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Industry, overseers on cozy side

TEXAS RAILROAD COMMISSION Revolving door swings as staffers move between agency, oil and gas firms

AUSTIN — When the three officials who oversee the Texas Railroad Commission were searching for a new executive director late last year, they turned to a former oil and gas executive. And when they needed a new chief lawyer, they selected a former coal company legal counsel.

The commissioners said they wanted to rely on experts with long experience in the oil, gas and mining fields. But the moves typify the cozy relationship between the commission and the industries that it regulates.

A review of employment, business and lobbying records by the Austin American-Statesman, some of them obtained through open records requests, illuminates a well-worn path from the oil and gas industry to the highest levels of the Railroad Commission. The analysis also found that many former agency employees are now advocating for companies they once regulated.

The ties between Railroad Commission employees and the oil and gas industry have been mirrored in policy: The agency has sought to shield the industry from further federal regulation and has beaten back criticism from environmentalists on everything from seismic activity to fracking.

It's a record of protection that makes the commissioners proud: The industries the agency regulates are "the backbone" of the Texas economy, says Railroad Commission Chairman David Porter.

Top officials at the commission have long had ties to industry: Commissioner Christi Craddick was an oil and gas lawyer; Commissioner Ryan Sitton served on the board of several energy trade associations; and Porter was a Midland accountant for oil and gas companies. In addition, the commissioners, who are elected, receive much of their campaign money from the industries they regulate.

In July 2012, then-Commissioner Barry Smitherman instituted a revolving-door policy meant to "safeguard agency independence and to avoid the appearance of impropriety." The policy, which essentially restated state law, barred a former commissioner or executive director from lobbying the agency and barred former agency staffers from lobbying on any matter in which they had participated while employed by the agency.

But the rule did nothing to stem back-and-forth worker moves between the state agency and industry.

Soon after Smitherman left the agency — his term expired in January 2015 — he registered as a lobbyist. By last April, he had signed up two energy clients, including a pipeline company, earning as much as \$75,000, while also working as an attorney at Vinson and Elkins, where he represents energy clients.

The firm's "robust energy practice provides the perfect opportunity for me to leverage the insights I gained with the Railroad Commission and Public Utility Commission," Smitherman said in a statement after his hiring in March 2015.

Smitherman didn't return a message seeking comment.

His former Railroad Commission colleague Buddy Garcia, who cosigned that revolving-door policy, made as much as \$200,000 in 2015 representing energy companies at the Capitol.

Trading places

Former officials at regulatory agencies who have examined the state revolving-door rules differed about their effectiveness.

"It's been effective, it's been well-implemented," said Larry Soward, who worked for a Houston environmental group after stepping down as commissioner at the Texas Commission on Environmental Quality in 2009.

A blanket rule that would bar employees from working for regulated companies would have a chilling effect on people signing up for state work, Soward said.

"It's an unreasonable restriction on employees who want to move on to something more challenging or more rewarding," he said. A lot of high-level employees "sign up to get a couple of years' experience, get general knowledge about the field they're in, and then move on to make more money and do something more challenging."

But employees just below the highest rank can leave an agency one day and lobby virtually the next.

Several top officials at the Railroad Commission have found lucrative work as lobbyists for the industry.

Some high-ranking officials join the companies.

Victor Carrillo, who led the commission when Porter defeated him in the 2010 Republican primary, is now an oil and gas executive. His chief of staff, Justin Furnace, got a job as president of the Texas Independent Producers & Royalty Owners Association. Furnace now works at Carrillo's company. The door also swings the other way. The two newest hires at the top of the commission —

Kim Corley, an executive who headed business development at Shell, and Alex Schoch, a lawyer at Peabody Energy, the world's largest private-sector coal company — are just the latest examples of officials moving to the agency from the industry.

As general counsel, Schoch is the commission's principal legal adviser and manages the day-to-day activities of the agency's attorneys. Corley, the executive director, manages the agency in accordance with the direction and policies established by the commissioners.

"I had retired and wanted to give back, to use my experience and leadership skills in a meaningful way," said Corley, who had retired from Shell in 2015 when she was recruited by the Railroad Commission.

"It's important that the agency understands the industry it regulates," she said.

Sympathetic to industry

When lawmakers mull new oil and gas regulation, industry representatives prefer that authority go to the Railroad Commission, which has shown itself to be sympathetic to business interests.

Consider the politics of Texas drilling activity and earthquakes: With mounting evidence that fracking-related activities have contributed to an uptick in seismic activity in Dallas-Fort Worth in recent years, lawmakers were under constituent pressure to investigate the matter.

One proposal last year directed the University of Texas' Bureau of Economic Geology to study the earthquakes.

Energy companies pushed back, with an energy lobbyist asking for more involvement by the Railroad Commission.

"We would like to see the Railroad Commission included in the language [of the bill] to see them more of a focal point in the process," Bill Stevens, a lobbyist for the Texas Alliance of Energy Producers, told the state House Energy Resources Committee in 2015.

UT eventually won the charge to direct the study, but the Railroad Commission seismologist, who has said he sees no evidence of industrial activity playing a role in Texas quakes, will sit on a board that oversees UT's work.

The commissioners appear sympathetic to key industry regulatory principles. After voters in Denton approved a ban on hydraulic fracturing in 2014, the oil and gas association successfully pressed state lawmakers to overturn the ban. At the time, Craddick called for limiting cities to "clearly defined regulatory roles" — otherwise, she warned, "oil and gas development — and its ability to anchor the Texas economy — is in jeopardy."

The Railroad Commission has also served as a dependable industry ally on beating back the specter of federal regulation.

Last year, the Railroad Commission joined a multiagency, multistate lawsuit against the U.S. Environmental Protection Agency, arguing it was interfering with Texas' sovereignty by expanding the definition of which waterways it can regulate.

"This lawsuit draws a line in the sand that will push back on this outrageous effort by President [Barack] Obama's EPA to further his radical war against fossil fuels," Porter, the agency chairman, said at the time.

State lawmakers have regularly shot down efforts to make the agency's relationship with industry more transparent.

Every session, the Republican-led Legislature kills efforts to change the name of the agency — which has had nothing to do with railroad regulation for generations — to something like the Texas Energy Commission or Texas Oil and Gas Commission. The resistance by the industry to a name change is "partly because there's a desire to keep it in the dark," Gary Gates, a Houston-area businessman and largely self-financed Republican candidate for the commission, told the Statesman.

Lobby rules rejected

Efforts to beef up lobbying rules have gained little traction in recent years.

A 2011 amendment to a bill reauthorizing the environmental commission would have prevented the agency's officials from lobbying for the companies they once regulated for four years. That amendment failed.

"Every single executive director and all but one commissioner over the last 10 years has left the agency to become a well-paid lobbyist," then-state Rep. Lon Burnam, D-Fort Worth, said in support of the amendment. "That clearly undermines decision-making authority at the agency." (Burnam failed in his run this year for Railroad Commissioner.)

State Rep. Wayne Smith, R-Baytown, the author of the reauthorization bill, countered, "What this really does is prohibit people from making a good honest living when they leave the agency."