

Questionnaire

Railroad Commission of Texas Sunset Review

Responses by the Texas Alliance of Energy Producers

1. What changes should be made to the mission, functions, or name of the Railroad Commission of Texas (Commission), given today's evolving energy market?

Regarding the name, there is no consensus within the Alliance membership that changes should be made to name of the RRC although there is agreement that the name does not reflect its current functions. No contention regarding name as long as if changed, it is reflective of the Commission's functions, duties and responsibilities.

Should the Commission be continued for 12 years? Why or why not?

Yes, the Alliance membership believes it is in the best interest of the public, the State of Texas and the oil and gas industry that the Commission should be continued as an independent agency for 12 years. Given its importance to the State and its impact on the economy of the State, the oil and gas industry should be regulated by a single agency. Though there are some flaws and inefficiencies, the regulating entity must combine regulatory expertise with a historical perspective and operational understanding specific to the industry. Merging the RRC with other agencies or moving jurisdictional responsibilities should be done with caution. The Alliance would not support changes which would effect core functions dealing with oil and gas exploration, production, permitting, inspection or enforcement.

2. What are the advantages or disadvantages to having one Commissioner oversee the agency instead of a three-member Commission?

Though there is recognition and perhaps a consensus that the current system is flawed, there is no recommendation voiced by the Alliance membership that warrants a change in the leadership configuration of the Commission per se. The industry is frustrated by the continual procession of Commissioners using the position as a springboard to higher office. We recognize the necessity for a Commissioner to focus on the issues, to understand the intricacies of the regulations and to learn the operational processes of the industry.

The Alliance suggests that consideration should be given to two tangential proposals:

(1) the adoption of a 'resign to run' requirement with appropriate safeguards to ensure proper transition intervals and to not act as a disincentive to the election or appointment of meritorious candidates; and, (2) the adoption of 'recusal' criteria to ensure greater transparency in the voting process. Although a commissioner is subject to the conflict of interest provisions of Chapter 572, Government Code, that apply to elected officers, need greater transparency in the process.

3. Are there functions within other state agencies that would be better positioned within the Commission? Likewise, are there current Commission duties that would be better housed elsewhere in state government?

Yes, the responsibility for planning, maintenance, and expenditure of monies credited to the Oil Field Cleanup Fund should be moved by statute to the Oil Field Cleanup Fund Advisory Committee.

The members of the Advisory Committee, representing the industry associations, the legislative chairmen and those appointed by Governor, Lt. Governor and Speaker, are charged with protecting not only the Fund, its integrity and balance but also the environmental integrity of the RRC regulations. The members of this committee are not conflicted about how to spend the monies of the Fund. Their sole purpose is to eliminate the backlog of abandoned-orphaned wells and remediate polluted abandoned sites. As overseers of the Fund, the Commission budgetary decisions can be skewed by the need to augment the Commission budget when appropriations from the GR are not adequate. The Alliance believes that the legislature should adequately fund the Commission and that the Oil Field Cleanup Fund should be used only for those statutorily defined purposes.

4. How effective is the Commission's permitting process? Are there changes to the process that you would recommend?

Permitting is a very important component to the industry in its relationship to the Commission. The need for timeliness and precision are vital to the flow of operations for the industry and the Commission. Though the Commission permitting section can be effective, it has had its lapses with permitting turnarounds lagging. It is imperative that the permitting section be properly staffed and funded to accomplish the workload. Crucial turnaround times must be maintained in drilling permits, UIC permits, completion numbers and disposal well permits. The continuation of the development of online filings should be encouraged. Though drilling permits turnarounds are currently sufficient, there is continued concern regarding the timeliness of the issuance of completion numbers and UIC permits.

5. How effectively does the Commission carry out its monitoring, inspection, and enforcement functions? Are there changes that you would recommend?

The Alliance has no current recommendations or changes. We support the continued monitoring and inspection functions and enforcement of current law.

6. Does the Commission effectively carry out its gas utility rate setting functions? What improvements could be made to this process?

All information that the RRC is charged to collect and monitor should be public so that the marketplace can operate freely and the RRC's actions regarding rate setting and other gas utility matters can be freely examined.

Is there a need for a gas utility consumer advocate?

The membership supports efforts to ensure the rights of the consumer are protected. However, we do not see the need for a consumer advocate inside the Commission.

The commission is already charged with protection of the public interest in Section 85.056 of the Natural Resources Code which provides that "the commission shall take into consideration and protect the rights and interest of the purchasing and consuming public in oil and all its products, such as gasoline and lubricating oil. In addition, at Section 85.058 the Commission may inquire into other aspects of oil and gas production, processing, marketing, etc, so as to determine whether there is waste or whether rules and orders of the commission are being violated. There does not appear to be a need for a consumer advocate if the Commission upholds current law.

7. How effectively does the Commission monitor pipeline safety? Are there changes to this function that you would recommend?

Pipeline safety is essential to the health and safety of the citizens of Texas. It is a key component in the public perception of the industry. The Commission's monitoring of pipeline safety, though good, can be

improved. The Alliance would support an increase in pipeline inspectors at the Commission. The Alliance is also supportive of the Call Before You Dig programs. The Alliance would also support expanding the Commission's authority for all transmission pipelines in the State, both intrastate and interstate. Thus, giving the Commission uniform damage protection enforcement authority. Please note that these additions to the Commission's pipeline safety program must be funded by the Legislature.

8. Could improvements be made to the Commission's well plugging program and remediation efforts, including oil field clean-up and abandoned mine lands? If so, what types of changes would you suggest?

The Commission has just completed its rulemaking to implement HB 2259 which was passed in the 81st Legislature. It addresses the value of an inactive well, increased financial assurance and the cleanup of inactive locations over time. This important rulemaking will be activated September 1, 2010 and time (at least three full years) should be given to assess the results. The Oilfield Cleanup Fund (see comments in answer to question #3) is a vital component to the industry's commitment to a clean and environmentally sound cleanup program. It is also an essential component in maintaining State and industry compliance with federally mandated programs. Its funding should remain secure and used only for purposes defined within its statutory authority. The Oilfield Cleanup Fund Advisory Committee should be continued. It should be given statutory authority. Since its inception in the 2001 Sunset of the Commission, the Advisory Committee has helped guide the process in reducing the orphaned well population from more than 20,000 to approximately 7,000, and has overseen the remediation of hundreds of sites. The Advisory Committee has complimented the work of the RRC staff. The members of the Advisory Committee include representatives of industry producer associations, royalty and landowners, academic experts and legislative chairmen. This broad base of knowledge and open discussion in a public forum is helpful to all concerned.

9. Is it appropriate for the Commission to play a role in the marketing and promotion of propane as an alternative fuel? Does the Commission's current role in this area take away from its other regulatory duties?

The marketing and promotion of propane by the RRC should be expanded to include CNG (compressed natural gas). The propane program is compatible, self – sustaining and does not interfere with the core regulatory responsibilities of the Commission.

10. From your perspective, does the Commission adequately address the needs of consumers and the public's interest in the development of natural resources?

The best consumer protection provided by the Commission is its diligence in meeting its core mandates of preventing waste, ensuring correlative rights, and protecting the environment. An effective Commission without onerous and costly regulations will help deliver ample supply of affordable oil and gas. This is in the interest of the general public. An effective Commission, with reasonable rules and proper enforcement, will help minimize any environmental degradation. However, public interest must not be construed to be so broad that it the Commission is forced to consider 'quality of life issues' that go far beyond its jurisdiction.

11. Please add any other comments or recommendations you may have on the Commission. If you suggest any changes, please provide:

- background information on how the current system works and a description of what you would like to see changed,
- benefits of your recommendation, and

▪ **any potential difficulties that may arise from implementing your recommendation.**

The Alliance identifies the following issues for your consideration:

▪ Currently the TCEQ and the RRC are amending an existing MOU to address shared and delineation of functions pertaining to air emissions from RRC regulated entities. Request that language be reviewed to ensure no conflict with Sunset Staff recommendations and to ensure implementation and compliance with its terms.

▪ A current Supreme Court case addresses the definition of “public interest” and the lack of RRC jurisdiction regarding consideration of truck traffic and other factors when considering issuance of a well disposal permit. Request that issues the RRC should consider when issuing certain permits be clarified or limited to those within its legal jurisdiction.

▪ The RRC also has a responsibility to protect natural water resources. Need to clarify that the RRC has adequate oil spill prevention and response capability within the agency including appropriate data collection, identification of preventative measures and response planning...to ensure prompt response to abate spillage and discharge.