibits production. Any oil or gas produced under a zero allowable is classified as unauthorized production and is subject to confiscation by the commission. The commission may also order, after hearing, that a

polluting well be plugged to prevent further pollution of surface or ground water. In all the divisions that issue permits or licenses, revocation or suspension of the licenses is imposed for continued violations of licensure requirements. Additionally, the LP-gas division uses a red warning tag system to identify unsafe LP-gas tanks or systems. Once a tank is tagged by a division inspector, the tank may not be filled or used until the unsafe condition is corrected and the tag removed. No hearing is required prior to tagging equipment as unsafe. Cessation orders are immediately issued by the surface mining division where a mining operation creates a condition of imminent danger to the public. These orders are issued after hearing when a previously detected violation has not been corrected in a reasonable time. For coal mining operations, any cessation order will expire after 30 days unless a hearing has been conducted by the commission.

Currently, the surface mining division is the only division that has the statutory authority to impose administrative fines. The authority to fine applies only to coal mining operations and allows a fine of up to \$5,000 per violation which may be imposed, after hearing, for a violation of the Act or of a permit condition.

Generally, the commission resorts to judicially imposed sanctions only when administrative action has not resolved the violation. All civil actions are initiated by the attorney general. While all divisions have statutory authority to seek injunctive relief, only the oil and gas division and the gas utilities division are authorized to request the court to appoint a receiver. Three divisions are authorized to petition the court for the imposition of civil fines. The amounts of these fines differ between divisions from \$5,000 per day of violation in the surface mining division to \$1,000 per day of violation for each violation in the oil and gas division.

Criminal charges are filed through the local district or county attorney in the county where the violation occurred. The severity of the criminal sanctions imposed varies among divisions. The only violations that are felony crimes relate to the making of false reports or the producing of oil and gas in excess of allowables and are under the jurisdiction of the oil and gas division.

The review of the sanctions available to the various divisions of the commission and the methods used to impose them indicated that the range of options available to the divisions could be improved in three areas. Also, two divisions have experienced problems with the method used to impose sanctions.

The first improvement that can be made in the agency's range of sanctions concerns the LP-gas division and the transportation division. In these divisions, license or certification suspension is a powerful enforcement tool because of the nature of the businesses regulated. Both divisions regulate businesses that provide services which are important to the communities they serve. Currently, both of these divisions have only the authority to revoke or suspend a license or certificate which would require the regulated business to stop operations. Many times violations are discovered which demand administrative action but are not so severe as to require the business to stop serving its customers. A regulatory agency should be able to impose sanctions that conform to the seriousness of the violations presented. However, according to Attorney General Opinion H-1199, express statutory authority is necessary before a regulatory agency may probate a license. To improve the enforcement ability of the LP-gas and transportation divisions, the statutes under which these divisions operate should be amended to include the authority to probate suspensions.

The second area in which the range of sanctions needs improvement is related to prevention of ground and surface water pollution and of unsafe conditions surrounding crude oil, natural gas, and LP-gas production and transportation. The agency currently is able, through several options, to compel the correction of an existing problem. All of the Railroad Commission's divisions are able to use some type of criminal or civil judicial sanctions. These sanctions can be useful in correcting an existing condition, but many times their effectiveness is limited by the difficulty of documenting the evidence necessary to prevail in a judicial matter, and by the delay that is associated with judicial proceedings. Various administrative sanctions are also effective in correcting existing problems, but neither judicial nor administrative remedies which currently exist are effective in preventing water pollution and unsafe conditions from occurring. In fact, many companies, knowing that sanctions will not be imposed when a deficiency is initially discovered, rely on commission field units for safety maintenance inspections. When the field units find a deficiency, the company then conducts repairs. This system contains no incentive for operators or companies to prevent serious pollution or unsafe conditions from occurring.

The surface mining division has a statutory enforcement sanction that can be very effective in ensuring that regulated operators and companies closely monitor possible violations. Although the authority has never been exercised, the division

may impose administrative fines up to \$5,000 per violation. If other commission divisions also had this authority, then field inspections that revealed unsafe or polluting situations could result in a commission order fining the company for allowing the condition to occur, as well as requiring corrective action. To improve the commission's ability to prevent pollution or the existence of unsafe conditions, the oil and gas division, the gas utilities division, and the LP-gas division should have statutory authority to issue administrative fines, subject to commission approval, of up to \$5,000 per violation.

The third area of concern regarding range of sanctions relates to the recently growing problem of oil field theft. Agency figures currently estimate that the worth of stolen oil in Texas exceeds \$100 million a year. Although the agency has requested increased funding for field personnel to deal with the problem, the commission has also experienced some difficulty in achieving successful prosecution of these cases under the ordinary theft statute. Under this penal provision, the commission has the burden of proving that the unidentified oil in the possession of a person is indeed stolen. This is often difficult to prove because the operator from which the oil was stolen does not have knowledge of the theft. One way to improve the commission's enforcement authority is to shift the burden of proof to the person in possession of the oil by making the possession of unidentified oil a felony. In addition, the commission could initiate a mandatory manifest system which could be helpful in documenting the identity of crude oil. By shifting the burden of proof and implementing a manifest system, the commission would have a much stronger enforcement mechanism to control oil field theft. Therefore, the statute should be amended to make the possession of unidentified oil a felony.

A final area of concern is related to two divisions' ability to comply with procedural requirements of the Texas Register and Administrative Procedure Act (APA). All of the commission's divisions conduct show cause hearings for various violations of their rules or statutes. However, before these divisions ever reach the point at which a hearing is necessary, they attempt to obtain compliance through negotiations with the regulated company. Many times these cases require legal decisions concerning the nature of the investigation and the strength of the investigatory findings. The APA, through its ex parte prohibition, requires that the person acting as the hearings examiner not discuss the facts of the case without all parties present. Because most of the commission's divisions there is a legal division staffed with several attorneys, a hearings examiner with no knowledge of

the investigation is available to conduct the show cause hearings. Two divisions, however, do not have separate legal divisions -- the LP-gas division and the surface mining division. Although each of these divisions employs an attorney, the potential for ex parte communications exists. Show cause hearings for these divisions and possibly special situations requiring hearings in other divisions, could best be handled if the commission designated an attorney to work as a hearings examiner-at-large who could sit for cases from any of the divisions. This attorney could part of the staff of the Office of Special Counsel and could handle cases upon request from the divisions, subsequent to approval by the commission.

Rate Setting

The Railroad Commission has jurisdiction over several rate-setting functions. First, the gas utilities division has certain original and appellate jurisdiction over rates charged by natural gas utilities. The transportation division sets rates for motor truck and bus carriers and has general oversight responsibility for rates charged by railroads. Finally, the oil and gas division, while having jurisdiction to establish rates for the transporting and storage of crude petroleum by pipeline common carriers, also has the responsibility to set production allowables for each oil or gas well in Texas.

These rate-setting activities have been reviewed to evaluate the procedures used by the different divisions to set rates. The rate-setting procedures include the applications for rate changes, the formal and informal hearings to set rates, and the steps necessary to appeal a rate decision. In evaluating the rate-setting procedures, the review centered on whether the procedures allowed all persons significantly affected by the established rate to participate in the process, whether the procedures provided a framework that allowed and encouraged full development of the issues, and whether procedures were in compliance with the Texas Register and Administrative Procedure Act.

Many differences exist among the various rate-setting procedures that are used by the Railroad Commission. The most obvious difference is the division of the particular regulated industry for rate-setting purposes. For example, oil and gas well allowables are set independently for each field or well. Gas utility rates, however, are set generally by utility system. Freight rates are set industry-wide according to the type of service provided. In addition to the way the industry is divided, the nature of the industries differ. Gas utilities, transportation and crude oil pipeline carrier industries essentially involve public utilities, and the regulation

is designed to ensure quality, non-discriminatory service at a reasonable price. Oil and gas production allocation, however, is structured to prevent waste of natural resources and to protect correlative rights of mineral owners.

Because these industries are split different ways for rate-setting purposes, an understandable difference also exists in the procedures used to set the rates for each industry.

Gas Utilities. The scope of the gas utilities division's rate-setting authority generally extends to all gas utilities including both the transmission pipelines and the distribution systems, excluding those systems which are municipally owned and located within the city's incorporated boundaries. The transmission pipelines are the natural gas pipelines that gather the gas from various production leases and transport it to industrial users and to distribution systems serving residential consumers. Distribution systems take the gas from transmission pipelines and, through a network of smaller pipelines, deliver the gas to consumers. The gas utilities division's rate-setting jurisdiction is granted under two separate statutes -- the Cox Act (Article 6050, et seq.) and the Public Utility Regulatory Act (Article 1446c). Under this authority, the division has original jurisdiction to set rates for transmission pipelines thereby controlling pipeline-to-pipeline sales and to set "gate rates" which dictate price of gas sold from transmission pipelines to city distribution systems. For distribution systems, municipalities have original jurisdiction over rates and services within their city limits which are provided by a gas utility. The Railroad Commission has original jurisdiction over utility rates and services outside the city limits and in other unincorporated areas. Also, the commission has appellate jurisdiction over rates set by municipalities for systems that are investor-owned. The commission has no rate-setting jurisdiction over distribution systems that are within incorporated boundaries and are owned by that city.

Procedures used by the division to set the rates for the operations within its jurisdiction generally fall into three types of proceedings. First, pipeline-to-pipeline sales are approved by the division in an informal process. Gate sales are more involved and usually required contested hearings conducted by the division. Rates for service outside city limits provided by distribution companies can usually be set in a summary proceeding, however, a few cases may involve a more formal process similar to that used in setting gate rates. The following exhibit provides a listing of the types of rates set, the number of rate cases completed by the division

during the fiscal years 1979 to 1982 and the number of those cases which have taken longer than 150 days to complete.

GAS UTILITY RATE CASES

	1979		1980		1981		1982	
	Filed	Over 150 Days	Filed	Over 150 Days	Filed	Over 150 Days	Filed	Over 150 Days
Distribution Company Rate Cases								
Appeals	20	20	16	13	6	6	1	0
Environs Rule	286	69	332	209 ¹	276	43	174	5
Original Jurisdiction Other than Environs Rule	3	1	6	4	10	9	10	1
Transmission Company Rate Case								
Pipeline to Pipeline	4	3	13	10	20	1	16	0
City Gate Rates	3	3	4	3	1	0	2	0

¹All service charge cases that were suspended for investigation.

A basic procedural principle that applies to all the division's original jurisdiction rate matters is that all rate changes are initiated by the filing of a statement of intent to change rates. The new rates proposed in that statement will go into effect by operation of law unless the commission acts. When necessary, the commission may suspend the proposed rates for up to 120 days pending further investigation of the rate application.

Approval of pipeline-to-pipeline sales is accomplished through a simple verification process. Under the Public Utility Regulatory Act (PURA), the commission is to approve contracts for pipeline sales of natural gas if: 1) neither the utility nor the customer had an unfair advantage in the negotiations; 2) the rates are substantially similar to the charges by other utilities for similar service; and 3) a competitive market exists. Unless there is a question concerning the validity of the pleadings, the division will generally not hold a hearing on the application and will let the rates go into effect by operation of law.

The application for commission approval of city gate rates usually follows a more comprehensive review procedure. In a typical case, the application will be assigned to a hearings examiner, who will then issue notice of hearing and suspend the rates. Dates are then set for the filing of prefiled testimony and for intervention by interested parties. Complex cases may require a pre-hearing conference to narrow the scope of the inquiry to those issues actually in dispute. Next, the hearing is held where evidence is formally introduced and testimony is heard. Unlike the process used by the Public Utility Commission, the division has no presenting staff. Thus, these hearings generally consist of the introduction of the evidence by the utility with the examiner acting as both the decision maker and the fact gatherer. Most cases have little participation by intervening parties who oppose the rate change.

After the hearing is completed, the examiner reviews the record and drafts a proposal for decision. This proposal is reviewed internally within the division and then is sent to the parties and the commission. Parties have 20 days to file written exceptions to the proposal. Another 15 days is then allowed for replies to filed exceptions. Finally, at formal conference, the commission will hear the examiner's presentation and the parties' oral arguments, when allowed by the commission. Once the commission has reached a decision, an order is prepared and signed by the commissioners. This order is then mailed to the parties who have 15 days to file a motion for rehearing. Should the motion be filed and granted, the case would be sent back to the hearings examiner for further action. If the motion is filed and no commission action is taken, the motion is overruled by operation of law after 45 days. Once a party has filed a motion for rehearing and the motion has been overruled, the party is entitled to appeal the commission order to a Travis County district court.

Applications for rate changes filed by utilities serving unincorporated areas are handled by the division through two different procedures depending on the proximity of the service area to an incorporated city or town. When service in the area is provided by a utility system that also serves customers inside an incorporated area, the commission, through an abbreviated process, applies an "environs rule" in establishing the rates. For cases where the "environs rule" is not applicable, the rate case follows the same procedure used in city gate cases.

The "environs rule" basically provides that the commission will set the same gas rates in service areas surrounding incorporated areas as were set by the city

for the incorporated area when the two service areas are served by the same utility. As shown in the previous exhibit, most of the commission's distribution company rate cases are decided through the application of this rule. The procedure for the application of the rule is simple. Once the case is assigned to an examiner, the examiner suspends the rates and waits until the city has acted on the rate change application for service within the city limits. After the city has established rates for city customers, the examiner recommends that the commission adopt the same rates set by the city. Although the city's rate structure is generally adopted, the commission places certain other limitations on the utilities rate structure, such as, a limit on the deduction for lost or unaccounted for gas, service charge limitations, and quality of service standards.

In setting rates for gas utilities, the most important element is cost. The utility is entitled to charge rates that will generate revenues which equal the utility's costs. These costs include both its operating costs and its cost of capital. Operating expenses are relatively easy to determine through the use of actual test year data. Determination of capital costs requires that the company's cost of money be determined and that the total amount of investment in the utility be calculated. Both of these calculations involve extensive analysis. Once the utility's costs have been calculated, a rate design must be structured to collect revenues which are equal to those costs incurred. Each time a utility applies for a rate change, these elements are reconsidered and new rates are set for that utility.

It was noted during the review of the gas utility rate-setting function, that PURA also provides for extensive rate-setting authority over certain telephone, electric, water, and sewer utilities to the Public Utility Commission. This division of state-level authority for utility regulation between the PUC and the Railroad Commission creates a situation in which differing rate-setting methods could be used by the two agencies. As a part of the review, a comparison using the services of an outside consultant was made to determine the extent of these differences. Because of the complexity of the subject and its relevance to more than one agency, the results of this comparison are presented as a separate report.

Transportation. The Railroad Commission's rate-setting authority for ground transportation is limited to intrastate traffic and includes both motor freight services and bus transportation. Under current regulation, three categories of motor freight carriers are controlled--common carriers, specialized motor carriers, and contract carriers. The commission sets rates for both the common carriers and

specialized motor carriers. Contract carriers are not required to file tariffs with the commission and may determine their own rates as long as those rates are not less than the rates set for common carriers providing similar services. Rates are also set for motor bus companies.

The transportation division's procedure for setting these rates is similar for all types of carriers. Rates established by the commission generally apply industry-wide and are set according to the type of service provided. For example, the commission sets a rate for transporting a certain amount of a particular commodity between two points in Texas. Unless a particular carrier gets an exception placed in the tariff because of special circumstances, all carriers providing that service must charge the same price.

If a carrier or shipper desires a rate change, an application requesting such a change must be filed with the commission. In practice, many of these applications are prepared and filed by associations that have been organized to represent carriers who haul certain commodities as well as shippers who ship these commodities. Three types of proceedings are used by the commission to consider these rate applications.

An applicant who files a rate change application may request that the application be handled by an expedited procedure. Applications can only be processed in an expedited fashion when sufficient evidence to justify the rate change has been filed with the application and when no protest to the rate change has been filed.

Notice of applications received are published twice monthly in the division's Notice of Hearing Bulletin. Any person with a justiciable interest has standing to protest the rate change. If no protest is filed, the application will be handled as an expedited matter or will be placed on the uncontested docket. Expedited cases are decided without hearing. Uncontested cases are set for hearing and notice is again published. At the hearing, the applicant presents testimony and evidence to support the rate change. The examiner, after receiving the testimony and evidence, makes a recommendation to the commission. If the commission approves the rate change, the new rate is published in a tariff which is distributed to all shippers and carriers.

Should a motion be filed to protest a proposed rate change, the case becomes contested. The transportation division's procedures for handling a contested case are much the same as those used by the gas utilities division. As with the gas

utilities division, the transportation division has no presenting staff to develop the record and depends upon the examiner to ensure that all issues are examined.

In setting rates to be charged by carrier, financial data for a particular company is not the controlling factor. The division attempts to set rates, based on data from several representative companies, which would give a fair return for an average company operating with average efficiency during the test year in question. To accomplish this, the division basically sets the average company's operating expenses, excluding taxes and interest, equal to 90 percent of that average company's rate revenues.

The commission also has oversight responsibility for rates charged by railroads. Although the commission previously had rate-setting authority for railroads, federal legislation recently preempted the commission's jurisdiction in this area. Since 1980, shippers or competing railroads may file challenges to rate established by a railroad company. The commission's power to review such a rate is determined by a complex set of federal guidelines. The key elements are railroad costs and their relationship with revenue. If it is proven that the rate charged is above the jurisdictional threshold and that the rail carrier has market dominance, then the commission can set a reasonable rate.

Oil and Gas. Two rate-setting functions are currently performed in the oil and gas division. First, the commission has authority to set rates for the transportation and storage of crude petroleum by common carrier pipelines. Common carrier pipelines are those that perform the transportation or storage service for hire. Rate regulation of these carrier pipelines by the commission has been limited to requiring that the carriers file tariffs with the oil and gas division and that the rates charged by the carriers not be discriminatory.

The second rate-setting function performed by the division is the setting of oil and gas production allowables. The Railroad Commission has the responsibility to set allowables for oil and gas wells so that waste of natural resources will be prevented, correlative rights will be protected, and, where possible, production for oil and gas will reflect demand. The production allocation system in Texas is composed of two elements -- a statewide allowable based on market demand and the maximum rate a particular well can produce without causing waste.

Each month a statewide hearing is held by the commission to set the statewide allowables for oil and gas wells in Texas. The purpose of this meeting is to match market demand with production. Market demand is determined through

the use of nominations provided by the lease operators forecasting the amount of oil or gas those operators expect to sell during a particular month. This market demand matching function is especially important for gas wells because natural gas cannot be stored above ground. For oil production, the commission sets a percent factor based on market demand which is applied to an individual well's production, thereby arriving at the allowed production for that well during the upcoming month. Except in the East Texas field, this percent for oil production has been set at 100 percent of each field's maximum production rate for the past ten years. Natural gas allowables are generally set by gas field, depending on the field's pro rata share of the market demand. Once these statewide allowables are set, the information is used by the division's production allocation section to compute and mail monthly allowables to individual oil and gas operators.

In addition to the market demand factor, physical characteristics of the individual wells and fields also have a significant impact on setting allowables. Each oil and gas field, as provided in its field rules, has a maximum allowable for that field. This field maximum is designed to provide efficient drainage of reservoirs without waste. However, a well is never assigned an allowable in excess of its annually tested production capability. To avoid waste, a situation in a particular field might also require a minimum production rate. As a rule, most oil wells are marginal wells operating wide open and are limited by their production capability rather than by a commission-imposed allowable.

Gas wells, however, are different. Gas allowables are assigned by fields and all wells generally receive the same allowable. Certain gas wells may also require a minimum production rate to avoid waste. To provide the flexibility necessary for different operators to meet contractual obligations for gas sales, while also protecting other operators from being drained by neighboring wells, a balancing period system is in effect. Although the description is an over simplification, the system essentially allows an operator to over produce in one period if that operator underproduces by the same amount during the next period.

The review of the agency's rate-setting procedures indicated that standing to participate in rate proceedings is generally appropriate and that procedures for all divisions are generally in compliance with the APA. However, several areas were identified during the review that appear to either limit the full development of the issues in cases under consideration or affect the efficiency of the process.

The first concern relates to the system used in gas utility cases to examine the issues and develop the record upon which all of the examiner's findings must be based. Because the division does not have staff to prepare and present testimony at division rate hearings and because consumer participation generally lacks the sophistication to identify key issues, the responsibility to ensure full development of issues is relegated to the hearings examiner reviewing the case. This places the hearings examiner in a dual role of being both the decision maker and the fact gatherer. Considerable expertise is required for an examiner to successfully perform such a role. In fact, the division has experienced problems in the past in developing a record that would support on appeal, the examiner's findings of fact and conclusions of law.

A related concern deals with the commission's policies on time deadlines for decisions. PURA requires that the commission make a final determination on rate applications within 150 days of the date the rates would have gone into effect had the commission not suspended them. This time deadline is conditioned by PURA to allow for the continuation of a hearing in progress. The Public Utility Commission has taken a strict line on this requirement by not allowing cases to exceed the 150-day mark. The Railroad Commission interprets the rule more broadly and allows the cases to exceed the deadline by beginning a hearing and suspending the proceedings as necessary. Although the difference in approach probably results from practical problems such as staff resources, rates that are put into effect after a long delay may not reflect the current condition of the utility, especially since the rates are based on a prior test year.

While both of these problems identified are mitigated by the significant reduction in the number of gas utility cases currently being filed with the commission, the agency is aware of the difficulties and has taken some steps toward a solution.

A final concern relates to the method used to set oil well allowables. Currently, each oil well in the state has a production allowable set each month. Considerable staff time, computer expense, and postage expense are required in this process. During the past five to ten years, some significant changes have taken place in the oil industry that affect the allowable system for oil wells. First, demand exceeds production. Although fluctuations exist in oil reserves due to economic conditions, drilling activity, and consumption variances, the overall trend indicates that demand will continue to exceed production. Thus, it is unlikely the

100 percent statewide allowable which has been in effect for 10 years will be reduced in the near future. Second, most oil wells producing today are marginal wells that produce less than 15 barrels of oil per day. These wells are not capable of production which even approaches the maximum allowable for their fields. Therefore, these wells are generally assigned an allowable based on their annual production test. Normally, this allowable is adjusted downward each year as the test shows declining capacity to produce. Rarely does a well's production increase dramatically.

The underlying purpose in setting allowables is to control production. However, the current situation results in a system where production from most oil wells does not need to be controlled and the allowables are basically set to equal production. The agency is currently investigating the possibility of simplifying the allowable process.

Technical Assistance

Technical assistance functions are performed in four of the commission's divisions. The oil and gas division prepares and publishes technical reports and studies related to the production of oil and gas, conducts seminars on various regulatory operations, and maintains a mapping system which identifies locations of oil and gas wells and pipelines in Texas. Information relating to natural gas industry operations is compiled and analyzed by the gas utilities division. In the area of rail planning, the transportation division identifies rail lines eligible for rehabilitation assistance and provides other governmental agencies with information regarding railroad tracks and installations. The LP-gas division conducts seminars concerning the safe handling of LP-gas and provides telephone and on-the-scene assistance when severe LP-gas accidents occur.

To evaluate the effectiveness of these services, the review focused on whether the method of deciding who should receive the service was fair and unbiased, whether the method of delivery of the service was efficient, and whether the service met the needs of the recipients.

All of the technical assistance functions currently performed by the oil and gas division are related to providing information about the industry or the regulation of the industry. First, through its extensive regulatory reporting requirements, the division accumulates and distributes oil and gas resource data. Fourteen different subscriptions to reports published by the division are available at cost. In addition, the division has prepared and published more than 15 studies

related to oil and gas regulation on topics such as enhanced recovery and oil and gas ratio calculation. These subscriptions and reports are available upon request from the division's Austin office. Second, seminars are conducted by the division on different regulatory aspects of the industry. Currently, seminars are being offered on oil and gas report preparation, the Natural Gas Policy Act, and underground injection control. These seminars are conducted by division personnel in various locations around the state to educate the industry on commission regulation and to reduce errors on reports submitted by operators. Finally, the division maintains a mapping system used to locate oil and gas wells and pipelines around the state. The pipelines are located on one set of maps, and oil and gas wells are spotted on a set of 400 county maps and 1200 field maps. Aside from the geographical location of the well, additional information is also recorded, such as the name of the operator, lease name, field name, producing reservoir, and well status. In fiscal year 1982, an estimated 90,000 spottings were hand recorded on these maps. The information found on the maps is used both to access the central record files when only the location of a well is known and to locate areas of possible new production by the smaller, independent producers.

The gas utilities division compiles historical and numerical data relating to natural gas industry operations. With this information, the division acts as a central source of reference materials and responds to requests for information and interpretation of natural gas matters. Through proper arrangement and analysis of the compiled information, the division also evaluates the impact or need for current and proposed regulatory practices and procedures. In fiscal year 1982, an estimated 2,000 inquiries were processed by the division.

Technical assistance operations in the transportation division are related to rail planning activities and include identifying rail lines eligible for federal rehabilitation assistance and providing information concerning rail matters to state and local governmental agencies. In order to select light density branch rail lines eligible to receive federal rehabilitation assistance, the division monitors about 5,000 miles of track potentially subject to abandonment because of light traffic density. After conducting a detailed economic analysis, the division selects rail rehabilitation projects to receive federal assistance based upon economic benefits that would accrue to regional and local economies. Economic benefits over a specific payback period must exceed costs of rehabilitation for a project to be eligible for federal grants. Since the program's origin in 1976, two projects have

been funded, with an estimated \$1 million available for rehabilitation projects in fiscal year 1983. A second service provided by the division involves the compilation and organization of data detailing the operational and financial performance of railroads. As a railroad information source, the division assists city, county, and state governments in responding to inquiries concerning railroads in Texas.

In activities performed by the LP-gas division, two technical assistance functions that relate to public safety and accident prevention and control are performed. First, the division conducts seminars on the handling of LP-gas for DPS troopers, policemen, firemen, and other emergency personnel. Also, seminars related to the handling and regulation of LP-gas are available for LP-gas license applicants and their employees. During fiscal year 1982, division personnel were instructors at an estimated 171 of these safety clinics. Second, the division maintains readiness to assist when severe LP-gas accidents occur. A "hot line" service is provided from Austin for telephone assistance, and inspectors are sent to accident scenes, if necessary, to assist police and fire departments in such emergencies. Inspectors based in 13 locations over the state are directed to emergencies from the Austin office as necessary. Over the past five years, the division has responded to 20 major LP-gas accidents.

The review indicated that the methods used to select the recipients of the services provided by the various divisions were generally equitable, and that the services offered were generally of value to the recipients. One concern, however, was identified which hampered the efficient delivery of these services.

Currently, the mapping function in the oil and gas division is a manual process. The spotting and the information placed on the map regarding new wells, completions, and pluggings are recorded by hand. Two types of maps are used in this process. County maps which are purchased from a private source are generally used as the primary spotting document. However, in fields where a great deal of drilling has occurred, a special field map is drawn by division staff to allow for legible entries. These maps are used heavily by the oil industry, especially independent operators, in the planning of future drilling projects and are used by the commission to access central files on oil and gas wells. The effectiveness of these maps in assisting exploration and indexing records is dependent upon their being legible, accessible, and up-to-date. The division, however, has experienced several problems which limit the effectiveness of this mapping system. First,

according to Attorney General's Opinion MW-307, the copyrighted county maps may not be legally copied, thereby limiting their accessibility to persons who are able to use the original maps in Austin. Also, the congested maps become hard to read and wear out from heavy use. Finally, the division is currently experiencing a backlog of approximately 15,000 spottings due to the drilling boom experienced last year, thereby hindering the commission's ability to maintain current maps.

To address these problems, the commission has requested funds in fiscal year 1984 to purchase a map computer and add the personnel necessary to load the information into the computer. Commission estimates indicate that the additional costs incurred by adding the computer would be recovered in seven years through the sale of map copies. Should new wells be completed as a result of the new mapping system, additional benefits would accrue to the state from the production taxes imposed. Although the conversion to the new system would take years to accomplish, such a computer mapping system, if funded, would substantially increase the effectiveness of the division's mapping effort.

Research and Development

Although the Railroad Commission does not perform any true research activities through operations staffed by commission employees, funding for the Texas Petroleum Research Committee has been provided in the commission's appropriation since 1952. While there is no specific statutory authority mandating the committee's existence, it was established under a joint resolution adopted in 1948 by the Railroad Commission, the directors of Texas A&M University, and the regents of The University of Texas at Austin. According to this resolution, the committee was created for the purpose of developing a petroleum engineering research program with primary emphasis on enhanced recovery of oil and gas. In 1974, the resolution was amended to include research in other primary energy natural resource reserves. The committee has interpreted this mandate to include the following responsibilities: 1) conducting research to provide information leading to enhanced recovery of oil and gas; 2) developing criteria related to improved methods of drilling and production regulation for the Railroad Commission; and 3) considering environmental factors related to drilling and production of oil and gas which are of concern to the commission and landowners. In addition, the committee is responsible for the distribution of information on these subjects through conferences and publications.

The five-member committee is composed of a railroad commissioner designated by the chairman of the Railroad Commission, and the chairman and a faculty member of the petroleum engineering department of both The University of Texas at Austin and Texas A&M University. A steering committee consisting of the Railroad Commission chairman and the presidents of the two universities appoints the committee's director. Functions of the committee are carried out through research at both universities with faculty members in petroleum engineering departments supervising projects conducted by graduate students. Research has been performed in a variety of areas such as secondary and tertiary recovery of oil, hydrocarbon phase behavior, gas well measurements, and well stimulation through fracturing.

In evaluating the performance of this research function, the review focused on whether the selection process used to choose research projects treats all areas of responsibility equally and whether appropriate safeguards are in place to protect any interest the state might have in research products.

The results of the review indicated that research projects conducted by the committee generally have been concerned with developing and analyzing enhanced recovery techniques for oil and gas. Recently, however, several projects have focused on lignite gasification and surface mining techniques. Although some of these projects also may have addressed regulatory and pollution aspects, the primary emphasis of the research has been to provide industry information regarding enhanced recovery techniques. Since September 1979, the committee has completed 15 different projects. Ten of these projects have dealt with oil and gas recovery and the remainder have centered on lignite or uranium mining. No project has been specifically designed to address regulatory or pollution issues.

With regard to safeguards to protect the state's interest in research developments, the committee has established a policy which assigns to the general public any patents obtained as a result of research work performed. Since fiscal year 1978, the General Appropriations Act has required that the expenditure of appropriated funds for research is contingent upon the agency adopting and filing with the Legislative Budget Board a policy which clearly establishes and protects the property rights of the state with regard to any possible patentable research result. At the time of the review, the committee was unaware of the filing requirement but has since filed its policy with the LBB. Because the committee has never applied for a patent to protect any research development, an examina-

tion of the committee's implementation of the policy was not performed. However, the review did indicate that the committee's current practice of publishing research studies does benefit the state. These studies contain information useful to industry in recovering oil and gas that otherwise would not be produced. Increased production benefits the state both from the severance tax collected on produced oil and gas and from the contribution to the state's overall economic health.

Well Plugging and Reclamation Funding

A final function performed by the Railroad Commission is related to the correction or rehabilitation of conditions which exist currently or threaten to pollute fresh water supplies above or below the ground. The burden of correcting these conditions falls on the commission only when a person or company legally responsible for the condition does not exist or cannot be located. These corrective projects are conducted by the commission through activities in two divisions. When ordered by the commission, the oil and gas division has the responsibility to plug non-producing oil and gas wells after efforts have failed to locate a person who is both solvent and legally responsible for the well. Reclamation of coal mine sites which were abandoned prior to the enactment of legislation requiring sites to be reclaimed is supervised by the surface mining division.

The Railroad Commission is statutorily authorized to plug or replug a well if after hearing a determination is made that the abandoned well is causing or is likely to cause pollution of fresh water and that a solvent, responsible operator or landowner cannot be located. To perform this plugging responsibility, two sections of the oil and gas division work together. The division's legal section conducts a hearing and attempts to locate responsible parties while the field operations section obtains bids from private companies to perform the plugging operations. In addition to a general revenue appropriation of approximately \$330,000 for fiscal year 1983, funds for plugging operations may be derived from contributions or through legal action after the well has been plugged by the commission. In addition to well pluggings, the general revenue appropriation also provides funds for cleaning up oil spills and saltwater spills where a responsible party cannot be identified. During fiscal year 1981, 50 wells were plugged and one oil spill was cleaned up.

The Railroad Commission is statutorily designated as the state agency to represent Texas in any state participation of projects funded by the federal

Abandoned Mines Reclamation Fund established by federal legislation in 1977. This fund is supported by a federal tax imposed on each ton of coal or lignite mined throughout the country. Although the commission has not participated in the reclamation of a pre-Act, abandoned coal mine since the Texas program was approved, the commission's responsibilities are to design the project, prioritize the eligible sites, and contract with private companies to perform the work.

EVALUATION OF OTHER SUNSET CRITERIA

The review of the agency's efforts to comply with overall state policies concerning the manner in which the public is able to participate in the decisions of the agency and whether the agency is fair and impartial in dealing with its employees and the general public is based on criteria contained in the Sunset Act.

The analysis made under these criteria is intended to give answers to the following questions:

1. Does the agency have and use reasonable procedures to inform the public of its activities?
2. Has the agency complied with applicable requirements of both state and federal law concerning equal employment and the rights and privacy of individuals?
3. Has the agency and its officers complied with the regulations regarding conflict of interest?
4. Has the agency complied with the provisions of the Open Meetings and Open Records Act?

EVALUATION OF OTHER SUNSET CRITERIA

The material presented in this section evaluates the agency's efforts to comply with the general state policies developed to ensure: 1) the awareness and understanding necessary to have effective participation by all persons affected by the activities of the agency; and 2) that agency personnel are fair and impartial in their dealings with persons affected by the agency and that the agency deals with its employees in a fair and impartial manner.

Open Meetings/Open Records

The review of this area indicated that the commission has generally complied with the provisions of the Open Meetings Act and the Open Records Act. Notice requirements for commission meetings, hearings, and rule-making activities generally conform to standards outlined in the Open Meetings Act. While almost all of the information maintained by the Railroad Commission is considered public, certain information relating to personnel files, transportation carrier contracts, and surface mining exploration is withheld from public disclosure in accordance with the Open Records Act. Two concerns were identified with regard to the accessibility and security of certain commission records.

The Railroad Commission generates and maintains a large volume of technical information about various aspects of the industries regulated. In many cases, access to this information is important both to those who are involved in the industry itself and to those who monitor industry activity as public advocates. The system for filing and indexing this information varies within the commission according to the needs and staffing of the different divisions. Each division has developed its own policy regarding the procedure through which documents in its files may be inspected and copied. Problems associated with these different policies include insufficient staff to respond to the requests for information and complicated filing systems which leave the inexperienced information seeker unable to locate the desired information quickly. In fact, many professional consultants operate full-time businesses by locating, copying, and selling information in commission files. Certain district offices and the central office in the oil and gas division have had to resort to referring persons with large information requests to these private consultants. While the numerous, ongoing regulatory responsibilities of the commission, coupled with limited available resources, prevent its divisions from attaching a higher priority to the information provision

aspect of their operation, several improvements could be made to increase the accessibility of division files. First, written policies concerning the copying of documents should be developed, including the designation of a person to whom requests for copies of division documents can be forwarded. Second, written descriptions of the types of information contained in division files, the organization of the information within the file, and a method to access the file should be developed by each division. Both the copying policy and the information location procedures could be placed in a single pamphlet and made available to the public.

A second concern is related to the security of certain commission records. The records retention section of the oil and gas division currently has a procedure whereby certain authorized consulting firms may sign out original files and micro-film containing information about various oil and gas wells around the state. The origin of the commission's signout procedure is historical and was developed before current duplicating processes became available. Because agency reproduction capabilities are not adequate to provide the service, removal of records from agency custody is currently permitted by the commission to comply with Open Records Act provisions requiring agencies to provide requested document copies. Once checked out, these files must be returned to the commission by 3:30 p.m. the same day. Consulting firms may apply by letter to the division's program management director for this authorization which, once granted, is subject to revocation. In general, state agencies comply with the custodial requirements of the Open Records Act which direct them to produce information for inspection or duplication and to preserve and care for agency records by allowing the public to inspect desired documents and by furnishing requested copies. While the commission's current policy for removal of original records does enhance the public availability of these documents, the care and security of such invaluable records cannot be guaranteed by the commission. In fact, several instances have been documented where records have been lost or returned late. In order to protect the divisions records from loss or alteration, the commission should discontinue the practice of permitting the removal of original records from the agency's custody and adopt procedures to respond to requests for document reproduction as efficiently and fairly as possible until increased reproduction facilities can be acquired.

EEOC/Privacy

A review was made to determine the extent of compliance with applicable provisions of both state and federal statutes concerning affirmative action and the rights and privacy of individual employees. The commission is operating under a current affirmative action plan and an established formal grievance procedure for employees. Quarterly and annual affirmative action reports and listings of current job openings are sent to the Governor's Office of Equal Employment Opportunity. Job openings are also sent to the Texas Employment Commission. The results of the review indicated that the commission is in compliance with appropriate state and federal statutes.

Public Participation

The commission encourages public participation and informs the public of its activities primarily through the statewide election of its commissioners, through required newspaper notices for certain licenses and rate changes, and through extensive commission publications and seminars. Commission members are state-wide elected officials. The selection of these commissioners occurs in general elections allowing all qualified voters in the state to participate in the evaluation of candidate's qualifications. Newspaper public notices of varying duration are mandatory elements of several commission regulatory processes, including the granting of exceptions to oil and gas rules, the permitting of an injection or disposal well, the consideration of a gas utility's rate change, and the granting of a permit to surface mine coal or uranium. These notices provide those persons who are affected or interested in the determinations made through these regulatory processes an opportunity to participate in hearings.

The commission offers a wide range of publications to the public or industry at cost. Topics covered by these publications are generally related to regulations and industry data associated with each of the commission's five regulatory divisions. In addition, the commission conducts a variety of seminars and conferences around the state relating to safety, changes in regulations, and industry reporting responsibilities.

Although the commission has encouraged public participation in several ways, public participation at commission proceedings has been limited. Industry-related representatives, who are associated with companies or individuals regulated by the commission have been the major participants. One area where this limited public participation is especially visible is in the rate-setting hearings for gas utilities. In

this area, the commission's order has a direct effect on all customers served by that utility. While notice to the public and the opportunity to participate in the rate hearing are currently part of the commission process, consumer participation in the sometimes long and complex hearings is often limited by the availability of resources to pay for appropriate representation.

Another area where limited public participation has occurred is in the hearings held to protest the granting of certain permits and certificates issued by the commission. Among the permits and certificates issued by the commission under a procedure that allows certain persons to protest the issuance, three types of permits offer a process whereby the general public would be able to participate in the hearing. These permits are in the areas of surface mining, transportation and underground injection wells. Surface mining and injection well procedures were adopted as a result of federal mandates and guidelines. Since the rules regarding injection wells have only been in effect since early 1982, the degree of public participation that will finally be realized is difficult to estimate. None of the surface mining permits issued in fiscal year 1982 involved a protest by a public participant.

The commission also has responsibility for public participation under the Federal Public Utility Regulatory Policies Act of 1978 (PURPA). PURPA was designed to guide state regulatory agencies in designing rates which promote efficient use of energy and utility facilities and resources. The Act requires the agency to evaluate the various standards and criteria used in rate decisions and to provide input into their determinations from all interested parties.

In compliance with the federal act, the agency has held hearings on certain aspects related to its review of gas utilities including termination of service standards and the inclusion of advertising expenses in a utility's rate base. As a result, the standards for inclusion of advertising expenditures in the allowable expenses of a gas utility were modified, however, no action was taken on termination of service standards.

Conflict of Interest

The review showed that the commission has established adequate procedures for making commission members and employees aware of their responsibilities under conflict-of-interest statutes. Commission members have filed the appropriate financial statements with the Secretary of State. New employees are provided an employee's handbook which contains information concerning applicable

conflict-of-interest statutes. Although no written guidelines regarding association activities are in place, employees are informally directed not to participate in activities of associations related to industries regulated by the commission. While the agency's procedures are adequate, it would be more appropriate if the agency had a statutory responsibility to notify new employees of conflict-of-interest requirements. To ensure that such a notification occurs, the statute should be amended to require the agency to provide and document notice of conflict-of-interest constraints to new agency personnel.

**NEED TO CONTINUE AGENCY FUNCTIONS
AND
ALTERNATIVES**

The analysis of the need to continue the functions of the agency and whether there are practical alternatives to either the functions or the organizational structure are based on criteria contained in the Sunset Act.

The analysis of need is directed toward the answers to the following questions:

1. Do the conditions which required state action still exist and are they serious enough to call for continued action on the part of the state?
2. Is the current organizational structure the only way to perform the functions?

The analysis of alternatives is directed toward the answers to the following questions:

1. Are there other suitable ways to perform the functions which are less restrictive or which can deliver the same type of service?
2. Are there other practical organizational approaches available through consolidation or reorganization?

NEED

The analysis of need and alternatives is divided into: 1) a general discussion of whether there is a continuing need for the functions performed and the organizational setting used to perform the function; and 2) a specific discussion of practical alternatives to the present method of performing the function or the present organizational structure.

Functions and Agency

The primary functions of the Railroad Commission relate to the regulation of five different areas of Texas industry. These areas are the oil and gas industry, natural gas utilities, the motor freight and motor bus transportation network, LP-gas commercial operations, and lignite and uranium surface mining operations. The review examined each of these areas separately to determine if continued regulation is necessary.

Commission regulation of the oil and gas industry is designed to closely control the drilling, production, and transportation of oil and gas in Texas. The need for this control has been and continues to be connected to the protection of ground and surface water, the protection of the general public from hazardous conditions, the conservation of natural resources, and the equitable production of oil and gas among operators. In addition, federal legislation requires the control of injection and disposal well operations to protect fresh ground water.

Since the 1920s, the commission has been involved in the regulation of natural gas utilities. Recently, the intensity of the regulation has increased, largely due to the passage of the Public Utility Regulatory Act and the federal Pipeline Safety Act. Regulation of gas utilities is structured to ensure a continuous supply of gas at a reasonable price and to prevent unsafe conditions resulting from poorly maintained pipelines and distribution systems. As a utility, price and service aspects of the industry continue to need regulation. Also, because of the explosive nature of the product transported and because of the existing federal requirements, pipeline safety should continue to be regulated.

Although the commission has been regulating railroads since its creation in 1891, the trucking industry did not become regulated until 1929. Regulation was imposed to address the unstable nature of the industry and to prevent discriminatory practices. Currently, the commission regulates both the rates charged and the service quality. Although considerable disagreement has recently surfaced con-

cerning the extent of regulation necessary to ensure a quality transportation system in Texas, some regulatory control over the industry is still necessary.

The regulation of LP-gas handling operations in Texas is imposed through the control of the companies that store and transport LP-gas commercially and the inspection of public facilities where LP-gas is used. Propane and butane are very dangerous substances because they are extremely explosive and because they are heavier than air. This combination allows LP-gas to collect rather than quickly dissipate as does lighter-than-air natural gas. Additionally, Texas, as a state with a large rural population, has experienced a wide spread use of LP-gas. To avoid potentially hazardous conditions that endanger public safety, a need for LP-gas regulation continues to exist.

Regulation of surface mining operations by the commission was begun in 1975. Since that time, federal legislation was enacted which required coal surface mining operations to be regulated either by the state or the federal government. Surface mining operations present potential pollution problems caused by runoff from mined areas and can destroy the usefulness of the mined land if not properly reclaimed. Should Texas discontinue regulation of lignite operations, the federal government would have jurisdiction to oversee the mining activities. Since Texas should maintain control over its own natural resources, where possible, and since uncontrolled mining operations threaten surrounding fresh-water supplies, a continued need exists to regulate surface mining operations.

ALTERNATIVES

Agency Reorganization

The organizational structure of the Railroad Commission's regulatory operations basically consists of five separate divisions conducting their activities independently of each other, yet reporting to the same commission. While many different organizational structures are used in other states to accomplish similar types of regulation, the review concluded that no substantial benefits would be gained by a general reorganization of the commission.

Several areas were identified, however, where possible benefits could be gained from consolidation or transfer of commission functions. The first area identified deals with the Texas Petroleum Research Committee (TPRC). As explained in the Research and Development section of this report, the research committee has generally been concerned with developing and analyzing enhanced recovery techniques for oil and gas. The committee has also conducted a few research projects related to lignite and uranium mining. A state agency that has related responsibilities is the Texas Energy and Natural Resources Advisory Council (TENRAC). Among other functions, TENRAC is responsible for developing energy and natural resources policies for the state, and for studying problems involving state agencies' permitting requirements related to energy and natural resources. In addition, much of the energy research performed under contracts awarded by TENRAC is now conducted at state universities.

Although TPRC is funded, in part, through the Railroad Commission and a commissioner serves on the committee, the committee operates as an independent activity which is not controlled by the Railroad Commission. Because much of the research performed by the committee is related to responsibilities exercised by TENRAC and because coordination of the similar efforts could improve the overall effectiveness of natural resources and energy research, the transfer of the Texas Petroleum Research Committee to TENRAC as a statutory advisory committee could improve coordination of research products.

If, however, the legislature perceives a need for an advisory committee which is attached to the Railroad Commission, the committee's authorization and membership could be strengthened. Currently, the committee is established according to a resolution adopted by the Railroad Commission, The University of

Texas at Austin, and Texas A&M University. By making TPRC a statutory advisory committee directly responsible to the Railroad Commission, the commission would have greater control over the projects undertaken. Also, the committee membership could be strengthened through the addition of public members. Public members would provide a useful viewpoint to the committee and could assist the committee in identifying areas where research would be in the public interest. The current five-member committee consists of two faculty members from each university and a railroad commissioner. The existing structure could be enhanced by increasing the membership to seven through the addition of two public members.

Another area where a transfer of functions could yield possible benefits concerns the collection of the gas utilities gross receipts tax. Presently, the commission's gas utilities division collects this tax from the 258 natural gas pipeline companies which pay the tax and also audits the companies regularly. However, the state agency that has general responsibility for tax collection in Texas is the State Comptroller's Office. The comptroller currently collects the oil and gas regulation tax for the commission. In addition, during the 67th legislative session, responsibility for the collection of a similar gross receipts tax imposed on utilities regulated by the Public Utility Commission as well as the audit function related to the tax collection was transferred from the PUC to the comptroller's office. The fiscal note attached to the legislation effecting this change showed no fiscal implication for the transfer of collection and audit functions. By transferring the tax collection responsibility for the gas utilities gross receipts tax and the associated auditing responsibility from the Railroad Commission to the comptroller's office, the collection of the tax and the audit could be placed with the state agency that has general responsibility for tax collection in Texas.

Change in Method of Regulation

While the scope and method of regulation appear appropriate to accomplish regulatory objectives, the methods used by the commission to set allowables for oil wells could be simplified. As explained in the Rate Setting section of the report, the current system results in an allowable set equal to production for a great many of the oil wells in Texas. Although certain oil wells and fields do require a monthly allowable in order to control production properly, most of the producing wells in Texas are marginal wells with limited production and do not need production controlled. A system which would identify these marginal or light production wells, place them in a special category, and then set the wells' allowables equal to

their production could simplify the process. The implementation of such a simplified process could reduce state expenditures in the areas of staff, data processing, and postage expense.

Along with changing the method for setting the allowables for certain wells, the agency could, as an alternative approach, simplify the allowable process by changing the frequency that the production rates are set. A system to set allowables quarterly, for example, could reduce the workload of the agency without hampering its regulatory efforts. Interviews with agency personnel indicated that the allowable process is being investigated for simplification where possible.

ACROSS-THE-BOARD RECOMMENDATIONS

RAILROAD COMMISSION

Applied	Modified	Not Applied	Across-the-Board Recommendations
A. ADMINISTRATION			
X		*	1. Require public membership on boards and commissions.
X			2. Require specific provisions relating to conflicts of interest.
			3. A person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
		X	4. Appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
		X	5. Per diem to be set by legislative appropriation.
		X	6. Specification of grounds for removal of a board member.
		X	7. Board members shall attend at least one-half of the agency board meetings or it may be grounds for removal from the board.
X			8. The agency shall comply with the Open Meetings Act, and the Administrative Procedure and Texas Register Act.
		*	9. The board shall make annual written reports to the Governor and the legislature accounting for all receipts and disbursements made under its statute.
X			10. Require the board to establish skill oriented career ladders.
X			11. Require a system of merit pay based on documented employee performance.
X			12. The state auditor shall audit the financial transactions of the board during each fiscal period.
X			13. Provide for notification and information to the public concerning board activities.
		*	14. Require the legislative review of agency expenditures through the appropriation process.

*Already in statute or required.

Railroad Commission
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING
X			1. Require standard time frames for licensees who are delinquent in renewal of licenses.
X			2. A person taking an examination shall be notified of the results of the examination within a reasonable time of the testing date.
X			3. Provide an analysis, on request, to individuals failing the examination.
X			4. (a) Authorize agencies to set fees.
X			(b) Authorize agencies to set fees up to a certain limit.
X			5. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
X			6. (a) Provide for licensing by endorsement rather than reciprocity.
X			(b) Provide for licensing by reciprocity rather than endorsement.
X			7. Authorize the staggered renewal of licenses.
			C. ENFORCEMENT
X			1. Authorize agencies to use a full range of penalties.
X			2. Require files to be maintained on complaints.
X			3. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
X			4. Specification of board hearing requirements.
			D. PRACTICE
X			1. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
X			2. The board shall adopt a system of voluntary continuing education.

OTHER ISSUES

During the review of an agency under sunset, various issues were identified that related to significant changes in the current methods of regulation or service delivery. Most of these issues have been the subject of continuing debate with no clear resolution on either side.

Arguments for and against these issues, as presented by various parties contacted during the review, are briefly summarized. For the purposes of the sunset report, these issues are set out for information only and do not reflect a position taken by the sunset review.

OTHER ISSUES

The review identified several issues for which effective arguments have developed on both sides of the issue. These issues are discussed below along with an explanation of the varying viewpoints.

1. Establish an Executive Director for the Agency

Currently, the administration of the agency is carried out by personnel under the direct supervision of the three commissioners. The commissioners make decisions on most routine administrative matters in weekly conferences with division directors. An argument can be made that the position of executive director with responsibility for these administrative activities should be created in the agency . Creation of the position would centralize responsibility for day-to-day administration and relieve commissioners of many details in managing the agency, thus allowing them to focus on agency policy decisions. Plural administration is inconsistent with a fundamental principle of administration which requires unity of command to provide clear lines of responsibility and authority. Almost without exception, other state agencies, even those headed by full-time commissioners, are directed by a single administrator. Because any meeting between two commissioners where commission business is discussed must first be preceded by the posting of notice under the Open Meetings Act, routine decisions may often be delayed.

On the other side of the issue is the fact that the commissioners are charged directly by statute with responsibility for managing the Railroad Commission. Direct contact with the day-to-day operations enables the commissioners to be familiar with the agency's functions and to develop solutions as problems arise. The commissioners have assistants to aid them in administration, as well as the office of special counsel which provides substantial assistance to the commissioners. Division directors meet monthly with representatives of the commissioner's offices to plan and discuss division activities. The commission has been able to provide adequate administration of the agency through the use of these various methods. Also, the commissioners have traditionally been responsible for budgeting, personnel, purchasing and related administrative functions and should continue to be in direct contact with operations of the agency as part of this management responsibility.

2. Transfer Underground Injection Control to the Department of Water Resources

Currently, the Railroad Commission has responsibility for protection of water supplies from pollution associated with oil and gas activities. This is accomplished through the issuance of permits for injection and disposal wells and underground hydrocarbon storage. The commission staff inspects wells and underground hydrocarbon storage facilities to ensure compliance with statutes and regulations and invokes sanctions if violations occur. The argument can be made that this responsibility should be transferred to the Department of Water Resources (TDWR). TDWR is the state agency with primary responsibility for protection of water supplies in the state. Activities performed by TDWR in this area include issuing permits for injection and disposal wells for industrial and municipal waste and for extraction of minerals and injection of fluids not associated with oil and gas activities. In performing these functions, the department has in place the staff and procedures with the potential capability of performing similar functions for oil and gas activities.

Because water protection is TDWR's primary area of responsibility, proponents of the transfer argue that TDWR would provide better protection of water supplies affected by oil and gas operations. The commission, on the other hand, is primarily concerned with the protection of oil and gas resources and groundwater protection is of secondary importance.

On the other side of the issue is the fact that the commission has trained staff and operating procedures in place to regulate oil field disposal and injection wells and has had many years of experience in this area of regulation. Injection wells used for enhanced recovery operations and disposal wells used to store saltwater and other fluids resulting from oil and gas activities are essential elements of oil and gas operations and are currently administered by the commission. More than 90 percent of these wells are operated by commission-regulated oil companies. Duplication of effort could occur if the Department of Water Resources issued all permits for injection and disposal wells and underground storage of hydrocarbons. TDWR inspectors, carrying out inspections for this function related to oil and gas activities, would be inspecting the same operations as commission field technicians performing inspections of oil and gas leases to audit compliance with commission production regulations.

3. Change in Intrastate Trucking Regulation

The merits of the regulation of trucking in Texas have been the subject of discussion for some time, particularly since the partial deregulation of interstate trucking. This was initiated by the federal government through enactment of the Federal Motor Carrier Act of 1980. As discussed earlier in the report, Texas now regulates all phases of the intrastate motor carrier industry including entry into the industry, rates charged, and quality of services standards. Three issues related to changing the method of regulation are discussed below along with varying viewpoints related to the changes.

a. Easing the Entry Requirements for Carriers

Currently, to become a carrier, a company must show that the service requested is needed, that other carriers are not meeting this need, and that the company is able to provide reliable and consistent service. Once a carrier is successful in obtaining operating authority, the carrier must provide service upon request to all customers within its service area. Proponents of trucking deregulation argue that current requirements unnecessarily restrict entry into the industry. With a limited number of carriers, competition is reduced and there is little incentive to develop innovative methods of service. Reducing the entry standards to require that a carrier only be fit, willing, and able to provide quality service would allow more carriers to enter the industry. Easing entry standards would also result in lower mandatory service requirements. In theory, competition among carriers would control industry activities better than the current regulation.

Arguments can also be made against easing the entry requirements. According to these arguments, there would be more carriers competing for freight traffic with no increase in freight to be hauled. Because mandatory service requirements would be relaxed, carriers would tend to serve only the more profitable metropolitan routes. Service to the less profitable smaller cities would be reduced. In general, the quality of service would decrease and the industry as a whole would be weakened.

b. Zone of Variation from Established Rates

Currently, the commission prescribes the rates to be charged industry-wide for intrastate shipment of all commodities. Interstate shipments are regulated by the Interstate Commerce Commission. With the passage of the Motor Carrier Act, a new rate-setting system was implemented. Rates are

prescribed by the I.C.C., however, carriers are allowed to charge any rate within a certain range above or below the established rate. An argument can be made that allowing this zone of variation for intrastate shipping would provide a method for limited competition between carriers and encourage efficient operations necessary to offer discounts.

On the other side, it is argued that rates would automatically be reduced to the limit below the established rates. Larger shippers would use this as a lever to drive the price down, while small carriers which would be unable to operate profitably at the discounted rates will be forced out of business. Safety of the industry would be affected as maintenance would be reduced in efforts to cut costs.

c. Exemption of Agricultural Commodities

As discussed earlier, the commission prescribes rates for all commodities transported intrastate. For many years, the I.C.C. has exempted certain commodities, such as agricultural products and livestock, from specified rate requirements for interstate shipping. An argument can be made for implementing a similar system for intrastate shipping of these commodities. Because rates are not regulated for interstate shipping, it is sometimes cheaper to ship products to markets out of the state than to ship to other points within the state. As a result, those higher quality products shipped out of the state are not available for purchase by consumers in Texas.

On the other side of the issue, it is argued that the rates charged are not less for interstate shipments of agricultural products. These shipments are the back hauls of the interstate carriers. This means that the major costs associated with the trip have been recovered during the shipments of commodities into the state. The carrier can then charge less for the return trip and still make a profit. When the costs of both trips are averaged, the rates are not appreciably less than intrastate rates and are often higher.

4. Transfer Regulation of Gas Utilities

The commission currently regulates certain aspects of the gas utilities industry in Texas. The gas utilities division recommends rates for certain utilities to the commission, collects the gas utilities gross receipts tax on transmission or pipeline companies, conducts safety evaluations of transmission lines and distribution systems and audits records of gas utilities to determine proper payment of the gross receipts tax. An argument can be made that the rate-setting functions

related to gas utilities should be transferred to the Public Utility Commission. PUC currently has ratemaking authority for certain electric, telecommunication, water and sewer utilities. In addition, the PUC has a rate-making staff in place and a developed hearings and analysis process which could be used to consider and act on gas utilities rate requests.

If the rate-setting function of the commission's gas utilities division were placed with PUC, then the other division functions could be assigned to other divisions within the Railroad Commission, assigned to other state agencies, or performed by independent entities.

Responsibility for safety evaluations of natural gas transmission and distribution system could be transferred to the commission's oil and gas division. The division has jurisdiction over other common carrier pipelines and is equipped to perform safety evaluations of natural gas systems. District offices of the division are located throughout the state so that an organizational framework is available to perform the safety evaluations.

Collection of the gas utilities gross receipts tax could be transferred to the comptroller's office as described in the Alternatives section of the report. Audits of gas utilities currently performed by the division could be made the responsibility of the gas utilities by requiring independent financial audits to monitor rates charged. The regulated gas utilities could be responsible for selecting a qualified, licensed accountant to perform the audit and report the findings. The Public Utility Commission uses this procedure for utilities under its jurisdiction with adequate results. Independent audits would relieve the state of the costs of conducting audits of many natural gas utilities.

In opposition to the transfer of the gas utilities regulation is the view that the responsibility should remain in one agency so that related regulatory activities can be coordinated. The commission has developed expertise in the regulation of gas utilities since 1920. The commission regulates other aspects of the gas industry and regulation of gas utilities is appropriately located in the commission. The hearings and rate analysis procedures are well-established in the gas utilities division and redistribution of functions could disturb a system that appears to function adequately.

5. Establishment of Drilling Permit Fee

As discussed in the Overall Administration section of the report, funding required for the oil and gas division has outgrown the revenues produced from the

regulatory tax designed to cover the costs of regulation. Establishment of a fee for issuance of a drilling permit has been suggested as a way to increase revenues associated with oil and gas regulation. An argument can be made that there is a lack of correlation between the production of oil and gas in the state and the cost of the related regulation. The oil and gas division's workload is related closely to drilling activity, but the oil and gas regulation tax is related to production. Drilling activity has generally increased, adding to the division's workload, while the revenue to finance the regulation has decreased as production has declined. Currently, the division collects no fees for any permits issued. A drilling permit fee under these conditions would be an appropriate method of generating a significant part of the cost of oil and gas regulation.

On the other hand, an argument can be made that the oil and gas industry currently pays, in addition to the regulation tax, a severance tax on oil and gas produced, an oil and gas well servicing tax and general taxes that include sales and ad valorem taxes. Payment of a drilling permit fee would be an additional obligation on an industry that is currently paying a significant portion of the overall costs of state government. In addition, the Railroad Commission is primarily a regulatory agency and not a fee or tax collecting agency. If a drilling permit fee were adopted, associated administrative costs would be incurred for staff and the establishment of necessary procedures for collection of the fee. This would be a substantial responsibility as evidenced by the 50,776 drilling permits issued in fiscal year 1981.

6. Standing for Public Protest in Permit and License Hearings

As discussed in the Protested Applications section of the report, the commission does not have a uniform policy regarding the standing of the general public to participate as a party in permit or license hearings. Members of the general public, for example, would normally not be allowed to participate as a party in proceedings before the oil and gas division while in the transportation division, members of the general public are allowed to be parties to a hearing. An argument can be made that limitations imposed on a persons ability to participate in commision hearings should be uniformly relaxed to allow greater public participation in regulatory activities.

Uniform commission policies to permit the general public to protest, inter-vene and participate in permit and license application proceedings in these areas would broaden participation in hearings and provide an opportunity for public input.

Such uniform policies would also provide information and viewpoints from the general public to hearings examiners and the commission which could be used in making decisions on permits and licenses.

On the other hand, general public participation in permit and license application proceedings in these areas would make hearings more time-consuming and costly to the parties involved. It is not clear whether general public participation, balanced against the additional time and expense that would be incurred by parties involved in proceedings, would prove to be beneficial overall. In addition, many of the areas regulated by the commission involve well-settled areas of law where the recognition of legal rights have been limited to parties having a financial interest in the dispute.

7. Public Representation in Gas Utilities Rate Cases

The Railroad Commission is charged by statute to protect the "public interest" in the regulation of gas utility rates and services. The "public interest" includes all classes of consumers -- residential, commercial, industrial and local government. As a practical matter, it is argued that residential ratepayers do not receive adequate representation because there are fewer intervenors on behalf of residential ratepayers, they are not as well funded and they simply cannot compete with the experienced advocates who appear on behalf of commercial and industrial consumers as well as local governments.

Various methods have been suggested in the past to enable residential ratepayers to compete effectively in the commission ratemaking proceedings. Two major methods that have been identified to solve this problem are: a) the development of a public counsel; and b) intervenor funding.

a) Public Counsel

Several states provide for a residential utility consumer advocate, and there have been attempts to establish such a counsel in Texas. The counsel would have party status in the hearings and would therefore be able to appeal commission decisions to the courts. In addition, the counsel could monitor the activities of the utilities and obtain information necessary to present an effective case on behalf of residential customers.

Supporters of the creation of a public counsel emphasize the need for each class of ratepayer to be fully represented in the hearings process. While industrial and commercial customers have the resources to obtain competent representation, residential customers do not. These smaller consumers can

not afford to pay for private attorneys and consumer advocate groups are already overworked and underfunded. The existence of a public counsel would give the general public a more positive attitude about activities of the commission. The general public would be able to focus on a representative who would be an active advocate for its viewpoint in the hearings process.

In opposition to the development of a public counsel, the argument has been made that the residential rate-payer is already adequately represented in the hearings process. The commission, charged with protecting the public interest, is functioning adequately to determine that rates are just and reasonable and has not been unduly preferential or discriminatory. The commission generally admits intervenors and consumer advocate intervenors are available and have represented residential customers in the past. Creating a public utility counsel would probably necessitate hiring a staff to help develop cases for presentation. The addition of a public counsel would be a duplication of representation and a waste of the taxpayers' money.

b) Intervenor Funding

Another method suggested to increase residential consumer representation is intervenor funding. This method would allow consumer group advocates as well as individual intervenors to be reimbursed for expenses incurred in representing residential consumers before the commission.

Supporters of this idea believe that residential consumers are paying for the representation of every group but themselves in the commission proceedings since costs involved in preparing and presenting the utilities' rate cases are passed along to ratepayers. Commercial and industrial consumers pass their costs along in the price of their products and services. Local governments recover their expenses through taxes. Fairness would suggest that representatives of the residential customers be reimbursed through public funding for their contribution to the hearings process.

Opponents of intervenors funding say that, as a practical matter, this approach would not be beneficial. There would be no fair way to determine the group or individual that would be funded and the standards that would be applied. Some states use a "positive contribution" standard and fund those parties who are deemed to have contributed in a beneficial manner to the hearing. This is a difficult standard to apply, however. Also, some special

interest "consumer" groups may intervene who do not really represent the entire residential class, but only a small part of it.

8. Application of PUC Two-Year Employment Rule to RRC.

PUC has in its statute a two-year post-employment restriction which prevents PUC commissioners or employees from obtaining subsequent employment with any utility or business entity which does a significant portion of business with a public utility. It has been suggested that the rule should also be extended to other major regulatory agencies such as the Railroad Commission.

Agencies with extensive regulatory authority, such as the commission, hear cases having significant financial impact which directly affect the public interest. As with PUC, the two-year rule would prevent agency employees in the major regulatory areas from being influenced in their decisions by promises of future employment from the regulated industries. The restriction would also prevent the commission from being a "training ground" for opportunistic employees who gain skills by working for the state and then, a short time later, market these skills in the private sector. Finally, it seems inequitable for PUC to be singled out as the only agency subject to the two-year rule, especially when the Railroad Commission is also involved in regulating major industries in the state.

Against extending this provision, the argument can be made that the two-year rule causes serious recruitment problems. State agencies already have difficulty attracting qualified employees because of salary limitations. If potential employees know that future job markets are limited by the post-employment restriction, the agency would lose qualified people to the private sector.