

State Office of Administrative Hearings

MAY 13 2016



Lesli G. Ginn
Chief Administrative Law Judge

May 13, 2016

Mr. Ken Levine
Director, Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78711-3066

Re: Response to Sunset Staff Report on the Railroad Commission of Texas

Dear Mr. Levine:

Thank you for the opportunity to provide comments concerning the Sunset Staff Report on the Railroad Commission of Texas. These comments are directed only to the portions of Issue 2 of the report that pertain specifically to the State Office of Administrative Hearings (SOAH), including Recommendations 2.1 and 2.2.

Recommendation 2.1 would require the use of SOAH to conduct hearings for contested gas utility cases, whether or not the regulation of gas utilities is transferred to the Public Utility Commission (PUC) under Recommendation 2.3. If the Legislature were to transfer the hearings to SOAH as recommended, SOAH is confident that its judges have the skill and expertise to handle these cases efficiently and competently. Since 1995, SOAH judges have conducted hearings in telephone and electric utility cases for the Public Utility Commission and in water and sewer utility cases for the Texas Commission on Environmental Quality (TCEQ) and its predecessors. The water and sewer utility cases were transferred from the TCEQ to the PUC in FY2015, and SOAH has continued to conduct those hearings for the PUC. Sixteen of SOAH's utility judges have conducted rate case hearings; ten have attended, or are scheduled to attend, training at the Utility Rate School of the National Association of Regulatory Utility Commissioners (NARUC); and seven SOAH judges have worked in the field of utility rate setting for more than 20 years, either as attorneys, judges, or both. Also, as noted in the Sunset staff report, SOAH conducted hearings in gas utility cases for the Railroad Commission from 2002 to 2003. SOAH handled those cases in a proficient, timely, and cost effective manner.

In addition to Recommendation 2.1 for SOAH to conduct hearings in gas utility cases, Recommendation 2.2 would require the Railroad Commission to use SOAH for all other contested case hearings. As with the gas utility cases, SOAH is confident its judges would handle these other cases efficiently and competently. SOAH judges conduct hundreds of

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enforcement hearings each year for a large number of agencies, including the TCEQ and the PUC. Although less common than enforcement hearings, SOAH's natural resources judges also are experienced in conducting hearings concerning restoration of in-situ uranium mine production areas and concerning environmental permitting for surface coal mines, wastewater injection wells, and similar projects. These cases can involve complex issues related to surface runoff and stream flow, underground geology and aquifers, fluid dynamics, and similar issues. SOAH's judges have the requisite skills and experience to evaluate evidence and legal arguments concerning complex matters such as these, and they would competently handle other Railroad Commission cases concerning coal and uranium mining, injection wells, enforcement, and other issues.

Based on information SOAH has been provided about the staffing level of the Railroad Commission's hearing division, we believe that Sunset staff's estimate of \$1.3 million per year should be sufficient to fund SOAH's services in handling all Railroad Commission contested case hearings. The primary unknown variable at this point is the potential cost associated with the physical location of the hearing rooms and offices for the transferred judges and staff, as SOAH's present offices would not be able to accommodate them.

Additionally, if the Legislature elects to transfer the Railroad Commission's hearings to SOAH, SOAH supports the recommendation to provide funding for this work through general revenue.

Thank you for the opportunity to provide comment, and please let me know if SOAH can provide additional information or be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Ginn', with a stylized flourish at the end.

Lesli G. Ginn
Chief Administrative Law Judge