

A Report by a Panel of the
NATIONAL ACADEMY OF PUBLIC ADMINISTRATION
for the Second Century Corporation Commission Task Force

An Organizational Assessment of the Oklahoma Corporation Commission



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**NATIONAL ACADEMY OF
PUBLIC ADMINISTRATION**

November 8, 2018

***An Organizational Assessment of the
Oklahoma Corporation Commission***

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Foreword

In 1907, the Oklahoma State Constitution established the Oklahoma Corporation Commission (OCC) to enforce laws, regulate, and supervise activities associated with the exploration and production of oil and gas; the storage and dispensing of petroleum-based fuels; the establishment of rates and services of public utilities; and the operation of intrastate transportation to best serve the economic needs of the public. Three elected commissioners, one of whom serves as Chair, lead the OCC.

In 2017, the Governor of Oklahoma created a five-member Second Century Task Force (the Task Force) and charged it with performing an organizational assessment in order to improve the operations of the OCC. The Task Force Chair contracted with the National Academy of Public Administration (the Academy) to conduct an independent, comprehensive assessment, which examined the mission, performance, staffing, funding, and structure of the OCC. This report provides the findings of that organizational assessment and offers recommendations to improve OCC's mission performance and organizational culture. These recommendations are the result of comprehensive research and data collection from such diverse sources as OCC commissioners and staff, stakeholders, other state regulatory commissions, and other researchers and associations.

As a congressionally chartered non-partisan and non-profit organization with over 850 distinguished Fellows, the Academy has the unique ability to bring nationally recognized public administration experts together to help state and federal agencies address their challenges. We are pleased to have had the opportunity to assist the Task Force by conducting this study; and we appreciate the constructive engagement of Task Force members, OCC commissioners and employees, and many others who provided important observations and context to inform this report. I am deeply appreciative of the work of the Panel of five Academy Fellows and the Study Team who provided their valuable insights and expertise throughout this project.

I expect that the Academy Panel's report will guide Task Force Members and OCC commissioners to further strengthen the OCC's mission performance and contribute positively to the industries and citizens of Oklahoma.

Teresa W. Gerton
President and Chief Executive Officer
National Academy of Public Administration

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Acronyms and Abbreviations

AG	Attorney General
AJLS	Administrative, Judicial, and Legislative Services
ALJ	Administrative Law Judge
BS	Bachelor of Science
CD	Conservation Docket
Consolidation Act	Information Consolidation and Coordination Act of 2011
Coordinating Council	Oklahoma Coordinating Council on Seismic Activity
DC	District of Columbia
DPS	Department of Public Safety
EN	Enforcement Docket
EO	Executive Order
EPA	U.S. Environmental Protection Agency
FTE	Full Time Equivalent
GAO	U.S. Government Accountability Office
GATT	General Agreement on Tariffs and Trade
GMU	George Mason University
GPO	Government Printing Office
GPT	Gross Production Tax
HCM	Human Capital Management
HR	Human Resources
IT	Information Technology
MA	Masters of Arts
MBA	Masters of Business Administration
Merit Rule	Oklahoma Merit System of Personnel Administration
NARUC	National Association of Regulatory Utility Commissioners
NOPR	Notice of Proposed Rulemaking
NRRI	National Regulatory Research Institute
OCC	Oklahoma Corporation Commission
ODOT	Oklahoma Department of Transportation

OGC	Office of the General Counsel
OGCD	Oil and Gas Conservation Division
OG&E	Oklahoma Gas and Electric
OIG	Office of Inspector General
OMA	Oklahoma Open Meeting Act
OMB	U.S. Office of Management and Budget
OMES	Office of Management and Enterprise Services
OUSF	Oklahoma Universal Services Fund
PD	Pollution Docket
PSTD	Petroleum Storage Tank Division
PUD	Public Utilities Division
TD	Transportation Division
The Academy	National Academy of Public Administration

Executive Summary

The Oklahoma Corporation Commission (OCC or Commission), embedded in the state constitution, oversees more activity than virtually all other state counterparts—including oil drilling permits and environmental assessments, tanks for storage of petroleum, enforcement of truck weight limitations, and consumer rates for electricity.

Of late, the Commission has come under unusual scrutiny, predominantly, but not only, for its determinations of electricity rates. As a result, Governor Mary Fallin issued an Executive Order (EO) that established the Second Century Task Force (the Task Force) to review the activities and organization of the OCC. The Secretary of Energy and Environment and Chair of the Task Force, Michael Teague in turn contracted with the National Academy of Public Administration (the Academy) to assist with the work of the Task Force.

This report contains the results of the assessment conducted by an Academy panel of Fellows selected for this analysis. The first chapter expands on the genesis and context of the report. Chapters 3-7 follow the outline of the Governor's EO. The full report includes findings and twenty-three recommendations. ([Appendix K](#) provides a full list of the report's recommendations).

The Panel is unable to make recommendations in several areas, most notably: 1) the organization of the OCC and whether the existing divisions should be changed or moved to other state agencies; and 2) the composition of the Commission and whether to expand the number of commissioners and/or change the method of selection from elected to appointed. This is, in part, because of a lack of relevant data.

Chapter 2 extends the Panel's analysis beyond the original scope of Governor Fallin's EO. The OCC shares many of its present challenges with other regulatory commissions across the United States. The OCC's abilities and preparedness to anticipate and respond to these challenges in the public interest are the focus of this chapter. Energy industries and their regulations have become more complicated as rapid changes in technology and energy markets have become the norm. Oil drilling techniques have evolved to the point where the United States is now the leading petroleum producer in the world. Wind and solar generation of electricity are making new demands on power grids and transportation infrastructure, challenging regulators to determine proper compensation to utilities as they are compelled to produce less of what they sell.

The Panel's analysis of the OCC suggests that the steps planned to meet these challenges in the near-term, as well as into the future, would likely prove insufficient. The Panel determined that the OCC presently lacks three critical capabilities essential to any regulatory agency's optimal efficiency and effectiveness in achieving its mission and goals. These include:

1. A mission-focused, future-oriented, and inclusive strategic planning process
2. A performance management system aligned with its mission and strategic goals, essential to any organization's ability to adapt to evolving trends and needs
3. An organization-wide change management process

The Panel explains these critical capabilities throughout this report, but two requirements stand out. The first is that the Commission needs to develop measures of the outcomes of their work related to their constitutional mission and strategic and policy goals—not just the outputs (e.g., number of permits issued). What are the real effects of the efforts of the OCC in, say reducing earthquakes or reducing methane emissions? The second is the need for a more rigorous planning process that analyzes the future developments in the industries they regulate and incorporates an assessment of the changes required by the OCC to meet those challenges.

There will certainly be pieces and parts of this report that are familiar to some readers. The Panel hopes that by providing the background and findings, more people can become familiar with the critically important work of the OCC as the energy, public utilities, and transportation industries continue to evolve and represent challenges to the state of Oklahoma.

Chapter 1: Background and Overview

Around the United States, regulatory commissions play essential roles in promoting economic growth and development while also protecting the public from the potential harms associated with economic activity and technological change. These regulators face significant societal expectations, with increasingly vast and uncertain challenges that require decisive and consistent actions.¹ Since 1907, the state of Oklahoma has looked to the Oklahoma Corporation Commission (OCC, or Commission) for these services. Over the following century and more, the OCC's roles and responsibilities expanded, commensurate with societal changes. Today, the OCC has a broader set of regulatory responsibilities than any other corporation commission in the United States.

This chapter introduces the origin and scope of the Panel's organizational assessment of the OCC, provides basic foundational data on the OCC, and briefly describes the Academy assessment methodology and approach.

1.1 Origin and Scope of this Study

On August 7, 2017, Governor Mary Fallin signed an EO and established the Second Century Corporation Commission Task Force (the Task Force). The EO directed the Task Force to perform an organizational analysis of the OCC to determine how best to structure and resource the OCC in order to efficiently operate in the twenty-first century.

The Task Force contracted with the Academy to conduct an independent, non-partisan organizational analysis. This analysis included data collection, interviews, and a review of the operations of similar regulatory agencies in other states. The Academy's analysis hewed closely to the Governor's EO and reflected in the report's organization.

Specifically, the analysis, at a minimum, was to include:

- An assessment of the stated mission, addressing:
 - The accuracy in light of modern day functions
 - The appropriateness and necessity of current duties
 - If the performance of certain functions are better suited to other agencies
- A performance assessment, addressing:
 - Current workload levels
 - The time required to process workload and individual cases
- A staffing assessment, addressing if the:

¹ Cary Coglianese. *Listening, Learning, Leading: A Framework for Regulatory Excellence*. Philadelphia: Penn Program on Regulation, (2015).

- Agency is properly staffed to meet its mission
- Staffing structure of the agency is efficient and effective
- Staff has the autonomy and accountability needed to perform their duties
- A funding assessment, addressing:
 - Whether the agency is properly funded
 - The current funding mechanisms available
 - Funding gaps within individual programs
- A structural assessment, addressing:
 - The makeup of the Commission and the impact of the Oklahoma Open Meeting Act (OMA) requirements
 - Trends related to terms of office
 - The appropriateness of the current number of commissioners
 - Whether the Commission should be appointed, elected, or a combination thereof

1.2 OCC History, Roles, and Responsibilities

Article 9 of the Oklahoma Constitution established the OCC in 1907. The State’s First Legislature gave the Commission the authority to regulate public service corporations. Today, the OCC regulates public utilities, except those under federal or municipal jurisdictions or exempt from regulation; oil and gas drilling, production, and environmental protection; aspects of motor carrier, rail, and pipeline transportation; most taxis, limousine, and for-hire buses; towing companies performing non-consensual tows; cotton gins; pipeline transportation; and private water companies. The OCC has the responsibility to ensure proper operation of fuel dispensing units at all retail filling stations, and the remediation of groundwater and soil pollution caused by leaking petroleum storage tanks.² The OCC also enforces federal regulations regarding the underground disposal of certain oil and gas waste fluids.

The Commission is comprised of three commissioners, elected by a statewide vote of the people to serve a six-year term. The terms are staggered so that one commissioner vacancy occurs every two years. The OCC has administrative, judicial, and legislative authorities. The three commissioners rule on all regulatory matters within the jurisdiction of the Commission, and Commission orders are appealable only to the Oklahoma Supreme Court.³

² Oklahoma Corporation Commission, “OCC Annual Report Fiscal Year 2017,” p. 10.
<http://www.occeweb.com/News/2018/2017AnnualReport-b.pdf>

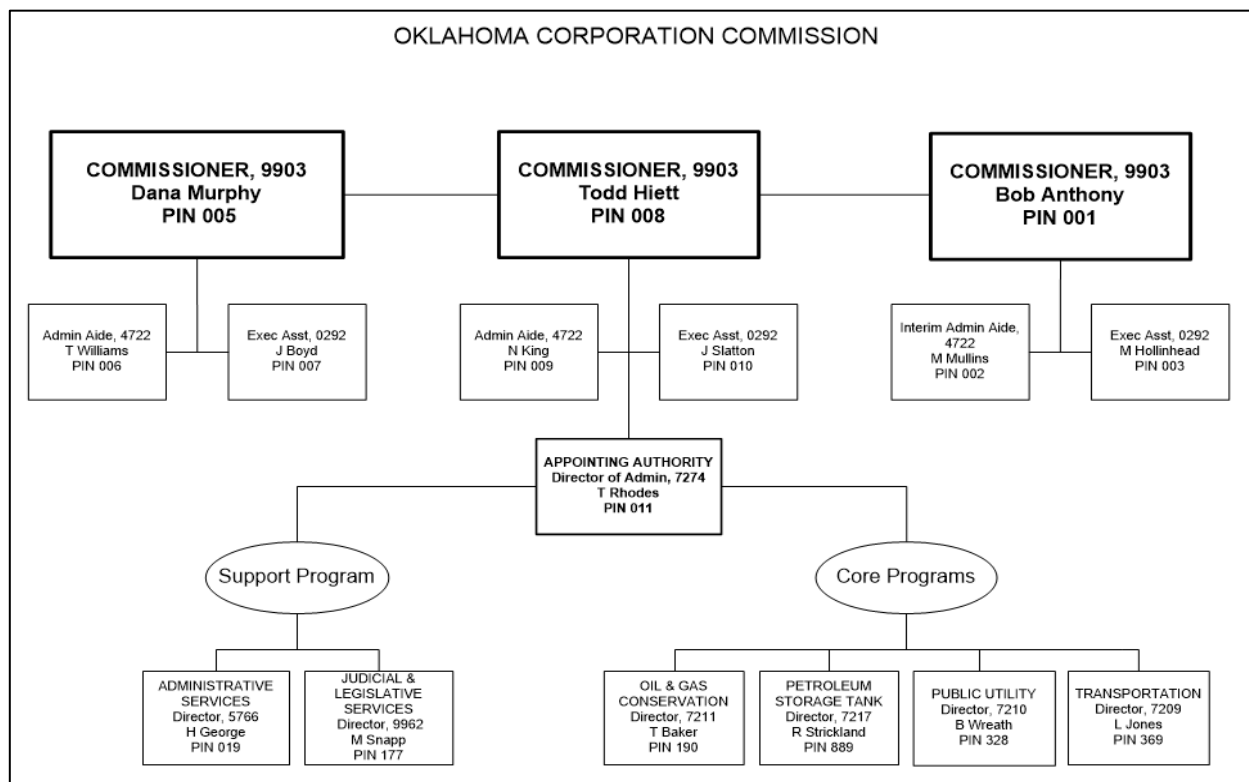
³ Ibid.

As shown in *Figure 1*, the OCC has four core operating divisions, providing services to companies and citizens, and one division that provides services for and to the OCC. The four operating divisions are:

- Public Utilities Division (PUD) – Public utilities and telecommunications
- Oil and Gas Conservation Division (OGCD) – Oil and gas drilling and production
- Transportation Division – Motor carrier, rail, and carrier transportation
- Petroleum Storage Tank Division (PSTD) – Petroleum storage tank regulation

In addition to the operating divisions, the recently combined administrative division is the Administrative, Judicial, and Legislative Services (AJLS) division.

Figure 1 - Oklahoma Corporation Commission Organizational Chart



1.3 Methodology

The Academy formed a five-member expert panel with diverse experiences directly related to assessing the OCC. Drawn from the organization’s over 850 elected Fellows, the Academy charged the Panel to direct and oversee the organizational assessment of the OCC. By bringing together these experts with different views, experiences, and skills in a process that yields state-of-the-art, innovative thinking, Academy panels have proven to be a powerful organizational assessment tool. These panels afford an opportunity for government leaders to interact with seasoned executives with significant experience dealing with similar challenges. With support from a study team, the

Academy's OCC Panel created a work plan, monitored progress on data collection, reviewed and directed analysis, and developed the findings and recommendations. ([Appendix A](#) provides detailed information about each member of the Academy Panel and study team).

The project began with extensive research to:

- understand the historical, constitutional, and historical contexts of the OCC;
- identify the present organizational structure, processes, capacities and capabilities of the OCC;
- identify present and emerging trends and challenges affecting the OCC, including those driven by sectoral, environmental, and technological changes;
- assess the evolution of industries regulated by the OCC and the effectiveness of regulatory commissions; and
- compare the OCC to similar regulatory commissions in other states.

Through its research, the Academy drew on a mix of documentary sources, interviews, OCC operational data, and 'best practices' research on corporation and regulatory commissions. Documentary sources included reviewing all policy documents, reports, and studies provided by the OCC and stakeholders, including legislative history, relevant statutory provisions, OCC policy documents, the OCC strategic plan and annual reports, literature on best practices for managing state regulatory commissions, and documents related to other similar state regulatory commissions (see [Appendix L - Bibliography](#)).

The study team conducted targeted interviews with more than 180 individuals. Inside the state of Oklahoma, interviewees included Task Force members, the OCC's commissioners and staff, representatives of regulated firms, and organizations and associations representing residential and commercial consumers, environmental concerns, and other commercial interests. Outside Oklahoma, interviewees included staff members of other state commissions, national research organizations, and national associations involved with regulatory matters, and academics. ([Appendix B](#) provides the full interview list with names, titles, and affiliations).

The Academy Panel and study team also reviewed analyses of emerging trends in energy, transportation, and public utilities industries and examined data regarding the current workload, funding, staffing levels, and performance of the OCC.

Finally, the Panel presented its 'Preliminary Observations' to Governor Fallin and to the Task Force in August 2018 and solicited feedback on those observations which were incorporated into the Panel's ongoing analysis of the OCC.

Chapter 2: Creating a More Future-Oriented, Efficient, and Effective Oklahoma Corporation Commission

2.1 Background

The OCC's ability to serve the people of Oklahoma today and in the future is dependent on its ability to operate efficiently and effectively in pursuit of achieving its constitutional missions and statutory, policy, and operational goals. As Governor Mary Fallin stated in creating the Second Century Task Force, "The Corporation Commission provides invaluable services to protect Oklahomans and regulates a wide swath of our economy."⁴

During its review of the OCC, the Panel was struck by the challenges facing the OCC today. Its importance to the well-being of the State of Oklahoma and its citizenry cannot be overstated. The OCC's constitutional mission is broad, covering regulation of industries and sectors critical to Oklahoma's economy, protection of Oklahoma's natural resources and environment, and service in the public interest. However, the rapid evolution of the industries that the OCC regulates today—energy, transportation, and public utilities—is driven by forces more complex than even in the recent past. Changes in market forces and technologies are leading to expanded energy development through hydraulic fracturing and horizontal drilling, as well as wind and solar power. Siting of energy production facilities in new areas presents challenges to existing transportation and public utilities infrastructure. Additionally, new technologies can have unintended consequences for the environment and the people of Oklahoma, whether from increased seismic activity, effects on water quality, or disruption of feeding and mating grounds for native and migratory wildlife. Balancing these, and other, equally complex challenges fall under the constitutional mission of the OCC.

As the OCC notes in its FY 2019-2023 Strategic Plan, "We must not only maintain, but get in front of, evolving trends, technology, and issues facing the industries we regulate and the customers we serve."⁵ The OCC's five-year strategic plan—its goals, strategies, action plans, and performance measures—is an important first step toward improving the OCC's abilities to fulfill its missions today and in the future.

However, the Panel's analysis of the OCC revealed that the steps taken and planned by the OCC to meet its challenges in the near-term, as well as into the future—including its FY 2019-2023 Strategic Plan—would likely prove insufficient. The Panel determined that the OCC presently lacks three critical capabilities essential to any regulatory agency's optimal efficiency and effectiveness in achieving its mission and goals. These are: 1) a mission-focused, future-oriented, and inclusive strategic planning process; 2) a performance management system aligned with mission and strategic goals, essential to any organization's abilities to adapt to evolving trends and needs; and

⁴ EO. No. 2017-23, (August 7, 2017), <https://www.sos.ok.gov/documents/executive/1569.pdf>.

⁵ Oklahoma Corporation Commission, *FY 2019-2023 Strategic Plan*, p. 3.

3) organization-wide change management processes. These three capabilities collectively are critical to the strategic management of any public agency.

The lack of these three capabilities also impeded the Panel's ability to conduct comprehensive OCC-wide assessments in four assessment areas identified in Governor Fallin's EO in particular—funding, staffing, workload, and performance. The lack of sufficient, comprehensive, and/or longitudinal data related to past, present, and future OCC goals, needs, and performance hampered the Panel's analysis. The Panel then determined that analysis beyond the scope of the EO was essential to the OCC's future ability to undertake comprehensive assessments in these areas, and ultimately to function with optimal organizational efficiency and effectiveness.

This chapter on, "*Creating a More Future-Oriented, Efficient, and Effective Oklahoma Corporation Commission*," contains Panel analysis on OCC capabilities gaps, and Panel recommendations for remediating those gaps and ultimately positioning the OCC to better meet its present and future challenges in service to the people of Oklahoma.

2.2 Findings

The OCC today is a large, complex organization, organized into four operating divisions and several other support divisions. Since the four operating divisions do not have overlapping responsibilities, they more or less function independently of one another. An OCC-wide Director of Administration and the three elected commissioners oversee the OCC's work. The challenge for the OCC is to manage its diverse, decentralized operations in such a manner that the several operating and administrative divisions are managed strategically, synergistically, and with appropriate alignment and synchronicity to achieve its missions and strategic and policy goals.

During its assessments of the OCC and its divisions, the Panel concluded that the OCC presently lacks three critical governance and management elements that are essential to improving its strategic management, as well as assessing, improving, and sustaining its efficiency and effectiveness today and especially into the future. These are:

1. An organization-wide **Performance Management System**, aligned with strategic goals, capable of tracking and measuring organizational outputs and outcomes, e.g., OCC efficiency, effectiveness, and adaptability; and of assessing present and future needs and gaps in OCC-wide capacities, capabilities, and competencies necessary to meet mission and strategic goals;
2. A future-oriented, mission-focused, organization-wide Strategic Plan that includes clear strategic goals for its missions, responsibilities, and performance set in the context of projected trends and unpredictability in the sectors regulated by the OCC, and that is the product of **Strategic Management Processes** that are continuous, not episodic; and
3. OCC-wide **Change Management Processes** that align with strategic goals and that implement and assess implementation of organizational changes to improve organizational efficiency, effectiveness, and adaptability.

These three organizational elements necessarily are interrelated and interconnected. They are the most critical capabilities for the strategic management of any public organization.

The Balanced Scorecard Institute, in its work on strategic planning and management, clearly emphasizes the importance of strategic management and differentiates it from operational management.

Strategic management of any organization differs substantially from its operational management. There are two basic questions to ask of management: ***are we doing things right***, and ***are we doing the right things?*** Operational management focuses on doing things right, and many tools have been developed to improve this (e.g. TQM, Six Sigma, business process reengineering etc.).... [T]he Institute has broadened the concept of “performance” to add strategic management concerns, which answer the second question, *are we doing the right things*. In any organization, it is the strategy, driven from the vision of the leadership that defines what the right things are. Process improvements alone cannot guarantee that a company will be successful, or that an agency will achieve its mission. These two aspects of management – strategic and operational – complement each other, so both must be assessed to determine the organization's total management capabilities.⁶

Assessing an organization’s strategic management capabilities—*Are we doing the right things?*—necessitates assessments of eight performance dimensions.

1. Leadership
2. Culture and values
3. Strategic thinking and planning
4. Alignment
5. Performance measurement
6. Performance management
7. Process improvement
8. Sustainability of strategic management

In its organizational assessment of the OCC, the Panel’s identification of capabilities gaps in OCC performance, strategic, and change management directly relate to four of these strategic management performance dimensions. They are 1) strategic thinking and planning; 2) performance measurement; 3) performance management; and 4) process improvement, as defined by the Balanced Scorecard Institute below.

⁶ Balanced Scorecard Institute, *Strategic Management Maturity Model*, www.balancedscorecard.org

Organization-wide **strategic thinking and planning** requires using consistent definitions of planning terms and understanding their distinctions; awareness of the distinctions between project planning and strategic planning; the ability to discuss planning at the appropriate “strategic altitude;” and awareness of the dynamic system effects in organizations, such as delays and feedback, among others.

Strategic performance measures or metrics align to the strategic plan, not just everyday operations and outputs, but strategic outcomes that are linked to the missions of the organization. Features to look for in strategic performance metrics are

- a) metrics derived from and aligned to the strategy, not just operations; and
- b) metrics that focus on outcomes and results, not just money spent, tasks accomplished, or outputs delivered.

Performance management deals with the degree to which performance metrics are used in decision making. Features to look for include:

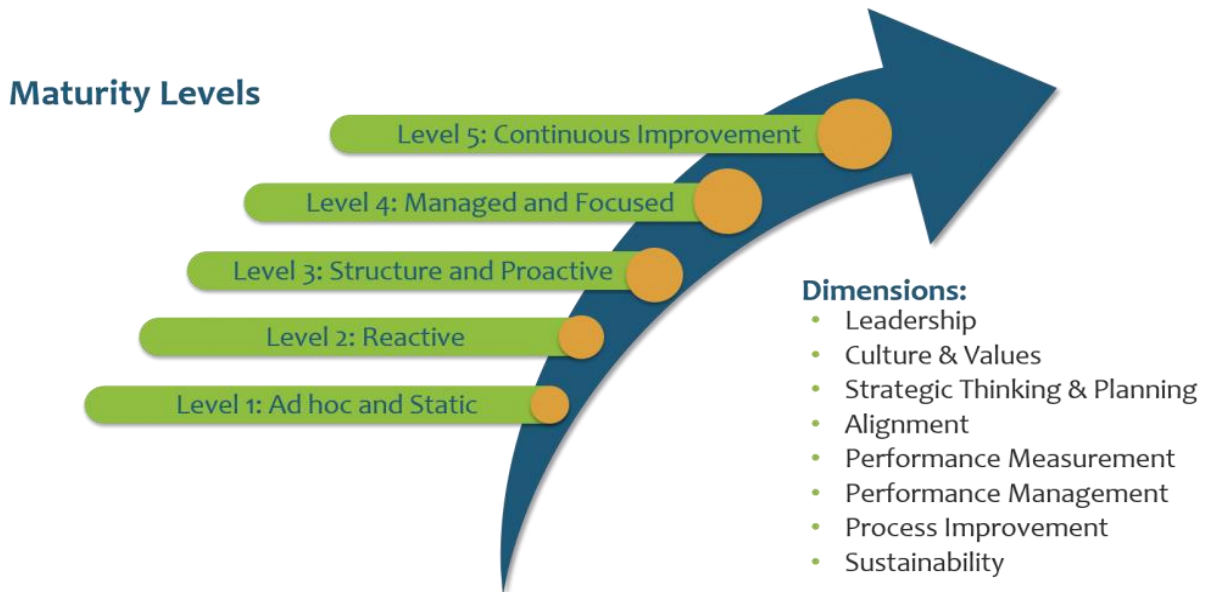
- a) recognition of the organization as a dynamic system;
- b) the use of feedback loops – so managers get to see the results of their decisions;
- c) leaders have placed the entire organization into a “learning loop,” so that they can validate their vision; and
- d) ultimately, the organization is learning what works to satisfy customers and improve the organization.

Process Improvement: What organizational processes are most in need of improvement—*doing the right things*? Which are most critical to achieving mission and statutory goals in the near term and long term? Does the organization have contingency plans in place for future risks, such as disasters, funding shortages, and leadership succession, aligned with organizational missions?

The Balanced Scorecard Institute’s assessment tools for measuring organizational strategic management are instructive for assessing the OCC, given the OCC’s complexity and the challenges that it faces. To assess the strategic management performance of an organization, the Balanced Scorecard Institute developed the *Strategic Management Maturity Model (SMMM)*, pictured below, and the *Strategic Management Maturity Model Assessment Tool*⁷. The SMMM defines five possible levels of an organization’s strategic capabilities—or strategic management. [Appendix J](#) discusses characteristics of the levels of strategic management maturity.

⁷ Balanced Scorecard Institute, *Strategic Management Maturity Model*, www.balancedscorecard.org

Figure 2 - Strategic Management Maturity Model



Based upon its independent assessment of the OCC, as defined by Governor Fallin’s EO, the Panel found that the OCC presently falls between Level 2 and Level 3 on the *Strategic Management Maturity Model*, because of the OCC’s lack of fully developed and aligned strategic, performance, and change management plans and processes. The OCC’s FY 2019-2023 Strategic Plan, and the processes that developed it, are steps forward in developing strategic capabilities. However, they primarily are focused on answering the question “are we doing things right?”

The Panel’s ability to assess with precision where the OCC falls on the SMMM obviously was limited somewhat, especially by the lack of comprehensive data on some elements of OCC operations. However, it is clear that the OCC presently lacks strategic goals and performance metrics aligned with its mission objectives and statutory responsibilities. It also appears to lack organization-wide performance measures of overall OCC *outcomes* related to achieving its mission objectives and statutory responsibilities. Rather, the present OCC strategic plan and its performance measures, as discussed below in this Chapter, focus primarily on operational goals and metrics.

2.2.1 Performance Management

2.2.1.1 Background

Any public sector organization’s ability to fulfill its mission objectives and achieve its strategic and policy goals depends upon the efficiency and effectiveness of the organization. Typically efficiency is related to producing the outputs of an organization, while effectiveness means that an organization has achieved, or made progress toward achieving, a specific result, usually related to its mission objectives and strategic and policy goals—or outcomes. During its research on the OCC, the Panel determined that the OCC presently lacks the measurement tools and processes to comprehensively assess the OCC’s organizational efficiency, effectiveness, and adaptability beyond

the efficiency of selected operational areas. To the extent that the OCC presently measures its performance, outputs are measured not outcomes.

An organization generally defines performance measurement as regular measurement of outcomes and results that generates reliable data on the effectiveness and efficiency of organizational programs, services, and decisions. An outcome represents a specific result an organization intends to achieve, usually aligned with its mission, strategic, and policy goals. An outcome also can be the specific objective of a specific program. An outcome is not what the organization produces itself (the output), but the consequences—whether intended or unintended—or effects of those products, services, regulations, etc. An organization may also define outcomes as end outcomes (or objectives) for which the organization is accountable. However, organizations may also define intermediate outcomes or results that must occur to meet the end outcome but also serve as benchmarks of progress.

Public agency focus on enterprise-wide performance and the achievement of policy and mission objectives stands in sharp contrast with a limited focus on organizational output. Outputs tell the story about what an organization produces or its activities. Output measures do not address public value or the public interest. Output information does not communicate anything about the actual results achieved or the consequences of the products or services delivered. However, output information can be useful in showing the scope or volume of what the inputs and activities within the organization produce.

Figure 3 - Outputs and Outcomes

OUTPUTS AND OUTCOMES: OCC EXAMPLES

Using the OCC as an example of the difference between output and outcomes, the OCC's mission in the Oklahoma Constitution includes the objectives: "To enforce laws, regulate, and supervise activities associated with the exploration and production of oil and gas.... [And] In the interests of the public...oversee the conservation of natural resources to avoid waste, [and] abate pollution of the environment." Measures of OCC outputs might include the percentage of oil drilling permit applications approved in one year compared with prior years or the percentage of permits approved within a designated time period. Such measures would focus on the efficiency of the OCC in performing a designated task, e.g., issuing permits. Nevertheless, such measures do not address OCC outcomes.

Examples of measures of OCC outcomes related to the exploration and production of oil and gas could include longitudinal assessments of the environmental impacts of the OCC's permitting decisions, given its constitutional missions. What are the percentage increases or decreases each year in methane emissions? What are the percentage increases or decreases each year in seismic activity? What are longitudinal decreases in oil and gas reserves? Other measures of outcomes might focus on assessing the protections of property and mineral rights; measuring the effects of wastewater disposal on aquifer water quality; or tracking worker injury and fatality percentages in the oil and gas sectors.

Performance measurement in public organizations has changed dramatically over the past two decades.⁸ Today, optimal performance measurement is comprised of ongoing processes at all levels of an organization that continuously measure, assess, and align the organization's capacities, capabilities, and competences with its mission, strategic, and policy goals. In the context of performance measurement, measuring *capacities* assesses the organization's ability to absorb change, e.g. time, resources, or understanding. *Capabilities* directly relate to the organization's ability to adapt to or meet future needs. Capabilities are requisite skills, tools, and knowledge necessary to complete tasks possessed by an organization. Organizational *competencies* reflect the sufficiency of *both* capabilities—organizational skills, knowledge, qualifications—and capacities to meet organizational or task needs.

Figure 4 - Capacities, Capabilities, and Competencies

CAPACITIES, CAPABILITIES AND COMPETENCIES: OCC EXAMPLES

The Oklahoma legislature recently directed the OCC to undertake regulation of wind farms in the State of Oklahoma, with regulation housed in the Public Utilities Division. The capacities necessary to undertake this new responsibility could include a sufficient number of staff to develop and implement wind farm regulations; sufficient start-up and ongoing funding; sufficient timelines for developing new wind farm regulations, procedures, and processes; and understanding of wind farm regulatory challenges within the region.

Examples of capabilities necessary for developing and administration of wind farm regulation might include staff expertise and skills, as they relate to the statutory reporting and notice duties, on wind farm development, turbine siting, and Federal Aviation Administration process related to Determinations of No Hazard. Competencies encompass acquiring and sustaining both the capacities and capabilities within the OCC to build and administer a wind farm regulatory system.

Often ongoing performance assessment processes reflect the creation of a *performance management system* within the public organization. "At the same time, as agencies shift from simply measuring performance to incorporating the resulting information into systemic efforts to actually improve performance, those performance management systems will be more effective in the long run if they are linked with strategy and driven by strategic management processes."⁹

In organizations with performance management systems, an organization's *outcomes*, as well as its *outputs*, are measured. A guiding principle for effective organizational performance is thus to

⁸ For discussions of the evolution of performance management, see, for example, Dean R. Spitzer, *Transforming Performance Measurement: Rethinking the Way We Measure and Drive Organizational Success*. New York: American Management Association, 2007.

⁹ Theodore H. Poister, "The Future of Strategic Planning in the Public Sector: Linking Strategic Management and Performance," *Public Administration Review*, Special Issue, December 2010: p. S252.

ensure that the organization's strategic goals are guided by the organization's mission, authorities, and responsibilities, as well as public and stakeholder input, in order to align its performance measures with accountability for mission, strategic, and policy objectives. 'Good' performance measures often are considered:

- Balanced, including both financial and non-financial measures
- Aligned with the organization's strategies
- Flexible—can be changed as needed
- Timely and accurate
- Simple to understand
- Focused on improvement¹⁰

For example, since the OCC has a diverse set of policy outcomes that it seeks to achieve (e.g., fair utility rates, environmental protection, or reducing the number of overweight trucks), the measurement of its performance should be connected to these outcomes. Such measures could include the reliability of electricity supply to the customers of regulated utilities; or the percentage of trucks on Oklahoma roads that are overweight compared longitudinally. The OCC must devise outcomes and, as needed, regularly revise them with robust, regular consultation with all stakeholders—e.g., legislative and executive branches, regulated companies, commercial companies, government, employees, consumers, etc. A greater focus on performance management and accountability for outcomes can quickly reshape public and stakeholder expectations about public agencies.

Perhaps the greatest value of performance management systems in public organizations, however, is to foster continuous organizational improvement and organizational adaptability to external changes. By continuously assessing organizational capacities, capabilities, and competencies against mission objectives and strategic and policy goals, an organization is able to identify gaps or weaknesses within the organization that could impede both its efficiency and effectiveness in the near and medium terms. This positions the organization to institute managed internal changes that may take time or require new resources, rather than responding to crises or failures in performance later.

Finally, stakeholders of public sector organizations today increasingly expect, and even demand, that a public organization have greater management transparency, accountability, and accessibility. With respect to accessibility, several other state corporation commissions periodically provide

¹⁰ Adapted from Joseph R. Matthews, "Assessing Organizational Effectiveness: The Role of Frameworks," *The Library Quarterly*, Vol. 81, No. 1, January 2011: pp. 83-110. See also, Mark Popovitch, et al, *Creating High Performance Government Organizations: A Practical Guide for Public Managers*, San Francisco, CA: Jossey-Bass, 1998.

publically available, standardized performance information on their website.¹¹ For example, Michigan provides a monthly scorecard reporting on performance ([Appendix E](#)).¹² Another often used performance evaluation, strategic planning, and communication tool in the public sector is the logic model.¹³ Organizations especially use the logic model to facilitate linkages between strategic planning and performance management. In the state-level energy sector, a report prepared for The New York State Energy Research and Development Authority on clear power technology utilized the logic model.¹⁴ SWOT (strengths, weaknesses, opportunities, and threats) analysis is a more traditional measurement tool and is still utilized at federal, state, county and municipal levels.¹⁵ For example, the State of Alaska Department of Administration conducted a SWOT analysis related to workforce planning for all Alaska state agencies in 2008. Alaska also utilized the SWOT analysis in its statewide economic development plan for 2017-2022. Alaska posts both the economic development plan and annual updates on a special website available to the public.¹⁶

2.2.1.2 Findings

The OCC tracks and reports on many operational data, measuring what is done and produced at the end of statutorily mandated processes. To the extent that OCC uses formal metrics to measure performance, most of those metrics are output-oriented. The OCC does not regularly measure outcomes related to its mission, strategic, or policy goals, nor does it measure organizational effectiveness.

The OCC presently publishes a substantial volume of *output* data that appear annually and publicly in the OCC Annual Report. The OCC makes the annual report available to the public six or more months after the end of each fiscal year, (the most recent Annual Report available to the public at this writing is for the fiscal year ending June 30, 2017). The annual report is the only publically

¹¹ An overview of the most common frameworks can be found in: Pietro Micheli and Mike Kennerly, "Performance Measurement Frameworks in Public and Non-Profit Sectors," *Production Planning & Control: The Management of Operations*, Vol. 16, No. 2, 2005.

¹² For more information about the use of balanced scorecards in the public sector, see Peter R. Niven, *Balanced Scorecard: Step-by-Step for Government and Nonprofit Agencies*, New York: John Wiley & Sons, 2003.

¹³ See, for example, Joaquin Herranz, Jr., "The Logic Model as a Tool for Developing a Network Performance Measurement System," *Public Performance and Management Review*, Vol. 34, No. 1, September 2010, pp. 56-80; J.A. McLaughlin and G.B. Jordan, "Logic Models: A Tool for Telling Your Program's Performance Story," *Evaluation and Program Planning*, Vol. 22, No. 1, Spring 1996; and the W.K. Kellogg Foundation, *Logic Model Development Guide*, Battle Creek, MI, 2004.

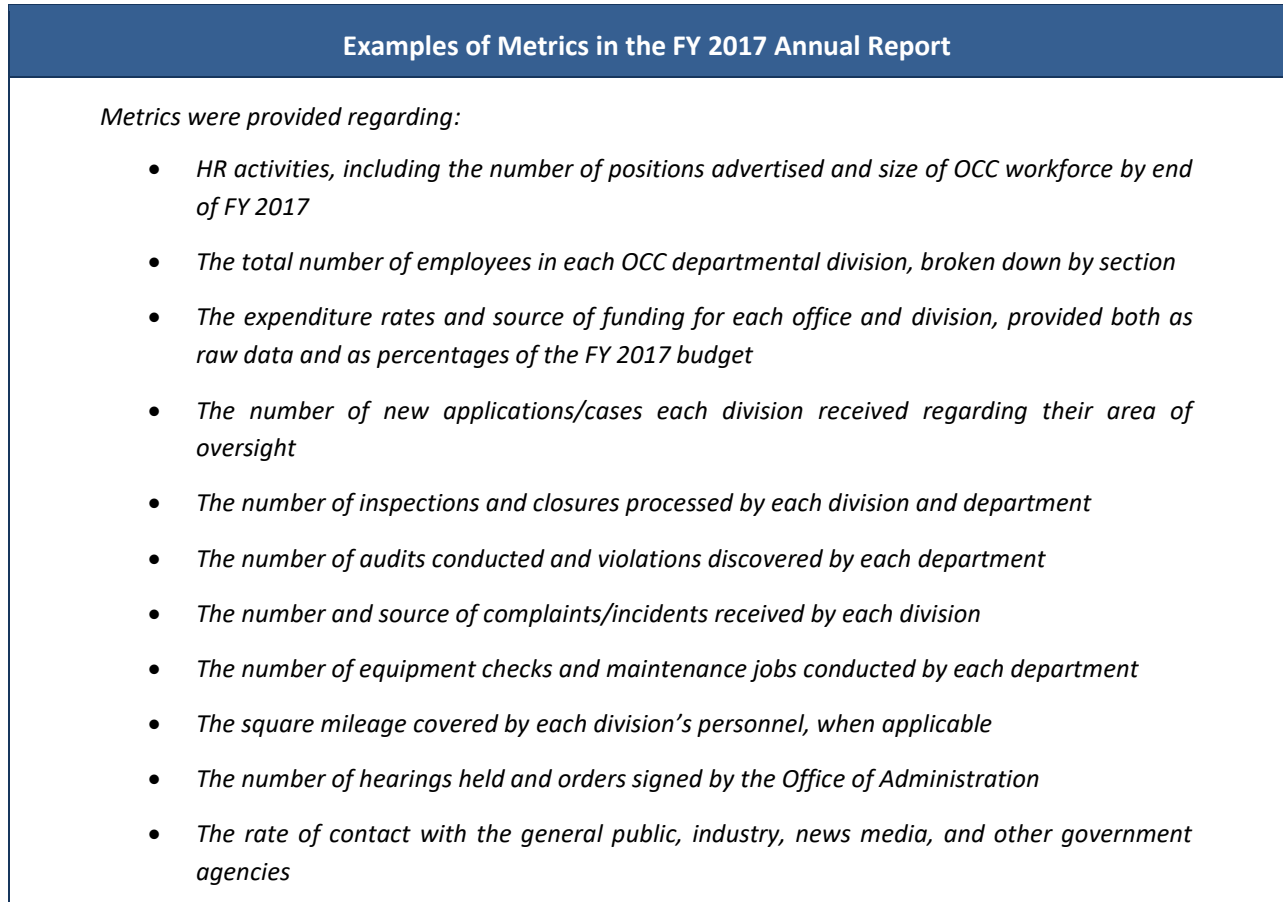
¹⁴ *Clean Power Technology Innovation Program: Initiative Level Logic Model Report*, Albany, NY: The New York State Energy Research and Development Authority, August 2014.

¹⁵ An example from the oil and gas sector is *Public Awareness: Strengths, Weaknesses, Opportunities, and Threats, the Final Report of the Pipeline Public Awareness Program Working Group*, U.S. Department of Transportation, May 16, 2016, <https://primis.phmsa.dot.gov>.

¹⁶ See State of Alaska, Department of Administration, *Conducting an Environmental Scan and SWOT Analysis*, doa.alaska.gov/dop/statewide_planning, 2008; and State of Alaska, *Alaska: Northern Opportunities: A Comprehensive Economic Development Strategy for Alaska, 2017-2022*, <https://northernopportunity.com>

available data to describe divisional activities over the year. The OCC does not provide monthly or quarterly reports on its performance to the public. Examples of the metrics used are in the chart below.

Figure 5 - Examples of Metrics in the FY 2017 Annual Report



The Panel finds that the metrics that the OCC employs to track and report performance information to the public do not *fully* measure the efficiency of its operations. Rather, the OCC divisions report primarily on their activities. The OCC does not use these data to provide the public with an analysis of trends, efficiencies, nor how its work has served its mission. Even efficiency measures must be comparative to something, such as goals or improvements over prior years. The OCC does not appear to use—or perhaps even comprehensively collect and retain—longitudinal data by which to evaluate its performance over time.

Identifying OCC performance measures that measure effectiveness (outcomes) as well as efficiency (outputs) necessitates setting strategic and performance goals aligned with organizational missions, responsibilities, and policy outcomes, and identifying measures or metrics to assess performance against goals. For example, outcome-based measures might include measuring overall energy production from year to year, reducing the percentage of trucks that are overweight over time, environmental protection indicators, and the like. The OCC should derive indicators of performance outcomes aligned with its missions through consultation with a broad group of key

stakeholders, to include OCC employees, consumers, regulated entities, Oklahoma citizens, political groups, and so on.

2.2.1.3 Recommendation

Panel Recommendation 1: The OCC should issue monthly or quarterly public reports on its performance, utilizing a scorecard or similar approach, ([Appendix E](#) includes an example).

Panel Recommendation 2: The OCC should establish an organization-wide *Performance Management System*, aligned with strategic goals, capable of tracking and measuring organizational outputs and outcomes, (e.g., OCC efficiency, effectiveness, and adaptability); and assessing present and future needs and gaps in OCC-wide capacities, capabilities, and competencies.

2.2.2 Strategic Planning

2.2.2.1 Background

A public organization's strategic planning capability defines its abilities to achieve its missions and goals, optimize the efficiency and effectiveness of its performance, and ultimately, ensure its public value. Optimal strategic planning in the public sector is not limited to preparing a strategic plan but entails formulating organizational strategy on an ongoing basis. It is inherently 'futuristic' and 'big picture' and helps the organization chart a future direction and course of action to ensure the organization's effectiveness in fulfilling its missions. The organizational strategy building process also helps to promote strategic thinking, learning, and adaptability throughout the organization.

As Theodore Poister concluded in a special edition of the *Public Administration Review*, "Public agencies are best served by 'nimble' strategic planning systems that focus very selectively on identifying and resolving the most compelling issues facing them as they continue to monitor internal and external conditions and scan the environment to discern emerging issues that might require new strategic responses. Consistent with this, strategic management must not be seen as a matter of micromanaging to enforce uniformity across operating divisions, but rather working to ensure that decisions and actions at all levels are driven by a few fundamental strategies that are critical for success in the long run."¹⁷

Strategic planning in the public sector also differs from planning in market or profit-driven organizations. "The public sector is neither static nor monolithic. It is constantly changing, pushed by its tasks, its environment and the capacities it needs."¹⁸ An important function of strategic

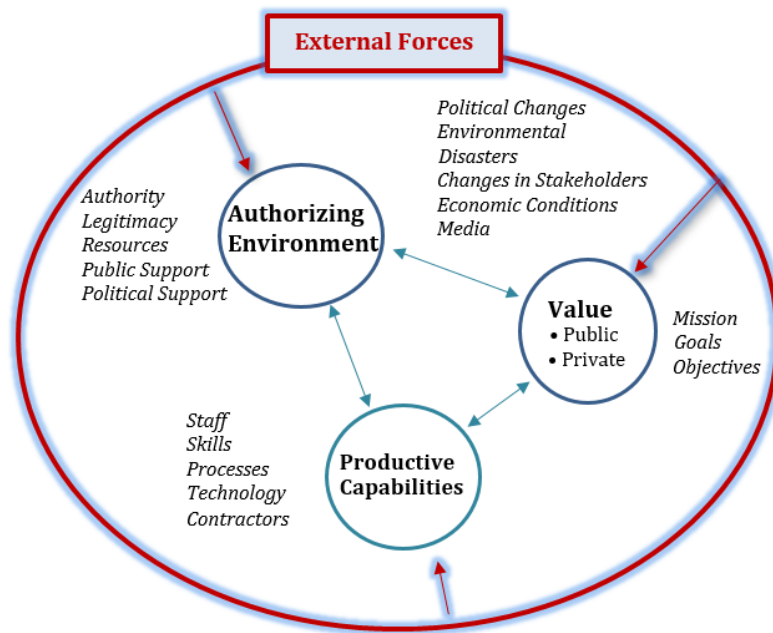
¹⁷ Theodore H. Poister, "The Future of Strategic Planning in the Public Sector: Linking Strategic Management and Performance," *Public Administration Review*, Special Issue, December 2010: p. S253.

¹⁸ Adapted from Joseph R. Matthews, "Assessing Organizational Effectiveness: The Role of Frameworks," *The Library Quarterly*, Vol. 81, No. 1, January 2011: pp. 83-110. See also, Mark Popovitch, et al, *Creating High*

planning is to monitor internal and external environments, gather information from a wide variety of sources, and sense how the values and priorities of a wide range of stakeholders may be changing.

Public sector organizations, such as the OCC, are also affected by, and must take into account, a broader array of strategic factors than most private sector organizations. *Figure 6* below illustrates selected strategic factors that influence public sector organizations and that an organization should consider during its strategic planning.

Figure 6 – Selected Strategic Factors that influence public sector organizations, considered during the strategic planning process.



As the figure illustrates, the public organization is responsible for ensuring that it produces *public value*, not just private value. Public value is the value that the citizenry receives collectively rather than value the stakeholders receive individually. The environment surrounding a public organization is not a market environment but an *authorizing environment* made up of various actors. These actors provide the permission, resources, and often the capacities the organization needs to complete its work. The *productive capabilities* include internally and externally available skills and knowledge. *External forces* are those emerging trends and forces within society and

Performance Government Organizations: A Practical Guide for Public Managers, San Francisco, CA: Jossey-Bass, 1998.

nature, relevant to the organization's missions, which shape its public value, authorizing environment, and necessary productive capabilities.¹⁹

Given the complexity of factors contributing to strategic planning in the public sector, strategic plans of public sector organizations can be inherently more complex than those in the private sector. Key characteristics of the strategic plans of public sector organizations are:

- Inclusiveness
- Future-orientation
- Goal-orientation
- Adaptability
- Transparency

Strategic plan development by a public organization should be *inclusive*. A strategic plan should be developed through a collaborative process, guided by organizational leaders and shaped by input from organizational staff and an array of external stakeholders as well.²⁰ Doing so enables the organization to develop a common understanding of its mission goals, priorities, opportunities, and performance goals.

In addition, a strategic plan should be *future-oriented* in response to unpredictability and nonlinear-development in its external environment. Future-oriented plans are essential to public organizations since their adaptability and ability to change can be impeded, or at least delayed, by authorization and appropriations processes. 'Future-oriented' plans may have longer timelines (e.g., eight to ten years), *or* they may include analyses of emerging and future trends (in industries, the economy, sectors, technologies, etc.,) that provide a longer-term and overarching context for setting strategic goals and implementation strategies in a shorter (four to five year) plan.

The public sector strategic plan also should be *goal-oriented*, defining mission, strategic, and policy goals, as well as performance and operational goals, within the timeline of the strategic plan. Goals

¹⁹ Adapted from John Alford and Carsten Greve, "Strategy in the Public and Private Sectors: Similarities, Differences, and Changes," *Administrative Sciences*, September 26, 2017.

²⁰ Discussion on strategic planning is informed by multiple sources, including Robert S. Kaplan, and David P. Norton, *The Strategy-Focused Organization*. Boston: Harvard Business School Press, 2001; Donald Kettl, *The Transformation of Governance: Public Administration for 21st Century America* (Baltimore, MD: Johns Hopkins University Press, 2002; John Bryson, *Strategic Planning for Public and Non-Profit Organizations: A Guide to Strengthening and Sustaining Organizational Administration*, San Francisco, CA: Jossey-Bass, 2006; Mark H. Moore, *Creating Public Value: Strategic Management in Government*, Cambridge, MA: Harvard University Press, 1995.

also must be specific, include implementation strategies, and potentially be accompanied by interim ‘benchmarks’ or ‘targets’ for progress on goals within the plan’s timeline.

The strategic plan should be an *adaptive*, ‘living plan’ with ongoing monitoring and assessment of the plan’s progress toward goals as part of a robust performance management system. The plan should identify indicators for measuring interim progress toward goals or ‘targets,’ as well as processes for making adjustments to plan implementation strategies, as needed, to keep implementation on track.

Finally, strategic plans in the public sector must be *transparent* in their processes as well as their publicly available plans. The perceived legitimacy of the strategic plan, its goals, and the organization itself by stakeholders, including the citizenry, is enhanced through transparency.

2.2.2.2 Findings

In January 2018, the OCC issued a strategic plan that will guide its planning, activities, and initiatives over the next five years (FY 2019-2023). Oklahoma law requires state agencies to develop a strategic plan, linked to the state budget process, that covers five fiscal years and provide updates to those plans periodically. The Oklahoma statute mandating agency strategic plans identifies a number of elements that should be included in the strategic plan, such as the agency’s mission, strategic goals, strategies, performance indicators and measures, key stakeholders, and so on.

The OCC’s Strategic Plan states that it addresses three questions: *Why do we exist? Where do we want to be? What are our desired outcomes?*²¹

In the plan, the OCC identifies four agency-wide goals for FY 2019-2023:

- Invest in the workforce
- Communicate in all directions
- Innovate for the future
- Maximize efficiency

The strategic plan also outlines specific strategies, action plans, and performance measures for each strategic goal identified for the OCC overall and for its divisions.

[Appendix C](#) summarizes OCC strategic goals for FY 2019-2023, its strategies in pursuit of those goals, and the performance measures that the OCC uses to assess its performance against goals and

²¹ Oklahoma Corporation Commission, “OCC Strategic Plan, FY 2019-2023,” p. 10.
<http://www.occeweb.com/1HotTopicAttachments/OCCStrategicPlan2019.pdf>

strategies. The goals, strategies, and performance measurements contained in the plan all warrant close review.

Collectively, the strategic goals and performance measures in the FY 2019-2023 strategic plan focus on OCC internal operations and activities, not mission or statutory goals or objectives. While the plan lays a foundation for building greater strategic capability within the OCC (and the Panel recognizes that building strategic management capability is an incremental process), the Panel found that the plan is insufficient to serve as a framework to comprehensively assess the OCC's organizational performance, its present and future effectiveness, and its ability to adapt in the face of future challenges and needs.

The most significant omission in the OCC strategic plan is that the 'goals' it defines focus primarily on OCC internal operations or organizational *outputs*. This omission is critical. Since the OCC derives its performance measures from the goals in its strategic plan—and its strategic goals are operational and short-term—the OCC performance metrics and associated measures are likewise output and near-term focused. Goals also generally lack longitudinal comparisons, transparent linkages to assessed 'gaps' in capabilities, and/or alignment with future needs.

Figure 7 is an illustration of the internal operations and activities focus of the OCC strategic plan. It also highlights that while a requirement of Goal 3 is to 'support transparent, accountable, and reasonable processes and results,' there are no measures at the agency-wide or divisional level capable of measuring whether the changes implemented will achieve these intended effects of supporting transparency, accountability, and the 'reasonableness' of processes and results. The Panel selected OCC Goal 3, *Innovate for the Future*, as an illustration.

Figure 7 - Example from OCC Strategic Plan 2019-2023

OCC Goal 3: INNOVATE FOR THE FUTURE

Manage for the future by investing in information systems and business and accounting controls necessary to support transparent, accountable, and reasonable process and results.

OCC-Wide Implementation Strategies

- 3.1 – Invest in equipment and tools (e.g., laptops, video conferencing, etc.)
- 3.2 – Improve use of existing tools (e.g., equipment, software, etc.)

Agency-Wide Performance Measures

- Percent of transactions completed electronically
- Percent of funds handled electronically
- Percent of records stored electronically
- Percent of audit recommendations implemented

Action Plan for Oil and Gas Division: Strategies with their Measures

- 3.1.1 – Identify software and equipment needs for job families (Annual goal is 100 percent)
 - Measure: Percent of job families with completed assessments
- 3.2.1 – Develop and conduct training on all technical software, systems, and equipment (Annual goal is 12)
 - Measure: One training session held per month

The OCC's new strategic plan also is not adequately *future-oriented*. The most significant gap in the plan is that it lacks sufficient transparent analysis and assessments of future trends in the sectors and industries that the OCC regulates, the Oklahoma economy, or emerging technologies and environmental issues. For example, the only projection in the plan is for employment in Oklahoma from 2014-2024; and there are no projections, or even longitudinal data from prior years, for industries regulated by the OCC, such as data on the number of active wells. According to the OCC, although the strategic plan does not specifically identify industry trends, its development is informed by knowledge of future trends and challenges housed within the OCC. According to the OCC, this knowledge is the result of commissioners and staff interacting with the public and industry on an ongoing basis, and being involved with numerous industry and regulatory organizations.

Nevertheless, identifying future trends and analyzing their potential impacts are critical components of effective strategic planning. Best practices research shows that the first step of strategic planning should be, “anticipating big challenges and spotting important trends.”²² This exercise requires the agency to look into the future in a more systematic way, develop a better picture of its future environment, and determine what changes need made. In addition, a strategic plan provides a valuable communication tool for the agency.²³ A thorough analysis of future trends and possible developments in the strategic plan allows the agency to better communicate the linkage between industry developments and its strategic priorities and goals to its employees, external stakeholders, and the public. The OCC’s strategic plan would be more mission-focused and more outcome-focused if the OCC conducted formal assessments of future trends in sectors, industries, technology, and other external factors that potentially could affect the OCC and achievement of its missions, and included findings on trends in summary form in its strategic plan.

Additionally, the majority of measures attached to the latest strategic plan focus primarily on tracking or counting OCC operational activities, as the chart on Goal 3 illustrates. There is no indication that these measures are sufficient or utilized effectively to identify gaps in OCC capacities, capabilities, or competencies related to future needs, even within the short timeline of the plan, or to suggest strategies to fill these gaps. Thus, the majority of performance measures or metrics in the present plan appear to focus on measuring *operational efficiency*. There are very few measures of overall organizational efficiency, much less organizational effectiveness, identified.

For example, one measure of performance success is whether the OCC implemented the 2012 audit recommendations. In part, the audit measures maximized efficiency by, “the number of statutes, rules, processes, and forms reviewed.” While the strategic plan has one of its four goals to, “innovate for the future,” the performance metrics cited to capture data to evaluate success in this area are not future-oriented. In this area, the OCC focuses on electronic processing of transactions, electronic funds transfers, electronic record storage, and audit recommendations implemented ([Appendix C](#)).

The OCC developed its new strategic plan following an apparently rigorous internal process that actively solicited input from all OCC employees. The OCC conducted an agency-wide survey seeking employees’ ideas about the actions the OCC should take to improve its effectiveness and efficiency, and employees submitted more than 1,000 ideas/comments. In August 2017, the OCC formed a group of sixty-five employees from across the agency (i.e., all divisions, all levels of employment,

²² Renee Dye and Olivier Sibony, “How to improve strategic planning,” McKinsey&Company, <https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/how-to-improve-strategic-planning>.

²³ U.S. Office of Management and Budget, Executive Office of the President, Circular A-11, Preparation, Submission, and Execution of the Budget, (2018).

and with varying lengths of service) to review and analyze the comments collected from the survey, which provided a basis for the development of goals and strategies in the strategic plan.²⁴

However, while the strategic plan mentions that stakeholders were consulted during the plan development process, it does not appear to be the product of a systematic, *inclusive* process that broadly engaged the public or key stakeholders, such as consumers or regulated industry representatives. The plan also does not specify its detailed methodology, and who, how, and which external stakeholders were engaged, e.g., whether related to OCC goals and performance, or to external trends.

2.2.2.3 Recommendations

Panel Recommendation 3: The OCC should develop a more future-oriented, mission-focused, organization-wide *Strategic Plan* that includes clear strategic goals and performance metrics for its missions, responsibilities, and performance set in the context of projected trends in the sectors regulated by the OCC, and that it is the product of ongoing, not episodic, strategic management and assessment processes.

2.2.3 Change Management Processes

2.2.3.1 Background

Change management is, “an organizational process aimed at helping stakeholders accept and embrace changes in their operating environment.”²⁵ It involves a number of tools, processes, and principles to successfully manage changes and transformations.

Drawing from best practices in both public and private sectors, the Panel identified six key components of an effective change management strategy:²⁶

1. Institute a top leaders-owned plan for change
2. Develop clear strategies to continuously engage top leaders to drive the transformation
3. Establish an implementation team to manage the transformation process

²⁴ Oklahoma Corporation Commission, “OCC Strategic Plan, FY 2019-2023,” p. 10.

<http://www.occeweb.com/1HotTopicAttachments/OCCStrategicPlan2019.pdf>

²⁵ U.S. Agency for International Development, Change Management Best Practices Guide: An Additional Help for ADS Chapter 597, (May 2015), <https://www.usaid.gov/sites/default/files/documents/1868/597saj.pdf>.

²⁶ National Academy of Public Administration, Anticipating the Future: Developing a Vision and Strategic Plan for the Social Security Administration for 2025-2030, (Washington: National Academy of Public Administration, 2014), and National Academy of Public Administration, Department of Housing and Urban Development Office of the Chief Financial Officer Organizational Assessment, (Washington: National Academy of Public Administration, 2015).

4. Develop a communication plan to engage employees and critical external stakeholders and be able to demonstrate what the changes are and why the agency needs the changes
5. Develop performance measures and timelines to track the progress and effectiveness of the change efforts
6. Establish a process to collect feedback, monitor progress, and celebrate success

Thus, change management processes are most effective when they are top-down initiatives, linked to strategic management, planning, and goals, and position the organization to meet future, as well as present, needs related to organizational structure, processes, authorities, capacities, capabilities, and competencies.²⁷

In public organizations, effective change management not only includes solicitation of staff ideas, but also provides an opportunity for key stakeholders to have input through surveys, focus groups, or other means. That said, however, staff input could be critical to the success of instituting change in a public agency. “Public-sector employees often stay at their agencies for a long time, typically much longer than their agencies’ leaders. Many have watched change efforts come and go—with little effect. But staffers’ longevity can actually be helpful to leadership seeking change. That is because those employees know a lot about how their agencies run and where they falter. By actively eliciting operational knowledge from them, leaders not only lay the intellectual foundation for the change effort, they also help gain the employee support needed for it to succeed.”²⁸

Linking change and the performance management processes results in an integrated, organizational management system that includes the following four steps:

1. **planning:** deciding what to do and how to do it;
2. **performing:** bringing the planned operations into action;
3. **monitoring:** inspecting the work completed or in progress, measuring the results and evaluating processes; and
4. **reviewing:** evaluating the finished work; and if the overall performance is far below the original plan, the organization will fix the plans and operational procedures will be fixed.

The above four steps are closely connected to each other from planning to reviewing and are the essential components of both change and performance management.²⁹

²⁷ Sergio Fernandez and Hal G. Rainey, “Managing Successful Organizational Changes in the Public Sector,” *Public Administration Review*, March/April 2006.

²⁸ Frank Ostroff, *Change Management in Government* (Brighton: Harvard Business Review, May 2006), <https://hbr.org/2006/05/change-management-in-government>.

²⁹ Adapted from M. Armstrong, *Performance Management: Key Strategies and Practical Guidelines*, (Philadelphia: Kogan Page, 2008): pp. 15-16.

2.2.3.2 Findings

Change management processes within the OCC appear very limited. Research failed to reveal OCC-wide change processes or processes linked with either the OCC Strategic Plan or performance measurement processes.

In 2015, the OCC Public Utilities Division (PUD) introduced a Change Management Initiative to actively solicit staff ideas for improvement. All recommendations submitted by employees are recorded, systematically tracked, and, for the most part, implemented. According to the PUD, during the past four years, staff members submitted 374 recommendations. Of that number, the OCC implemented 327 recommendations (87 percent). Two hundred twenty-six recommendations (60 percent) aimed at streamlining PUD processes, such as modifying the energy testimony template, creating talking points template for the Signing Agenda and revising the division's Procedures Manual. For those recommendations not adopted, the individual making the recommendation received an explanation of why it was not.

The PUD's Change Management Initiative is an important step within the OCC to solicit staff input in order to continuously improve work processes and enhance the division's operational efficiency. Nevertheless, its focus is narrow. It is operationally focused; unaligned with strategic and policy goals or a broader framework for organizational change, and its effects on PUD efficiency and effectiveness appear unmeasured.

2.2.3.3 Recommendation

Panel Recommendation 4: The OCC should institute organization-wide change management processes, under the Director of Administration, that align with organizational strategic and policy goals defined in the OCC Strategic Plan, and include performance measurement processes to assess the impacts of changes implemented on organizational efficiency and effectiveness.

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Chapter 3: Mission

In his article “Public Service and Motivation: Does Mission Matter?”,³⁰ Bradley E. Wright argues that the importance of an organization’s mission increases public employee work motivation by making the job more important, even after controlling for the effect of performance-related extrinsic rewards. Indeed, much research stresses the importance of organizational mission as an important factor in affecting employee performance. The Governor’s EO begins with a call for an assessment of the OCC’s stated mission, including the following areas of focus:

- accuracy in light of modern day agency functions;
- appropriateness and necessity of current duties; and
- if performance of certain functions are better suited to other agencies.

In the course of its research, the Panel assessed four topics:

1. OCC’s mission statement
2. Commissioner Oath of Office
3. OCC’s range of responsibilities
4. Possible reallocation of select functions to other agencies

3.1 OCC’s Mission Statement

3.1.1 Background

The OCC’s Mission Statement³¹ is:

To empower Oklahoma by:

- *ensuring responsible development of oil and gas resources; reliable utility service at fair rates; safe and legal operation of motor carriers, pipelines, rail crossings, and fueling stations; and prevention and remediation of energy-related pollution of the environment; while*
- *balancing the rights and needs of the people with those of regulated entities through development and enforcement of regulations in an open, transparent, ethical, and just manner.*

³⁰ Wright, Bradley E. "Public Service and Motivation: Does Mission Matter?" *Public Administration Review* 67, no. 1 (2007): p. 54-64. <http://www.jstor.org/stable/4624540>.

³¹ Oklahoma Corporation Commission, “Oklahoma Corporation Commission Annual Report Fiscal Year 2017”, <http://www.occeweb.com/News/2018/2017AnnualReport-b.pdf>

3.1.2 Findings

While corporation commissions³² across the nation have distinct structures and defined sets of legal responsibilities that may differ from the OCC, they all have a broad set of high-level responsibilities that can be examined and compared.

The Panel's research indicates that there are three key elements that should be reflected in the mission statement of a corporation commission.³³ There should be a clear reference to:

- Consideration of citizen and consumer rights;
- Consideration of the rights of companies operating in the state; and
- Decision-making that reflects a fair and independent balance of these sometimes-competing interests for all parties.

The Panel finds that the current OCC's Mission Statement reflects an appropriate balance of these three key elements. The Panel concludes that the OCC Mission Statement is sound, comprehensive, and generally similar to mission statements adopted by other state corporation commissions.

3.2 Commissioner Oath of Office

3.2.1 Background

The Commissioner Oath of Office, provided below, has remained intact since the OCC's inception in 1907, over 110 years ago.

*"I, (name), do solemnly swear that I am not, directly or indirectly, interested in any railroad, street railway, traction line, canal, steam boat, pipe line, car line, sleeping car line, car association, express line, telephone or telegraph line, nor in the bonds, stocks, mortgages, securities, contract or earnings of any railroad, street railway, traction line, canal, steam boat, pipe line, car line, sleeping car line, car association, express line, telephone or telegraph line; and that I will, to the best of my ability, faithfully and justly execute and enforce the provisions of this Constitution of the State of Oklahoma, and all the laws of the State of Oklahoma concerning railroads, street railways, traction lines, canals, steam boats, pipe lines, car lines, sleeping car lines, car associations, express lines, telephone and telegraph lines, compress and elevator companies, and all other corporations over which said Commission has jurisdiction."*³⁴

³² We use the term "corporation commissions" as a generic comparative term when referring to other agencies that have similar responsibilities to those of the OCC. Agency titles vary across the nation.

³³ See Appendix C for project methodology.

³⁴ Oklahoma Corporation Commission. *Oklahoma Corporation Commissioner Todd Hiatt will take the requisite oaths of office for his first six-year term on Monday, January 12, 2015.*

3.2.2 Findings

When composed and embedded in the Oklahoma State Constitution in 1907, the Commissioner Oath contained industry references consistent with the OCC's operating environment. Today, references to steamboats, sleeping car lines, canals, and telegraph lines serve to remind Commissioners of the OCC's long tradition of essential service to the state.

The Panel recognizes the importance of tradition and maintaining an organizational connection to historical context and legacy. The Panel also recognizes that an Oath of Office can help maintain textual continuity over time, which could contribute to the OCC's stature as a long-standing contributor to Oklahoma's citizens and companies.

However, the Panel concludes that the Commissioner Oath of Office has two main deficiencies. First, the Oath does not directly reference certain functions added to the OCC's operational purview since its founding in the early twentieth century. Major functions without direct reference in the Oath include setting utility rates under a statewide system of electricity distribution,³⁵ provision of oil and gas drilling permits and oversight of environmental and safety issues such as induced seismicity from modern drilling techniques,³⁶ and the oversight of wind energy siting and distribution.³⁷ Second, others could misinterpret the OCC's reference to outdated responsibilities like sleeping car lines and steamboats, as the OCC being mired in its past and not actively reconsidering and updating its purpose and functions. While changing the Oath requires a constitutional change,³⁸ the Panel sees considerable value in using the Oath in a more deliberate manner to point commissioners to the OCC's present realities and adding future-oriented language to underscore the importance of today's rapid technological change. The OCC can benefit from having an up-to-date, if not forward leaning, Oath to remind commissioners and others of its current purpose and focus.

The Governor's decision to name this task force the "Second Century Task Force" suggests a charge to Task Force members to consider how the world has changed since 1907. It also suggests an appeal to Task Force members to examine the value of modernizing certain aspects of the OCC's approach to its current mission. Modernizing the Oath, even when embedded in the Oklahoma Constitution, will not in and of itself foster a demonstrable change in performance. However, the

³⁵ Regulation of electricity, gas and water was added to the OCC's jurisdiction in 1913, with the enactment of 17 O.S. §§ 151–155. See also *Southern Oil Corp. v. Yale Nat. Gas Co.*, 1923 OK 129, 214 p. 131.

³⁶ Regulation began in 1914, with the authorization to establish an Oil and Gas Department in 1917. See 17 O.S. §§ 51 and 52.

³⁷ Oversight of wind energy and seismicity issues connected with energy extraction activities are two examples of responsibilities added to the OCC's task list in recent years (to accommodate these areas of OCC's current mission, there is a broad reference in the Oath to "all other corporations over which said Commission has jurisdiction").

³⁸ The Oklahoma Legislature may amend only sections 18 through 34 of Article 9 of the Oklahoma Constitution. See OK Const. Art. 9, § 35. Absent specific authorization for legislative amendment, amending the Oklahoma Constitution requires submitting the proposed amendment to voters. See OK Const. Art. 24, § 1.

Panel finds that this will provide an important initial signal from the Task Force that they will recommend further changes to enhance the OCC's performance and relevance to the state's present challenges and operating environment. The review process of updating this mission statement would also provide a broader service of public education, communicating the state's commitment to acknowledge the transformational changes in the scope of OCC responsibilities.

3.2.3 Recommendation

Panel Recommendation 5: OCC commissioners should work with the governor and state legislature to approve text for a more modern Commissioner Oath of Office in the following manner: (1) delete obsolete references; (2) add explicit references to current OCC responsibilities that are not currently documented in the oath; (3) add language that references potential future OCC responsibilities that could impact its mission; and (4) take actions to change the oath currently embedded in the Oklahoma State Constitution.

3.3 OCC's Range of Responsibilities: Operating Divisions

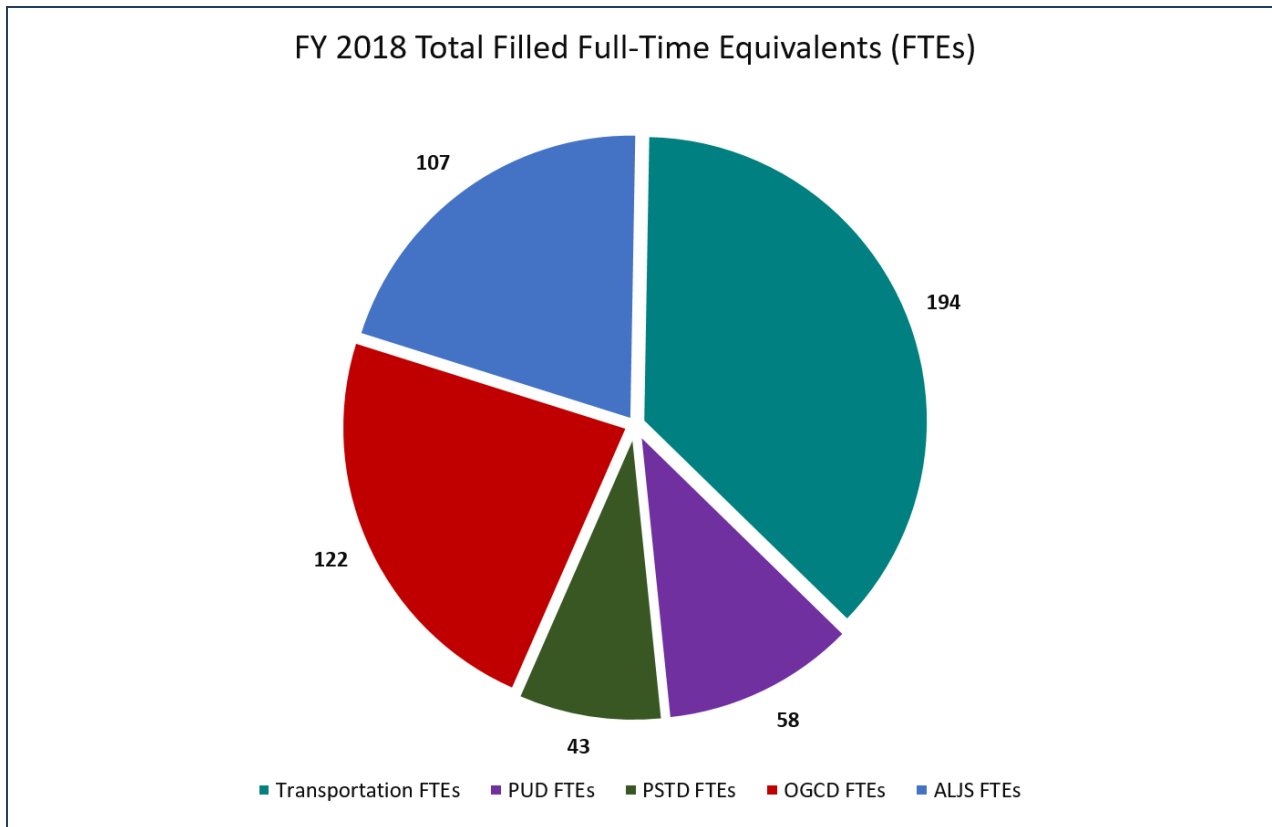
3.3.1 Background

The OCC has four operating divisions providing services to companies and citizens, and two others that provide services for and to the OCC. The four operating divisions are:

- Public utilities and telecommunications (Public Utilities Division – PUD)
- Oil and gas drilling and production (Oil and Gas Conservation Division (OGCD))
- Motor carrier, rail, and pipeline transportation (Transportation Division)
- Petroleum storage tanks (Petroleum Storage Tank Division – PSTD)

In addition to the operating divisions, the recently combined administrative division is Administrative, Judicial, and Legislative Services (AJLS).

Figure 8 - (Data courtesy of OCC) FY 2018 OCC Total Filled FTEs



3.3.2 Findings

Among corporation commissions across the United States, the OCC's organizational structure is unique because it amalgamates four different and distinct operating divisions into a single entity. Only the Kansas Corporation Commission has a roughly comparable structure to the OCC, with utility, transportation, and oil and gas divisions. Other states distribute one or more of the OCC operational divisions across separate state departments or agencies, including many with energy-producing economies such as Oklahoma.

This unusually broad mandate presents the three commissioners with a challenging burden of responsibility, reflected in oversight of very diverse sectors of the state economy and a large volume of issues that reach the OCC for decision. As noted, other states distribute the work to other agencies or departments and twenty-two states have more than three commissioners to decide matters before the Commission.

Given the OCC's unique structure and small number of OCC commissioners, the Panel evaluated two possible alternatives to narrow the focus of the OCC. The probable alternatives included 1) the transfer of one or more OCC divisions to an existing state entity or 2) the creation of a new state entity separate from the OCC. Specifically, this section explores the possibility of moving two divisions. The Panel selected these two divisions because they were added to the OCC by legislative mandate and because most other states perform these divisions' work in a different manner.

Petroleum Storage Tank Division

The OCC is statutorily responsible for the remediation of petroleum storage tanks.³⁹ Divided into four departments, the PSTD processes more than twenty-five different types of transactions and activities, with over 73,000 storage tank meter calibrations alone during FY 2017.⁴⁰ Oklahoma is the only state in the country to assign this work to a corporation commission. In all other states, remediation of petroleum storage tanks is a responsibility assigned to a separate state agency/department responsible for environmental protection, health, and/or pollution control.

Oil and Gas Conservation Division

The OCC began regulating oil and gas in 1914 when it restricted oil drilling and production in the Cushing and Healdton fields to prevent waste when production exceeded pipeline transport capacity. In 1915, the Legislature passed the Oil and Gas Conservation Act. This expanded oil and gas regulation to include the protection of the rights of all parties entitled to share in the benefits of oil and gas production.⁴¹ In the shale era of hydraulic fracturing and horizontal drilling, more than seventy of Oklahoma's seventy-seven counties produce some oil and gas, creating a large and decentralized industry presence that creates unique governance challenges from states with more modest resources that are more geographically concentrated. During FY 2017, the OGCD completed technical reviews on 2,608 applications to drill, recomplete, and re-enter wells, processed a total of over 65,000 forms connected with the Division's work, and conducted 8,775 hearings.⁴²

The Panel notes that thirteen states have no agency to issue oil and gas permits at all because these states have no history of oil and gas production, either due to lack of resources or due to a political decision to forego or limit drilling. Many states, particularly some with extensive energy resources where the volume of drilling permitting is high, have created a separate agency to focus on this

³⁹ (a) 42 U.S.C.A. § 6991 et seq., permits the State to submit a petroleum storage tank regulatory program for review and approval by the Administrator of the United States Environmental Protection Agency.

(b) 17 O.S. § 305 authorizes the Oklahoma Corporation Commission to administer Subtitle I of Title VI of the Solid Waste Disposal Act (42 U.S.C.A. § 6901 et seq.).

(c) 17 O.S. § 306 requires the Oklahoma Corporation Commission to promulgate and enforce rules to carry out the provisions of the Oklahoma Petroleum Storage Tank Regulation Act (17 O.S. § 301 et seq.).

(d) 27A O. S. § 1-3-101 grants jurisdiction to the Oklahoma Corporation Commission over underground and aboveground storage tanks that contain antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel, or aviation fuel.

⁴⁰ Oklahoma Corporation Commission, "Oklahoma Corporation Commission Annual Report Fiscal Year 2017", <http://www.occeweb.com/News/2018/2017AnnualReport-b.pdf> and OCC data provided to Panel.

⁴¹ "Oklahoma Corporation Commission History," Oklahoma Corporation Commission, <https://www.occeweb.com/Comm/commissionhist.htm>.

⁴² Oklahoma Corporation Commission, "Oklahoma Corporation Commission Annual Report Fiscal Year 2017", <http://www.occeweb.com/News/2018/2017AnnualReport-b.pdf> and OCC data provided to Panel.

work (e.g., Texas, Alaska, Nebraska, Colorado, Arkansas, and New Mexico). In other states, the oil and gas regulatory function resides within other state government agencies, such as the Department of Environmental Quality in Arizona, the Department of Environmental and Natural Resources in South Dakota, and the Department of Environment and Conservation in Tennessee. States with longer histories of production and larger output volumes are more likely to have a separate agency as opposed to placement in a larger environmental department.

Given Oklahoma's extensive oil and gas resources and the importance of drilling to the state economy, one could argue that the state should put a greater focus on the function of issuing drilling permits by establishing a new agency with this important economic focus. This argument might be bolstered when considering that staff member expertise in this field is largely concentrated in engineering, geology, and law. These professional skills are unique from the types of skills required in public utility cases, transportation, or petroleum storage tank-related issues.

Conclusion

The Panel finds no compelling reasons to move either the PSTD or the OGCD to a different agency. The Panel provides the following four reasons that support this standpoint.

1. First, the Panel concludes that these divisions generally implement the tasks under their authority to a satisfactory standard of performance already.
2. Second, the Panel also recognizes the financial costs of creating a new agency for either purpose. For example, extracting one of the divisions and moving them elsewhere might require establishing an additional team of Administrative Law Judges (ALJs) to work on the cases, whereas the ALJ team is already available at the OCC.
3. Third, there will be inevitable service disruptions whenever a division is extracted and re-located.
4. Finally, the creation of a new single purpose agency could raise concerns that "regulatory capture" could become an unintended consequence under such a narrow focus. Regulatory capture occurs when regulatory bodies protect and advance the agenda of the industry it was formed to regulate.⁴³ These regulatory bodies become known as captured agencies and often fail to serve the broader public good. The Panel notes that ad hoc bodies may be created to address emerging problems, such as the Coordinating Council on Seismic Activity (this issue will be addressed further in Chapter 6).

⁴³ G. Baxter, Lawrence, "Understanding Regulatory Capture: An Academic Perspective from the United States", *Duke Law School* (2012).

3.4 Moving Certain Functions to Other Agencies

In contrast to relocating OCC divisions to other agencies, the OCC could consider relocating specific functions located within present divisions. There may be legislative proposals introduced in the future to move a discrete task of an OCC division to another state agency. During the course of this study, one such proposal discussed with the Panel was to move trucking size and weights inspection from the OCC to the Department of Public Safety (DPS) to allow a one-stop shop for all related transportation matters already housed in DPS.

The Panel is not prepared to comment on any specific proposal with respect to extracting a part of the Commission and moving it to another agency. Based on a handful of interviews with the OCC and several other stakeholders, the Panel concludes that specific issues involving the Transportation Division are beyond the scope of this project. Rather, the Panel recommends specific criteria for evaluating this and other proposals for amending OCC divisions and functions, based upon best practices in public administration.

3.4.1 Recommendation

Panel Recommendation 6: When considering moving a part or all of an OCC division in or out of the OCC, the following high-level principles, consistent with best practices in public administration should guide those decisions:

1. **Enhance overall customer service efficiencies and service delivery efficiencies due to the move.** Organizational changes must be considered within the context of evaluating the expected impact on OCC clients. The same is true for considering the impact on whether state agencies might operate more efficiently and effectively by re-grouping various functions across agencies. There may also be synergies realized, positively or negatively, as a result of moving a portion of the OCC to another state agency. These intended, and even unintended, consequences must be assessed.
2. **Compare estimated costs of the move.** A comprehensive budgetary impact estimate connected with the change must be prepared to cover a three to five-year time horizon.

Chapter 4: Performance

The Governor's EO calls for an assessment of the OCC's performance, to examine:

- current workload levels; and
- time required to process workload and individual cases.

The Panel's analysis of OCC performance examined three areas:

- Workload and staffing levels
- Timeliness of utility rate case decision-making and processing of drilling permits
- Information technology (IT) development

This chapter addresses the specific performance issues identified in the Governor's Executive Order. The analysis reviews workload and staffing levels, timeliness for processing rate cases and drilling permits, and finally comments on IT usage and development.

A more complete assessment of the OCC's performance measurement capabilities is the focus of Chapter 1 of this report.

4.1 Workload and Staffing Levels

4.1.1 Background

Based on interviews, the Executive Order's focus on workload is connected with concerns about timeliness of OCC decisions and orders. Concerns about these orders were articulated by some interviewees who represent OCC stakeholders principally engaged with the Public Utilities Division (PUD), Oil and Gas Conservation Division (OGCD), and to a lesser extent with the Petroleum Storage Tank Division (PTSD) and the Transportation Division. Given the importance of both the regulated utility and energy industries to the State of Oklahoma, and thus the important role that the OCC plays in them, the issues of workload and staffing are important to examine. The findings result from examining a broad array of workload indicators drawn from the OCC's publically reported data and assessment of those data. The Findings summarized below highlight key indicators of OCC performance related to workload and timeliness.

4.1.2 Findings

Workload is best considered by looking at several different data points, including: volume of work completed by each division; the FTE count in the division doing that work; and the degree of complexity of the work.

Five years of work volume data provided to the Panel clearly shows that the volume of work for each of the OCC divisions varies from year to year. However, the OCC does not publish annual volume goals for various work it performs annually, making it difficult to evaluate OCC divisional

work efficiency or productivity. At the request of the Panel, various divisions provided five years of information and FTE counts. As noted in Chapter 1, the type of data provided by the OCC does not offer insights into how effective its divisions are in meeting policy objectives. However, data provided by OCC divisions for the last five years offer a basis for making the following summary observations as to workload and staffing by division.

Administrative, Judicial, and Legislative Services (AJLS)

The number of FTEs has remained more or less stable over the past five years, with the current number of FTEs at 107. During that time, oil and gas applications have risen and fallen year by year, with lower volumes mostly in 2015 and 2016. Transportation applications have risen annually from 26,802 in 2013 to a high of 39,836 in 2017. Total filings, which include the figures provided already, show steady increases starting in 2015 from 37,097 to 49,789 in 2017.

Transportation Division

Staffing in this division has increased to 194 FTEs due, in part, to the decision to construct new Ports of Entry across the state for purposes of monitoring truck weights. The OCC staffs these ports. Overall, the various activities provided show workloads that increase slightly over the past few years.

Oil and Gas Conservation Division (OGCD)

With a total staff contingent that is stable over the past five years (at around 122 FTEs), the number of forms processed has been rising over the past few years, while inspections have dropped significantly from 87,736 in 2015 to 64,862 in 2017. Compliance actions and wells plugged have dropped in the past few years.

Public Utilities Division (PUD)

The division has had a steady FTE count of fifty-eight in FY 2018, with nineteen FTEs assigned to the Energy Department to prepare utility rate cases as reported in the FY 2017 Annual Report. The number of rate cases increased significantly in 2017, to seven. In addition to rate cases, PUD staff workload also includes administration of the Oklahoma Universal Service Fund, providing consumer services and telecommunications regulation.

Petroleum Storage Tank Division (PSTD)

The division staffing is stable with fifty-five to fifty-eight FTEs over the past five years. Observing the data provided, there seems to be a steady flow of workload over the period.

Based on these data, the Panel recognizes a modest increase in overall OCC workload in the past five years. During the same timeframe, the average number of total OCC FTEs has been 510, with a low of 486 in FY 2016 and a high of 524 in FY 2018.

Conclusion

In FY 2016, the OCC reports that the overall staffing level decreased due to budget cuts imposed by the legislature, which made it impossible to fill openings in the OCC created by attrition. A large percentage of staff increases since FY 2016 have been the result of staffing the newest ports of entry weigh stations in Sequoyah and Love counties.

In considering workload, complexity of work is also an important factor. During the course of this project, both workload data and OCC staff interviews indicate recent increases in work complexity within the OCC. Work complexity is driven especially by the evolution of technology within industries regulated by the OCC and the increase or evolution of industries regulated by the OCC. Examples of these indicators include the addition of the wind power industry to the OCC's portfolio; recent increases in requests for oil drilling permits; the complexity of permitting for horizontal well drilling; and the increasing number of interveners in public utilities cases. For example, PUD data show that the average number of interveners in major utility cases in 2017 was ten. In 2017, sixteen parties did intervene in one rate-like proceeding.

Complexity related to work in public sector organizations can be defined as, "the measure of heterogeneity or diversity in internal and environmental factors such as departments, customers (or stakeholders), suppliers, socio-politics and technology."⁴⁴ As work heterogeneity and diversity increase, so does the complexity of work within the organization. The baselines for heterogeneity and diversity within the OCC were already high, due to the breadth of the OCC's constitutional and legislative responsibilities. Indicators of increasing complexity in recent years suggest that the OCC should institute mechanisms to track and measure workload complexity, in addition to timelines, as part of its performance measurement, strategic planning, and budgeting processes.

While recommending mechanisms and metrics for measuring increases in work complexity are beyond the scope of this study, existing assessment tools for measuring and tracking complexity of work in public organizations often share the same indicators of complexity. These include: mandates, including legislative or executive mandates that could impact work; sufficiency of OCC processes in place to conduct the work, as well as communicate with stakeholders; technical requirements and whether the OCC has met similar requirements in the past; staff team expertise, including functional skill sets; staff size and availability; stakeholder involvement; and external dependencies.

⁴⁴ Francis Amagoh, "Perspectives on Organizational Change: Systems and Complexity Theories," *The Innovation Journal: The Public Sector Innovation Journal*." Vol: 13(3), 2008: p. 6.

In summary, assessments of work complexity typically focus on assessing whether the work demanded aligns with the existing capacity, capabilities, and competencies of the organization, or whether organizational adaptation or change is needed.⁴⁵

The OCC does not track and report comparative data that might be used by the Panel to evaluate, with a reasonable degree of confidence, whether the OCC's workload and staffing levels are properly balanced. As noted in Chapter 1, a change in what data are collected and how they are used can result in outcome-oriented metrics that should be used to evaluate whether workload and staffing levels are at optimal levels.

4.1.3 Recommendation

Panel Recommendation 7: The OCC should institute mechanisms to track and measure workload complexity as part of its performance measurement, strategic planning, and budgeting processes. Measures might include the staff time to complete the typical or less complex analysis.

4.2 Timeliness of Decision-Making

Timeliness of decision-making is an issue that does not pertain equally to each operating division. The nature of the work assigned to the PST and Transportation Divisions is not connected with a timeline that is highly scrutinized by OCC stakeholders. In contrast, timeliness connected with utility rate case decision-making by PUD and issuing permits for drilling by the OGCD is an important issue. This section focuses analysis on timeliness of decision-making for utility rate cases, followed by an assessment of oil and gas drilling permits.

4.2.1 Utility Rate Cases: Background

Many stakeholders, particularly public utility companies, and OCC employees contend that the origin of this organizational assessment is, in some part, connected with an extended delay in the length of time that the OCC used to come to a final order on a rate case submitted by the Oklahoma Gas and Electric Company (OG&E). The OG&E filed the case with the OCC in December 2015, representing a \$92.7million increase request. In July 2016, the company implemented an interim \$69.5 million interim rate increase subject to refund, as permitted under law.⁴⁶ In December 2016, the OCC ALJ in the case recommended a \$43.6 million increase for the company. In March 2017, approximately fifteen months later, the OCC approved the case for \$8.9 million, thus requiring

⁴⁵ This list of possible indicators are adapted from the "Project Complexity Matrix" used by the U.S. Department of Agriculture, Farm Service Bureau, to assess the feasibility of potential projects. USDA, Farm Service Bureau, *Project Management Operations Guide*, AMC-PMO-100, Version 2.1., 03-10-09.

⁴⁶ Oklahoma law requires that an energy rate case has a 180-day timeline before interim rates may be implemented at the utility's discretion. There is no requirement that the OCC enter an order within a certain timeframe in rate cases.

OG&E to reimburse tens of millions of dollars to its customers. The long delay and the OCC's final rate decision had negative impacts on how investment and equity research firms evaluated the credit profile of both the company and the overall investor environment in regulated industries operating in Oklahoma.

The global capital investment company, Barclays Equity Research, issued a report on North America Power and Utilities in March 2016 that downgraded Oklahoma's regulatory environment from a ranking of three to four on a five-point scale,⁴⁷ (a ranking of one is deemed to be the most favorable for investors in regulated utility companies, and a ranking of five is least favorable), explaining that, "long delays in making regulatory rulings was the key driver to the change." One possible effect of being downgraded to a fourth tier state is that the overall cost of capital for regulated utility companies operating in Oklahoma could rise.⁴⁸

4.2.2 Utility Rate Cases: Findings

Based on data provided to the Panel by the OCC, there have been twelve rate case final orders from July 2012 through January 2018, including one dismissed case excluded from upcoming calculations. The average duration from application submission to final order was approximately 275 days (or 9.1 months). Excluding the OG&E case, the average duration from application submission to final order was approximately 238 days (or 7.8 months). For the seven final orders issued after the OG&E case, the average duration from application submission to final order was approximately 119 days (or 3.9 months).

The OCC evaluated reasons for why the OG&E case referenced above was long delayed. As a result, important changes were made in personnel in AJLS, including a process review. Since that time, OCC issued final orders on utility rate cases, on average, within 180 days of rate case filing (see [Appendix F: Supplemental Information on Rate Case Timeline Comparisons](#) to see timeliness data provided by OCC). In [Appendix G](#), there is a flowchart/timeline of the rate case process. The PUD has not missed its 120-day deadline for completing its review in a rate case for several years. The PUD reports that it typically completes its review of a rate case twenty to thirty-five days prior to its 120-day deadline. With respect to its work to consider and approve funding requests connected with the Oklahoma Universal Service Fund (OUSF), the PUD has a statutory deadline of ninety days to file a determination. Similar to rate cases, the PUD has not missed this deadline over several years.

As noted in [Appendix G](#), the PUD review of a rate case is submitted to an ALJ to prepare a recommendation to commissioners. The time required for ALJs to evaluate the case is combined with the time commissioners require to consider the ALJ report. The period required for these two

⁴⁷ 33 states were ranked by Barclays in tiers 1-3. Oklahoma, ranked in the 4th tier, is joined by 8 other states, and there are 7 states in the 5th tier.

⁴⁸ The Panel did not investigate whether or how the cost of capital changed in Oklahoma.

phases of the rate case deliberation varies according to the number of questions and complexities involved in each particular case.

In Oklahoma, as in other states, there is protection for regulated utilities that allows the company to impose interim increased rates, in the case of a delayed OCC decision. The current statutory period is 180 days from filing date that serves as the trigger, after which time the state permits the utility to implement interim rates, subject to refund, if the OCC has not issued an order. Referencing back to the OG&E case filed in December 2015, with the final order issued in March 2017 (long after the 180-day mark), the long delay is not attributed to PUD's work on its review. Rather, the long delay in the OG&E case filed in December 2015 is attributed to delays connected with the phase when ALJs and Commissioners were considering the case.

When considering the timeliness of rate case decisions, there is no statute that requires the OCC to issue a rate order within a specific period following a rate case filing. In theory, the OCC has all the time it deems necessary to consider a case. However, the long delay in decision-making can have deleterious effects on regulated utilities. In order to protect the regulated utility from facing negative financial impacts from a failure to rule within a prescribed and reasonable period of time, the state offers a remedy that allows the regulated utility to impose, should the company wish to do so, interim rates to a maximum level of the rate case still pending the OCC's order. It is important to stress that the interim rate charged is subject to reimbursement to ratepayers if the corporation commission's final order is lower than the rate case. The final order is the basis on which calculations of reimbursements are made.

Since there is no statutory deadline by which time the OCC must issue an order, assessments of the timeliness of rate case decisions should be based upon time periods designated before a utility has the right to impose interim rates, a standard that is codified. In the case of Oklahoma, the state statute sets the 180-day statutory trigger after the case is filed at which time the utility may impose interim rates (subject to reimbursement). In short, timeliness in utility rate cases ultimately means addressing the question of when a regulated utility may impose interim rates (and not when the Commission must issue an order).

The imposition of interim rates, however, can also have consequences for stakeholders, both ratepayers and the utility companies collecting the interim rates. With respect to ratepayers, the problem with charging interim rates seems obvious. While one cannot say with absolute certainty, it is highly likely that a corporation commission's final order will approve utility rates at a level somewhat less than what the regulated utility company requests (certainly, it will not be higher). In that case, for a discrete period, while interim rates are charged, ratepayers will pay higher utility rates than would be charged had interim rates not been imposed. Thus, even though there will be adjustments in utility bills to cover the reimbursements back to ratepayers as appropriate to the case, ratepayers will be obliged to pay higher rates that serve to stretch commercial and residential consumer budgets.

There is a second drawback to interim rates, besides higher rates paid during the interim rate period. Utility companies do not have the IT system capability to be able to reimburse each customer, dollar for dollar. Reimbursements are made by classes of customers, and thus some

customers may receive a higher amount in a refund, while other customers may receive a lower amount than was charged during the interim period. In short, there is no system in place to ensure that all customers are reimbursed the exact amount they had paid, and thus some “overpay” and others “underpay.” When asked about the costs, OCC employees and stakeholders from utilities and ratepayer groups indicated that the cost of upgrading the utility company systems would be very high; and such costs would be borne by ratepayers in a future rate case. Thus, a better outcome for ratepayers is to have a final order issued within a timeframe as to avoid imposition of interim rates.

With respect to regulated utilities, the right to impose interim rates and collect higher revenues for a period when they can rightfully be charged to ratepayers may not ultimately be a benefit to the company. For the regulated utility, entering a period when the company may impose interim rates, subject to reimbursement, introduces uncertainty into its operating cash flows. The lack of clarity due to a delay in a final order could linger for an extended period. It leads to uncertainty in a company’s revenue planning, and ultimately adds further uncertainty to potential and existing debt and equity investors in the company. Furthermore, there is the uncertain future financial liability the company incurs due to its obligation to reimburse ratepayers if there is a gap between the final order and the interim rate. Thus while a right to impose interim rates may be a temporary stopgap measure to assist a regulated utility with its cash flow profile, the best outcome is to alleviate the resulting uncertainties and avoid a need to impose interim rates altogether.

The right to impose interim rates is, however, important for public utilities. The prescribed number of days after which interim rates may be charged to customers provides a regulated utility an option to enhance cash flows when there is a longer period of time when a commission is still deliberating the case. It is clear that a shorter period required for an order to be issued benefits the regulated utility and not the consumer. Similarly, the longer time given for a commission to deliberate in advance of a right to impose interim rates is a benefit to consumers, rather than a benefit to a regulated utility. In considering this issue, the Panel seeks to balance the burden of interim rates to consumers with what is seen as a fair period during which commissioners should issue a final order.

The balancing of these two competing interests can be informed by examining how Oklahoma compares with other states with its 180-day rule against the average number of days for all other states between rate case filing and when an interim rate may be imposed. At present, that average is 249 days, with the minimum being 120 days in Mississippi and the maximum being 540 days in California. Oklahoma is clearly on the low end of the national average, suggesting that interim rates may be more likely to be imposed in the state should there be a delay in the deliberations that the Commission makes, either stemming from ALJs or commissioners as they consider the complexities of the case. The Oklahoma average has improved significantly since the OG&E case filed in December 2015. See [Appendix I](#) for a chart with the average number of days between rate case filing and when an interim rate may be imposed without notice, broken down by state.

4.2.3 Recommendation

Panel Recommendation 8: The OCC Commissioners should work with the state legislature to increase the time when regulated utilities may impose interim rates (subject to refund) from 180 days after case filing to 250 days (the current national average) or more.

4.2.4 Timeliness of Processing Drilling Permits

There is an oil rig standing on the Oklahoma Capitol Building grounds, a graphic reminder of the importance of the energy industry in this state. Thus, accurate assessment and timely issuance of oil and gas drilling permits is particularly important in Oklahoma. “Roughly one-quarter of all jobs in Oklahoma are tied to the energy industry, either directly or indirectly,” says economist and Dean of the University of Central Oklahoma’s College of Business Administration Mickey Hepner. “The state has a unique historical stake in the oil industry, but Oklahoma today is as much an energy state as perhaps it’s ever been, and oil and natural gas helped the state survive the recent recession.”⁴⁹

4.2.5 Processing Drilling Permits: Background

The financial expense and planning required to progress from planning, to permit request, to actual drilling operations for oil and gas is substantial.⁵⁰ Concerns over timeliness of OCC issuance of drilling permits stem from economic costs, either real or opportunity costs, incurred while waiting to receive an operating permit. There are various degrees of complexity connected with a permit prepared, then, considered by the OCC’s OGCD. The process for considering a permit starts with a technical review by the OGCD. After a technical review is complete, the OGCD forwards the case to ALJs who complete the legal review, and ultimately, submit the case to commissioners for final determination.

Each case presents different facts and potential technical challenges. For example, requests for permits for vertical wells are often less complicated to review than horizontal wells. Other important issues must be considered in each permit, including environmental impacts, worker safety, protection of property rights and mineral rights, among several other issues. The process of OCC consideration of each drilling permit seeks to establish a fair balance of the rights of many stakeholders, including drillers, water purveyors, mine owners, surface owners, and others. Some wells are large and affect many surface owners. It is important to note that there are often several parties who may formally submit an objection to the OCC when a drilling permit request is filed and evaluated by OGCD.

⁴⁹ Mickey Hepner, *Explainer – Energy Industry*, StateImpact National Press Radio, <https://stateimpact.npr.org/oklahoma/tag/energy-industry/>.

⁵⁰ Nick K. Lioudis, *How Long Does It Typically Take an Oil Producer to Move from Drilling to Production*, (Investopedia, February 2018), <https://www.investopedia.com/ask/answers/061115/how-long-does-it-take-oil-and-gas-producer-go-drilling-production.asp>.

4.2.6 Processing Drilling Permits: Findings

In this section, the Panel does not provide a detailed review of the steps and the complications connected with OCC decision-making of drilling permits. Rather, it is important to recognize that there are uncertainties connected with the drilling industry that do not lend themselves to a routinely ordered, anticipated set of considerations that could be built into a fixed anticipatory timeline of decision-making for permits, such as was discussed for utility rate cases. Setting a fixed deadline of days, similar to utility rate cases addressed by PUD, during which an oil or gas permit must be issued after receiving an application, is not practicable.

Perhaps for reasons noted above when talking about background, the OCC has not incorporated a formal reporting process to track timeliness (the number of days from receiving a permit request to the date for deciding on the permit request) to issue drilling permits. Recognizing the various uncertain relationships between factors involved in considering many of the OGCD decisions, the Panel does not propose to introduce a decision-making deadline (to resemble one for PUD rate cases).

Instead, the focus in considering this question has been on process efficiencies and having adequate staff (as earlier noted in this report, the Panel does not have adequate data on which to base an evaluation of whether divisions are adequately staffed). There are some ebbs and flows in overall OGCD workload connected with levels of energy prices, which influences investor appetite and industry interest in drilling. That said, there have been greater efficiencies observed in the recently re-organized AJLS Department with respect to the order review process for Conservation Docket (CD), Pollution Docket (PD), and Enforcement Docket (EN) applications. Introduced in September 2018, the streamlining of order forms should lead to faster processing of these applications. In addition, the OGCD developed form order templates for common types of applications on the CD—spacing, increased density and vertical and horizontal well location exceptions. Use of template orders will further streamline the order review process for ALJs and other OCC staff. Given the importance of the energy sector in the state's economy, the Panel encourages continued process improvement to enhance timeliness of OGCD, ALJ, and commissioner decision-making.

4.2.7 Recommendation

Panel Recommendation 9: The OGCD and ALJs should initiate the process of tracking the time taken for issuance of each permit between submission and final decision in order to evaluate trends in the timeliness of this process and to use these data to identify ways to introduce greater efficiency and timeliness in decision-making.

4.3 Status of Information Technology

4.3.1 Background

The OCC leadership recognizes the value of information technology, and the OCC is currently undertaking a major, multi-pronged initiative to modernize its IT systems and improve its

operational efficiency. This initiative includes fifteen discrete projects (described in [Appendix H](#)) and covers a wide array of areas, such as server upgrades, software upgrades, website redesign and upgrade, process automation (e.g., electronic forms, development of an online portal), helpdesk optimization, data management, and so on. As of September 2018, most projects are still ongoing. The OCC's strategic plan speaks to IT in connection to its goal to innovate for the future, articulating several goals that speak to introducing enhanced electronic capabilities (and that several states already provide their customers).

As a part of the state's effort to consolidate IT services under the Information Technology Consolidation and Coordination Act of 2011, the OMES carry out the OCC's IT modernization projects. OMES thus is the IT service provider to all state agencies in Oklahoma. All state agencies are required to use the OMES for IT projects/services, and all OCC IT personnel transferred and became employees of OMES.

4.3.2 Findings

In comparison to other states, based on spot-checking of various state commissions, the OCC has not broadly deployed modern IT-driven tools. The OCC, for example, does not have the capacity for electronic filing and payment. In addition, the OCC website lacks quality with respect to website search capabilities (see [Appendix H](#) for a full list of projects). According to OCC sources, insufficient funding for the past several years resulted in delayed IT upgrades of current systems, and a lack of funding has hampered the development of new systems.

The IT modernization projects that the OCC has undertaken through OMES seem consistent with priorities that have been identified in interviews with OCC staff and external stakeholders. As most of the projects are still on going, it is still too early to assess the outcomes of these projects.

The OCC raised several concerns that many of the IT projects the OMES is working on have experienced significant delays and cost overruns. In the view of OCC, there are real concerns over how OMES is advancing the projects. In several instances, OMES prioritizes its mission and goals over those of the OCC, and the decision-making at OMES usually requires multiple levels of approval. Additionally, the OCC reported that a statewide, consolidated IT service model has created impediments to the OCC's unique functions. The removal of IT personnel familiar with OCC business functions and IT applications has resulted in project delays and growing frustration.

The OCC currently has a process by which OCC and OMES leaders communicate on concerns and challenges that arise in their working relationship. Interviews indicate that this forum has not always been very effective in resolving outstanding issues in a timely, cost-effective manner. In summary, it is important that the OCC have a regular, periodic senior level meeting with OMES during which key challenges and concerns can be raised by OCC leaders with respect to operational and other project-related issues, and so that solutions can be formulated and implementation tracked over time.

4.3.3 Recommendations

Panel Recommendation 10: The OCC should work with OMES to regularly assess the progress of the OMES IT upgrade project and validate its scope, feasibility, and priority. The OCC should issue periodic public reports of these assessments.

Panel Recommendation 11: The OCC should establish a process to regularly assess its IT capacity, capabilities, and gaps to support evolving service delivery and decision-making needs. The analysis should use, as benchmarks, assessments of IT capacity and capabilities needs and gaps identified through strategic planning and performance measurement assessments.

Panel Recommendation 12: OMES should dedicate staff resources to assist the OCC to identify the IT capacity needed to develop and support the recommended strategic planning, performance management, and change management systems.

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Chapter 5: Staffing

The Governor's EO calls for a staffing assessment, addressing:

- If the agency is properly staffed to meet its mission
- If the staffing structure of the agency is efficient and effective
- If the staff has the autonomy and accountability needed to perform their duties

In this Chapter, the Panel's analysis of OCC staffing examined two areas:

1. Advisory support to Commissioners
2. Recruitment and retention

The first issue identified in the EO (i.e., if the agency is properly staffed) is discussed in [Chapter 4 Performance](#).

5.1 Advisory Support to Commissioners

According to the National Regulatory Research Institute, the major job of advisory staff in state regulatory commissions is to assist the commissioners in making well-informed decisions by providing education, advice, and technical support.⁵¹ Some OCC staff members reported that OCC Commissioners do not receive sufficient technical support. In this section, the Panel examines the workload of commissioners, assesses whether there is sufficient staffing support for commissioners, and evaluates the OCC's processes for providing advisory support.

5.1.1 Background

As discussed in [Chapter 3](#), the OCC has a broad range of responsibilities. It is the commissioners' constitutional and statutory responsibility to review materials and issue orders in all matters within the jurisdiction of the Commission.⁵² The OCC Rules of Practice identifies sixteen types of dockets⁵³ that require the commissioners' approval, including: General Docket, Conservation Docket, Consumer Services Docket, Enforcement Docket, Gas Gathering Docket, Motor Carrier Citation Docket, Oil and Gas Citation Docket, Oklahoma Universal Service Fund Docket, Petroleum Storage Tank Docket, Petroleum Storage Tank Division Citation Docket, Pollution Docket, Public Utility Docket, Rulemaking Docket, State Fund Plugging Docket, Transportation Docket, and Oil and Gas Docket.

⁵¹ Ken Costello and Rajnish Barua, *Evaluation of Public Regulation Commission Staffing and Budget Allocation*, (Silver Spring: National Regulatory Research Institute, May 2017), p. 11.

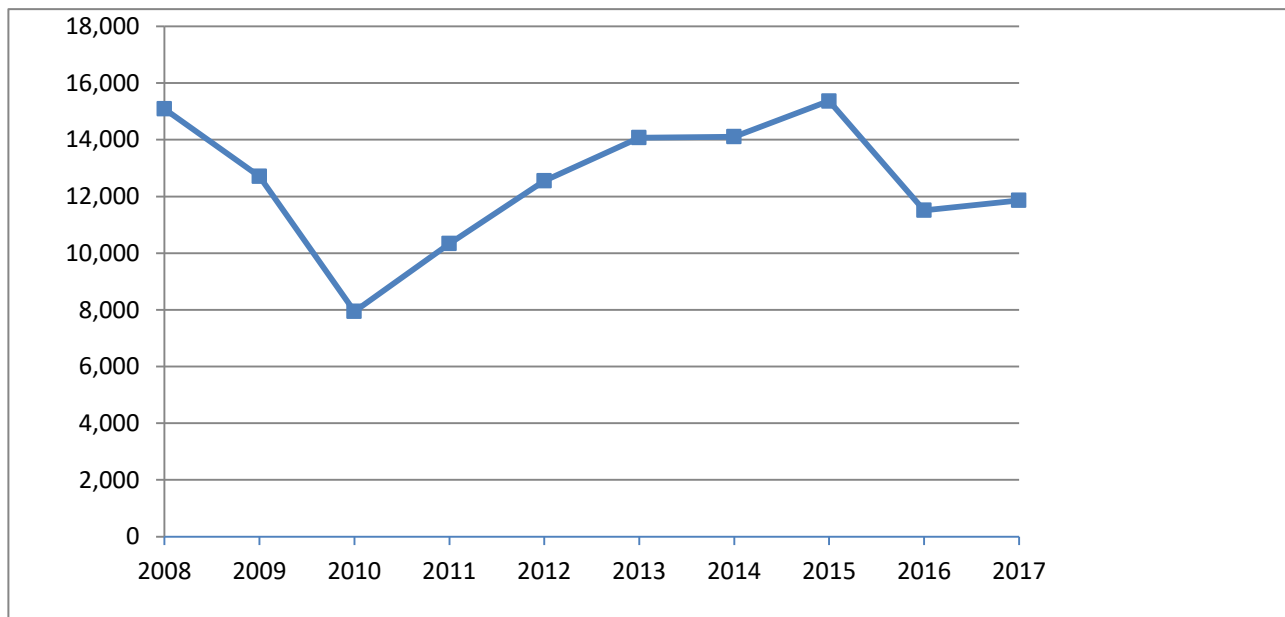
⁵² In certain matters, when properly authorized by statute or rule, decisions are handled administratively which do not require Commissioners' approval.

⁵³A docket in the United States is the official summary of proceedings in a court of law.

In all matters, whether judicial or legislative, reports and recommendations of the ALJs are advisory only. The commissioners are required to reach their own conclusions upon evidence and to make adequate findings. They may adopt or reject any or all findings and recommendations of the ALJs, and they may expand such findings and recommendations.⁵⁴

According to the FY 2017 OCC's Annual Report, the total number of orders issued by the commissioners was 11,865. The number of orders issued fluctuated over the past ten years (See *Figure 9* below).

Figure 9 - Orders Issued by Commissioners (2008-2017) (Data from OCC Annual Report FY 2017)



In addition, the commissioners have other responsibilities and duties, such as serving as the Oklahoma state representative on the Regional State Committee of the Southwest Power Pool; attending and speaking at conference events; and testifying before federal and state committees and subcommittees.

Regulatory issues have become increasingly complex, and commissioners must make decisions on highly technical issues. Given the OCC's broad range of responsibilities and with only three commissioners,⁵⁵ it is difficult for them to have expertise in all regulated areas (i.e., utility, energy, geology, finance, accounting, law, and so forth). In order to enhance both timeliness and quality of commissioners' decisions, the Panel believes that providing adequate and effective advisory support is critical to the success of the OCC.

⁵⁴ Smith Cogeneration Management, Inc. v. Corporation Com'n, 863 p.2d 1227.

⁵⁵ As discussed in Chapter 6, 29 states have three commissioners, 20 states have five commissioners, and 2 states have 7 commissioners.

Under the current structure, commissioners do not have their own technical staff. One aide and one executive secretary support each commissioner. The commissioners' aides are attorneys and do not have extensive technical expertise. In addition, the OCC assigns each commissioner a deliberations attorney to assist in areas as each commissioner directs. However, as some interviewees noted, the deliberations attorneys spend their time reviewing certain daily orders (primarily Oil and Gas orders); and currently, this task consumes the majority of their workload, instead of assisting the commissioners with other matters. These deliberations attorneys technically are not members of the commissioners' staff but rather report to the OCC's Director of Administration.

5.1.2 Findings

The Panel used three principles to examine and evaluate the OCC's practices and processes for providing advisory support to commissioners:

1. commissioners should receive adequate advisory support to make well-informed decisions;
2. the OCC should have an effective process that clearly assigns authority and accountability for providing advisory support to commissioners; and
3. the OCC's advisory support should meet the varied needs of each commissioner.

In order to evaluate staffing support for commissioners, the Panel attempted to obtain detailed information on how commissioners apportion their work time. The Panel's research revealed that the OCC does not track the time commissioners spend on each type of case and the number of orders does not reflect the complexity of the cases (as discussed in [Chapter 4](#)). Many orders are straightforward and routine, while other orders are more complex and require more time for commissioners to deliberate. Under these circumstances, it is difficult for the Panel to assess whether a commissioner has "adequate" technical support based on the workload data provided by the OCC.

After careful review of the OCC's policies and interviews with multiple staff members, the Panel finds that a key challenge is that the OCC lacks an effective process to provide advisory support to commissioners. Commissioners typically request technical advisory support from division directors. The Panel learned that the process for commissioners to request and obtain advisory support could be complicated and confusing because of varied communication and procedural requirements within the OCC.

The implications of ex parte communication restrictions are a key factor in the Panel's analysis of commissioner staff support. Several interviewees explained how ex parte restrictions could convolute the communication flow between commissioners and staff members. According to Oklahoma statute, a judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their

lawyers, concerning pending or impending matters.⁵⁶ The OCC commissioners and ALJs are prohibited from ex parte communications. Within the OCC, some types of cases follow ex parte rules, while others are exempt. The OCC primarily addresses two types of cases: judicial cases and legislative cases. *Table 5-1* below provides an overview of the OCC’s judicial and legislative cases.

Table 5-1 Overview of OCC Judicial and Legislative Cases

	Definition	OCC Cases
Judicial Cases	Judicial cases refer to the cases that investigate, declare, and enforce liabilities as they stand on present and past facts and under laws supposed already to exist.	<ul style="list-style-type: none"> • Oil and Gas • Enforcement/contempt • Transportation • Motor carrier citations • Petroleum storage tank • State funds, and • Consumer service complaints
Legislative Cases	Legislative cases look to the future and change existing conditions by applying a new rule thereafter.	<ul style="list-style-type: none"> • Utility Rate Cases • Rule makings • Notice of Inquiries

Judicial cases are subject to ex parte communications (i.e., no parties involved in a case are allowed to interact with ALJs or commissioners). In judicial proceedings, the commissioners are required to make decisions solely based on the evidentiary record. Thus, they need to refrain from gaining information outside of the record. For example, PUD handles both legislative and judicial matters. In judicial cases (e.g., consumer service complaints), if requested by commissioners before a case starts, the PUD director may assign staff members to serve as the designated advisors. The PUD advisor must: 1) not work on the case directly and 2) be excluded from communications with other staff members working on the case.

The same approach is used for legislative cases in PUD. Legislative cases, such as utility rate cases, are exempted from the prohibition on ex parte communications; however, PUD leaders asserted that staff members should not interact with the commissioners when they are working on a case (i.e., before filing testimonies), as PUD serves as an independent party to any rate case. The purpose of this practice is to alleviate concerns of other parties that PUD might have superior access to the

⁵⁶ 5 O.S. Rules 2.9 (OSCN 2018) App. 4.

commissioners. The commissioners must provide prior notification if they need an advisor for a rate case.

OGCD cases are judicial cases and therefore subject to ex parte communications rules.⁵⁷ According to the Panel's interviews with OCC staff members, there does not appear to be a standardized process for the commissioners or ALJs to obtain advisory support from the OGCD. While the professional staffs within the technical department of the OGCD have the technical expertise to provide advisory support, there are different views among OCC staff members whether the OGCD technical staffs are a party in all cases and whether they are thereby subject to ex parte rules. Some commissioners utilize their deliberating attorney to obtain information from the OGCD's technical department.

The concern about ex parte communication is not unique to Oklahoma. To streamline the process and avoid confusion, other states have adopted different structures and models to provide advisory support to commissioners. In some states, such as Utah and North Carolina, advocacy staff resides in a separate agency in order to minimize ex parte communications. In some states, a designated group of commission employees serves as advisory staff⁵⁸ and do not work directly on cases. For example, at the Arkansas Public Service Commission, approximately fifteen staff members work as the commissioners' advisory staff and approximate seventy staff members work as advocacy staff who perform independent analysis and file testimonies. In the Arizona Corporation Commission, the utility division assigns staff members to serve as the commissioners' advisors when there is a utility rate case. These advisors focus on supporting the commissioners and cannot have private conversations with staff members who work directly on rate cases.

According to the OCC, PUD is not sufficiently funded to maintain a permanent designated body of technical advisors to the commissioners that is separate and distinct from the staff who regularly appear and advocate a position in causes heard by the Commission. The PUD recently created a new advisor position to provide technical support to ALJs; after the ALJs issue their recommendations, that advisor could be available to Commissioners. However, this advisor has not been widely utilized by Commissioners and their staff.

Each OCC Commissioner (and their aide) has different experiences and academic backgrounds, and therefore, their needs for advisory support are different. For example, one current commissioner's aide has extensive experience in public utility matters, so this commissioner's office does not need as much technical support for utility cases. Another commissioner has background in both law and geology and may not need as much support to deliberate oil and gas cases. The Panel believes that it is important to allow commissioners the flexibility to decide how they will utilize advisory support.

⁵⁷ 5.O.S. Chapter 1, App. 3-A.

⁵⁸ According to NRRI, the professional staff in regulatory commissions typically plays two distinct functions: advisory staff and advocacy staff. Advocacy staff serves as an independent party to utility rate cases and represent the interest of the public, while advisory staff assist and advises Commissioners in making final decisions.

5.1.3 Recommendations

Panel Recommendation 13: The OCC should reassign staff in order to establish a pool of technical advisors to assist commissioners in making well-informed decisions. This agency-wide advisory group should consist of a professional expert in each of the OCC's core program areas. These advisors should report directly to the commissioners through a lead advisor who will work with the individual commissioners to identify and prioritize assignments.

This advisory group should be responsible for: (1 ensuring that commissioners have access to the technical information needed to support their decision making process in all regulated areas (e.g., public utility, oil & gas, etc.), and (2 monitoring recent developments and future trends in OCC-regulated industries and briefing commissioners on those developments and trends.

Panel Recommendation 14: The OCC should reexamine the Commission's rules and procedures related to staff assignment to introduce more flexibility in the capacity to provide advisory technical support to commissioners as needed.

5.2 Recruitment and Retention

5.2.1 Background

To successfully carry out its mission, the OCC must be able to recruit and retain highly qualified employees. In this section, the Panel highlights a number of OCC's recruitment and retention issues and offers recommendations to address challenges and further build the OCC's ability to develop an effective workforce.

The OCC's staff size has fluctuated over the last five years. The number of employees within the OCC increased from 450 in 2014 to 496 in 2017.⁵⁹ For the past five years (FY 2013-2017), the OCC had an average turnover rate of 12.6 percent, which is lower than the state average rate (17.3 percent).⁶⁰ In interviews, some staff members raised concerns about the retention of attorneys and ALJs; however, the data provided by the OCC Human Resources (HR) Office does not suggest significant attrition of ALJs and attorneys for the past five years.⁶¹ The average turnover rates for these positions were lower than that of the OCC as a whole. The estimated average time to hire at the OCC is thirty-eight days.⁶²

⁵⁹ Oklahoma Corporation Commission, Human Resources Division, *Human Resources Report* by Jim Nelson, (Presented January 16, 2018).

⁶⁰ Ibid.

⁶¹ Over the past five years, three ALJs retired and one resigned; eight attorneys resigned and three retired.

⁶² OCC does not track "time to hire" as a metric. Time to hire varies, depending on the type of positions. 38 days are an estimated timeline. OMES does not track state-wide, average time to hire, which means the study team did not have comparative data across the state.

5.2.2 Enhance Staff Job Satisfaction

5.2.2.1 Findings

While data does not suggest a major recruitment and retention issue at the OCC, a number of interviewees (both inside and outside of the OCC) noted that it could be a potential challenge in the future. OCC officials suggested in interviews that the OCC's current compensation level has placed them at a disadvantage when competing for top talent in certain professional areas, such as utility regulation, geology, law, and engineering. According to the OMES, annual compensation reports (from 2016 and 2017), the salaries of OCC employees are generally comparable with that of other Oklahoma state agencies for most positions. Like other public sector organizations, the OCC offers substantially lower salaries than the private sector for comparable technical and professional positions. The Panel learned in interviews that it is common for OCC employees to leave for higher salaries in the private sector, as their skills can be easily transferable.

Pay and benefits play an important role in attracting and retaining high-quality employees. However, there is many other recruitment and retention tools available to government agencies, including career development opportunities, flexible work arrangements, and staff advancement and recognition programs. The Panel finds the OCC does not use these broadly or uniformly.

Career Development and Lateral Rotation Program

Career development opportunities can be an effective tool to reward high-performing employees. Many employees were concerned that staff advancement and mobility are limited at the OCC. The OCC has taken actions to address the concerns related to career development opportunities. For example, since the reorganization in 2017, the AJLS has had ongoing discussions on redesigning career development paths to encourage the retention of attorneys and ALJs. However, promotions at the OCC are largely vacancy-driven, and career paths are not clear for many positions.

One way to boost employee retention is to provide employees opportunities for cross-divisional movements. Lateral rotation is an especially important tool to retain and engage employees when the organization has limited resources to move employees up a traditional career ladder.⁶³ Within the OCC, there are opportunities to borrow or loan employees from other divisions for short-term assignments. However, the OCC lacks a formal lateral rotation program. A formal rotation program typically allows customized assignments to promising employees, and the assignments usually run for one year or longer.⁶⁴ An OCC-wide rotation program offers an alternative approach to allow employees to expand their skills and networks, discover new career interests, and develop a more holistic view of organization operations.

⁶³ Society for Human Resource Management. *Developing Employee Career Paths and Ladders*, (July 23, 2015), <https://www.shrm.org/resourcesandtools/tools-and-samples/toolkits/pages/developingemployeecareerpathsandladders.aspx>.

⁶⁴ Ibid.

Training

A common theme from interviews and the staff survey⁶⁵ is that staff members are not satisfied with the training opportunities provided by the OCC. Due to limited budget resources, the primary type of training for OCC staff is the Human Resource Development Service training sponsored by the state (OMES). OMES training is offered in the form of academic workshops, taught on a semi-annual basis. These courses are typically one to two days in length and cover a variety of topics such as learning management skills, violence in the workplace, and advanced problem solving. The OCC also offers employees other types of training, such as financial management training, Council on Enforcement Education and Training for enforcement officers, field office staff training, and the “Desk Week” for ALJs and attorneys.

Many interviewees and survey respondents reported that the OCC does not conduct training needs assessment, and the training courses currently offered are not very helpful. Some employees said that most training is for beginners and does not benefit the more-experienced employees. Additionally, there are many generic courses such as, “how to handle stress.” Staff members would welcome training programs tailored more closely to their jobs and professional development needs, such as technical training, software training, project management, leadership, and public utility 101. Third, the Panel finds that the OCC’s training programs are not “future oriented.” Regulatory issues have become increasingly complex and highly technical, and energy, utilities, transportation, and telecommunication sectors are evolving rapidly. In order to serve the people of Oklahoma effectively, the OCC should provide its employees training programs to help them identify future trends in regulated industries and understand how they may affect the future operating environment of the OCC. Fourth, as discussed in [Chapter 2](#), the OCC should establish an agency-wide performance management system to assess and improve its effectiveness and efficiency. In order to implement the Panel’s recommendations, it is necessary for the OCC to provide training to help employees develop a better understanding of effective performance management, strategic planning, and change management in the public sector.

Another challenge noted by interviewees in developing training is the lack of common practices across the OCC. Some divisions have the resources to provide employees more training opportunities, while other divisions rely on the OCC-wide training programs.

Mentoring Programs

In addition to formal training courses, conferences, seminars, and mentoring programs also provide learning opportunities for employees. The OCC does not appear to have any formal, organization-wide mentoring programs. Successful mentoring relationships benefit both mentors and mentees. The OCC started a job-shadowing program (i.e., the Knowledge Sharing Program) a few years ago to allow employees with leadership potential to gain broader exposure to the organization’s operations. However, the OCC suspended this program after both the staff member tasked to

⁶⁵ As part of the new strategic planning process, the OCC conducted a staff survey in 2017 to solicit input from staff members.

operate the program and the former Director of Administration, who initiated the program left the OCC. The OCC's HR Manager noted that the program is currently under review, and the OCC will update the program in accordance with their new strategic plan. Some divisions, such as PUD and AJLS, have implemented their own mentoring programs.

Flexible Work Arrangements

Interviews indicate that a better work-life balance is one of the key reasons why many people choose to join public service. Flexible work arrangements, such as telework, compressed workweek, and flexible work hours, are appealing to employees who have a strong desire to achieve a healthy work-life balance. Effective use of telework and other types of flexible work arrangements can help the OCC reduce operation costs and improve employee job satisfaction. The OCC offers flexible work schedules (as defined in the OCC Operations Manual, under "Flextime" procedures); however, few staff members (e.g., enforcement officers) regularly use Flextime. Additionally, the OCC only has five employees who telework full time, due to personal or professional reasons. Individual divisions manage their telework schedules and there is not a formal, organization-wide telework policy. According to the OCC, the organization plans to utilize telework to a greater degree, as the OCC modernizes computer systems.

Succession Planning

Succession planning is essential to effective human capital management. A successful succession plan allows agencies to forecast future talent needs, develop, and train current employees, and create a strong pipeline of high quality successors for a wide range of positions, especially leadership positions. The OCC currently does not have an integrated, organization-wide leadership succession plan in place, and workforce and succession planning efforts vary considerably across the OCC. Some divisions, such as the PUD, have established their own succession plan process, while other divisions have not implemented any succession programs. The absence of a clear succession plan can be troubling, as evidenced with the recent retirement of the Director of the Oil and Gas Division.

5.2.2.2 Recommendation

Panel Recommendation 15: OCC should enhance staff job satisfaction and professional development by: a) clearly defining career development paths; b) enabling staff mobility across divisions; c) enhancing staff development opportunities, including training in performance management and future energy trends; d) establishing formal mentoring programs; e) expanding the use of flexible work arrangement and telework opportunities; and f) establishing formal leadership succession programs.

5.2.3 Evaluate Employee Classification Needs

5.2.3.1 Findings

Many interviewees noted that the OCC does not have effective tools to recognize and incentivize the performance of classified employees. Classified employees are state employees under the jurisdiction of the Oklahoma Merit System of Personnel Administration (Merit Rule), while unclassified employees are employees excluded from coverage of the Merit Rule.⁶⁶ Approximately 65 percent of the OCC's employees are classified employees.⁶⁷ All PUD and the PSTD employees are unclassified employees. Most leadership positions (e.g., division directors) and professional positions (e.g., ALJs and attorneys) in the remaining divisions are unclassified positions.

The merit system principles are designed to ensure fair and open recruitment and employment practices in state agencies. A common concern about the merit system is that agencies do not have authorities or tools to manage employee performance effectively.⁶⁸ Under the Merit Rule, the OCC's current compensation structure for classified employees is rigid and does not include the flexibility to reward high-performing employees. Salaries are set based on pay bands assigned to jobs for classified employees and managed by the OMES, and there are no "steps" within the same pay band. The only way to recognize staff performance is to promote them to a different pay band or change their job titles within the same band. All classified employees with the same title in the OCC receive the same pay for their work, regardless of their performance. According to the Merit Rule, "pay raises are prohibited unless specifically authorized by legislation or the Merit Rule."⁶⁹ Agencies have authority to offer performance-based adjustments to employees who have achieved an overall rating of "meets standards" or better on their most recent performance evaluation;⁷⁰ and as the OCC's HR Manager noted in interviews, supervisors rate the majority of the OCC's employees as "meets standards" or better. Pay raises must be the same for all classified employees in the same pay band.

For unclassified positions, agencies in Oklahoma have more authority and flexibilities to manage employee performance. The difference between classified and unclassified employees is that

⁶⁶ Oklahoma Office of Management and Enterprise Services, *Merit System of Personnel Administration Rules, Title 260: Chapters 25, 30, and 35*, (September 1, 2017), <https://www.ok.gov/opm/documents/MeritRulesTitle260.pdf>.

⁶⁷ Oklahoma Corporation Commission, Human Resources Division, *Human Resources Report* by Jim Nelson, (Presented January 16, 2018).

⁶⁸ The federal government's merit system principles are found at 5 U.S.C § 2301 and can be accessed here as part of a broader discussion of performance management: <https://www.opm.gov/policy-data-oversight/performance-management/reference-materials/more-topics/merit-system-principles-and-performance-management/>

⁶⁹ 260 OK: 25-7-1(b)

⁷⁰ 260 OK: 25-7-27 Performance-Based Adjustments.

unclassified employees serve on an “at will”⁷¹ basis, while classified employees are entitled to due process procedures prior to termination. Many classified employees view the job security provided by the merit system as beneficial. Salaries and benefits are similar for both classified and unclassified employees. Some interviewees noted that there is a general trend of moving towards unclassified positions in Oklahoma state agencies. All PSTD positions were recently transformed into unclassified positions. In most of the states the Panel interviewed, such as Arizona, Nebraska, and Kansas, all of the employees of their regulatory commissions are unclassified employees.

Legislative actions are required to transfer unclassified positions to classified positions. The transfer process involves a formal proposal from the OCC (divisions) to the Human Capital Management liaison at the OMES.

5.2.3.2 Recommendation

Panel Recommendation 16: The OCC should evaluate the use of classified and unclassified employees in each division and determine whether reclassifications are needed to align with current budget and operational needs.

5.2.4 Enhance the Capacity of the HR Office

5.2.4.1 Findings

People are the most important asset of an organization. Numerous studies confirm that the HR function has evolved to become an integral component of the organization and the cornerstone of any organizational transformation efforts.⁷² In modern, high-performing organizations, the role of the HR office goes beyond supporting the organization with administrative tasks. The HR office should serve as a strategic partner to the OCC’s leaders and participate in the decision-making process. It is necessary for the HR office to have adequate staff and institutional authority to carry out the full range of human capital management (HCM) functions.

Currently, the OCC’s HR Department is staffed by four people (including the HR Manager) to support over 500 employees across the OCC and mainly focuses on administrative matters and transactional activities, such as processing hiring contracts, pay adjustments, employee benefits, and performance appraisals. Given the limited capacity of the central HR office, most of the strategic HCM activities, such as those activities discussed in [Section 5.2.2](#) (i.e., training assessment, career development paths, succession programs), are largely decentralized and vary significantly across divisions.

⁷¹ At will employment: employment is for an indefinite period of time and is subject to termination by employees or employers, with or without cause, with or without notice, and at any time.

⁷² US Government Accountability Office, *Sustained Attention to Strategic Human Capital Management Needed* (Washington: 2009).

The OCC has taken several actions to improve organization-wide HR-related efforts. For example, the OCC is in the process of implementing a new HR management system called “Empower HR,” which is expected to allow the OCC to streamline and modernize its HR processes and provide real-time HR data and statistics. Another example is the OCC’s new onboarding program. Based on the feedback collected from a staff survey, the OCC is developing and updating its employee orientation program, which provides new hires the opportunity to develop a more comprehensive understanding of how the OCC operates. Participants' feedback about this program is generally positive.

These initiatives are critical to strengthening the OCC’s ability to manage its workforce effectively; however, the Panel maintains that additional efforts are needed. It became apparent that the OCC’s current decentralized HR management approach is detrimental to their performance. The lack of consistency in human capital management across divisions was an issue commonly raised by staff at all levels in interviews.

5.2.4.2 Recommendation

Panel Recommendation 17: The OCC should enhance the capacity of the HR office to provide the training necessary to fulfill Panel Recommendation 15, to strengthen key human capital management processes within the OCC and promote consistency across all divisions.

Chapter 6: Funding

The Governor's EO mandates an assessment of the OCC's funding, to include the following areas of focus:

- whether the agency is properly funded;
- the current funding mechanisms available; and
- funding gaps within individual programs.

In the course of its research, the Academy team highlighted three topics for assessment:

- funding sources;
- reliability of funding; and
- funding gaps.

Reliable and adequate funding of the OCC enables the organization to achieve its critical mission. At a high level, underfunding of the OCC results in:

- Potential of statutory mandates not being performed or performed at a slower rate
- Delays to IT projects that include electronic filing and payments, critical computer application enhancements, and additional security of the OCC's IT infrastructure
- Delays in filling vacant positions to avoid furloughs and a reduction in force
- Potential for deteriorating transportation infrastructure due to insignificant fines levied against overweight vehicles
- Not optimally operating newly built ports of entry and weigh stations and loss of revenue due to closed facilities

The assessment of funding considers the following factors regarding OCC resources:

- The OCC is vulnerable to budgetary decisions if reliant on general revenue to fund the Transportation and Oil and Gas divisions
- The OCC would benefit greatly from a consistent revenue stream to sustain the organization's operations during years of economic downturn
- Currently, OGCD revenue streams are closely tied to drilling activity
- Given the strong link between drilling activity and the state's overall economic growth, general revenue appropriations approved by the state legislature tend to decrease at the same time the OCC experiences low revenue collections due to less drilling activity
- The OCC has not identified a steady revenue stream to fund the Seismicity Department

- The OCC cannot continue to rely on one-time exceptions to use revolving fund cash balances to fund across divisions, as was permitted in FY 2016 and FY 2017 when general revenues were significantly lower than the amount of appropriations originally set by the legislature
- The state legislature is using the annual appropriation bill to re-appropriate OCC revolving fund balances, resulting in a lower amount of resources to fund long-term IT needs, to fund inadequate staffing levels, and necessary capital and building improvements
- Uncertainty connected with the appropriation bill makes it difficult to build budgets, particularly when state legislature can cut general revenue, and the OCC can lose revolving fund balances
- Regulatory prevention is more cost effective than repair or replacement of infrastructure, damaged because of inadequate regulatory oversight by the OCC.

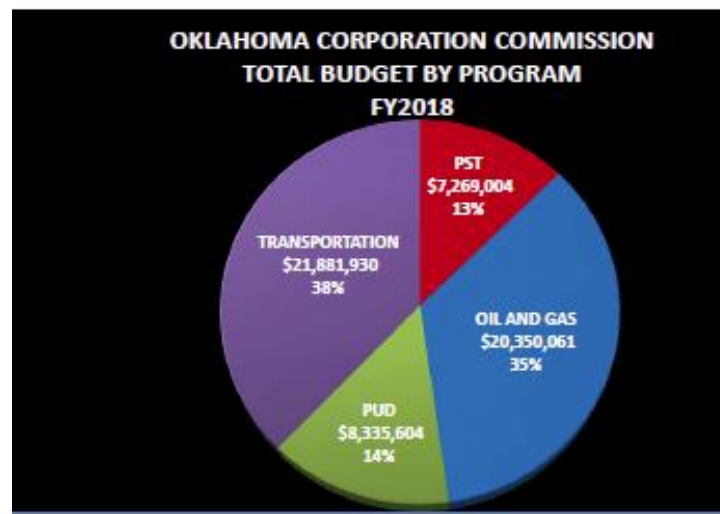
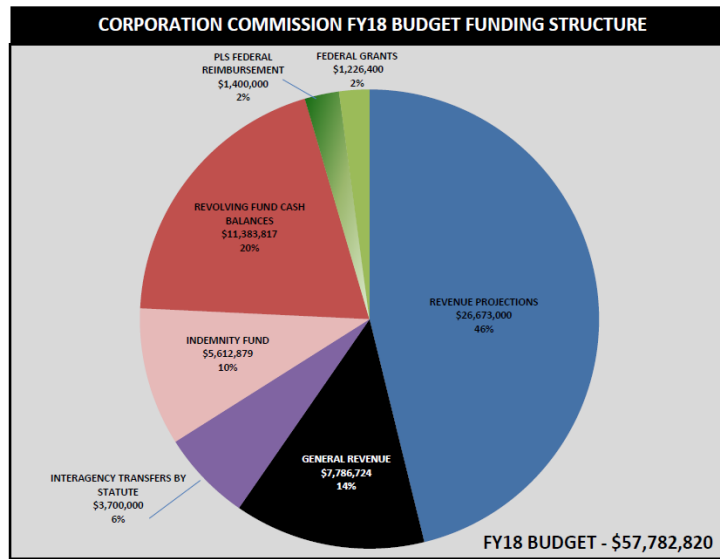
6.1 Funding Sources

Chapter 6 will review OCC funding sources in further detail and examine the reliability and adequacy of OCC funding in light of the factors discussed above.

6.1.1 Background

The OCC operates as four distinct operating divisions providing services to the citizens and companies of Oklahoma. Each division has its own unique funding stream. This section first details the principle revenue/funding sources of the entire OCC, and then reviews the principle funding sources of each operating division (transportation, oil and gas, petroleum storage tank, and public utility), providing data over the last five fiscal years. Importantly, the OCC must seek approval for a total budget from the state legislature in advance of each fiscal year and total expenditures are capped regardless of funding levels.

Figures 10 and 11 – FY 2018 Budget Funding Structure and Total Budget by Program



The operations of the Commission are funded by the following major categories of revenue sources. Briefly,

- **The General Fund**, in which funds are appropriated by the Legislature each fiscal year and are therefore fiscal year specific;
- **The Revolving Fund(s)**, in which payments are received from regulated companies for fees, fines, licenses, and permits;
- **The Public Utility Assessment**, in which annual assessments to regulated utilities are made for the funding of the Public Utility Division and related support costs;
- **Well Plugging**, funded by an excise tax on oil and gas gross production and dedicated for the plugging of abandoned oil and gas wells; and

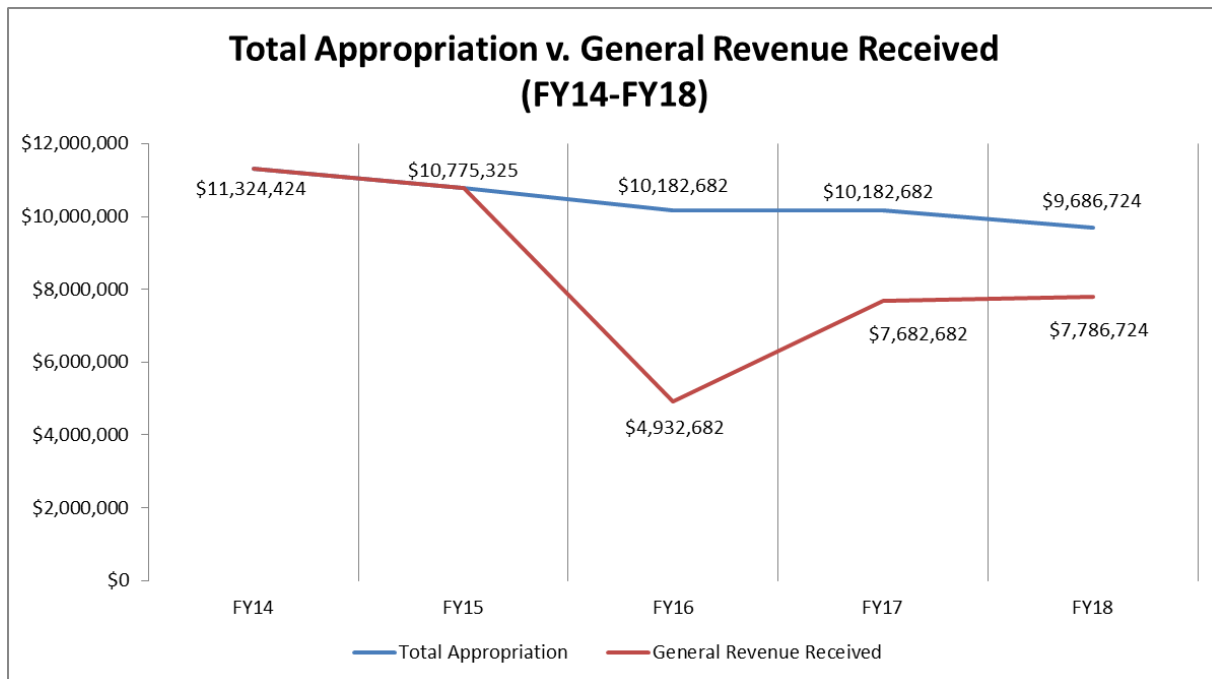
- **Federal Funds**, grants, administered by the Commission, for federal programs.⁷³

General Revenue Fund - Appropriations

The Oklahoma Legislature appropriates general revenue funds each fiscal year. In FY 2018, general revenue was \$7,786,724, or 14 percent of the OCC’s total budget. Historically, the OCC splits these monies between the OGCD and the Transportation Division. Since at least 2014, the total appropriation has been divided 75 percent to OGCD and 25 percent to Transportation. In FY 2017, general revenue funds amounted to 29 percent and 9 percent of OGCD’s and Transportation’s budgets, respectively.

Since FY 2014, the legislature has not fully funded the total appropriated budget; therefore, general revenue funding has varied widely. The below chart (*Figure 12*) illustrates the gap between OCC’s annual total appropriation and the general revenue received. [Appendix D](#) provides additional, detailed information about how, historically, the OCC funds this gap.

Figure 12 - Total Appropriation Promised by the OK Legislature (blue) v. General Revenue Received by OCC from the Legislature (red). (Source: OCC Annual Report FY 2017)



⁷³ Oklahoma Corporation Commission, “Annual Report Fiscal Year 2017,” <http://www.occeweb.com/News/2018/2017AnnualReport-b.pdf>.

Public Utility Assessment Fund

The Public Utility Assessment Fund is the funding mechanism in which the OCC makes annual assessments to regulated utilities for the funding of the Public Utility Division (PUD) and related support costs.

Oklahoma law authorizes the OCC to assess a fee (an assessment) on each public utility, “to provide adequate funding to the Public Utility Division of the Corporation Commission for the regulation of public utilities in the state and for providing timely and expeditious reviews and completions of rate cases, and increased responsiveness to the needs of consumers and the regulated community.”⁷⁴

Any assessments levied by the OCC under this section of the statute are recoverable as an operating expense for public utilities and should be included in a utility’s base rates or basic monthly service charge. All assessments collected by the OCC under this section of the statute are deposited into the 220 Public Utility Regulation Revolving Fund, also known as the Public Utility Assessment Fund.⁷⁵ The statute also states that the Legislature will establish budgetary limits for PUD for any fiscal year.

In FY 2017, the Fund had revenues of \$9.3 million, of which \$7.4 million came from public utility assessments.

202 Corporation Commission Revolving Fund

State statute established the Commission Revolving Fund, which consists of all fees and monies received by the OCC, “as required by law to be deposited to the credit of said fund and any other monies, excluding appropriated funds that are not directed by law to be deposited to the credit of any other Corporation Commission Fund.”⁷⁶

In FY 2017, the Corporation Commission Revolving fund had revenues of \$14.6 million, collected from a variety of sources, including unified carrier registrations, pipeline safety fees, and filing fees.

230 Oil and Gas Conservation Revolving Fund

The Oil and Gas Conservation Revolving Fund was established by statute in 1992.⁷⁷ The statute declares that the fund will be a continuing fund, not subject to fiscal year limitations, and will consist of all monies designated for deposit to said fund. In addition to fees, the Oklahoma excise tax

⁷⁴ 17 OK Stat § 17-180.11 (2017)

⁷⁵ Ibid.

⁷⁶ 17 OK Stat § 17-180.7 (2017)

⁷⁷ 17 OK Stat § 17-57 (2017)

on petroleum oil, which the Commission credits and apportions each year, generates \$1.35 million.⁷⁸ The fund should be used, “for the purposes of expeditious prevention and abatement of oil and gas pollution, the protection of correlative rights, and the prevention of waste.”⁷⁹

In FY 2017, the Oil and Gas Conservation Revolving Fund had revenues of \$5.3 million.

210 Petroleum Storage Tank Revolving Fund

Oklahoma Statute established the Storage Tank Regulation Revolving Fund in 1989.⁸⁰ The statute dictates that the fund will be a continuing fund, not subject to fiscal year limitations and will consist of monies from five sources:

1. “The proceeds of any fees imposed pursuant to the provisions of the Oklahoma Storage Tank Regulation Act...;
2. Interest attributable to investment of monies in the [210 Revolving Fund];
3. Monies received by the Commission in the form of gifts, grants other than federal grants, reimbursements or appropriations from any source intended to be used for the purposes of the revolving fund;
4. Fines, forfeitures, administrative fees, settlement proceeds; and
5. Any other sums designated for deposit to the revolving fund from any source public or private.”⁸¹

In FY 2017, the PST Revolving Fund had revenues of \$4.2 million.

215 Well Plugging Fund

State statute originally established the Corporation Commission Plugging Fund in 1990 and subsequently amended several times since, most recently in April 2016.⁸²

The Plugging Fund consists of monies received by OCC as required by law to be deposited in the fund. Additionally, the fund is a continuing fund, not subject to legislative appropriations. The 215 Plugging Fund received a transfer of \$1 million in proceeds from the penny-per-gallon fuel assessment, as well as other funds.⁸³ In FY 2017, the fund produced revenues of \$3.4 million.

⁷⁸ Title 68 Chapter 1 – Tax Codes Article 11 Section 1103

⁷⁹ Ibid.

⁸⁰ 17 OK Stat § 17-315 (2017)

⁸¹ Ibid.

⁸² 17 OK Stat § 17-180.10 (2017)

⁸³ 17 O.S. § 354; 17 O.S. § 327.1 (effective 11/1/18)

Indemnity fund

PST administers the Oklahoma Petroleum Storage Tank Release Indemnity Fund⁸⁴ to assist storage tank owners and operators to meet a federal financial responsibility requirement for damages caused by a leaking storage tank system. The Indemnity Fund Program must prioritize cases to most effectively protect the public health, safety, and welfare, and minimize damage to the environment. As part of this process, the Indemnity Fund Program reimburses allowable costs incurred for corrective action.⁸⁵

The Indemnity Fund consists of 1) all monies received by the OCC as proceeds from the assessment of one cent per gallon on the sale of each gallon of motor fuel in the state;⁸⁶ 2) interest from the investment of money in the Indemnity Fund; and 3) money received by the OCC in the form of gifts, grants, reimbursements, or from any other source intended to be used for the purposes specified by or collected pursuant to the provisions of the Indemnity Program.⁸⁷

Accumulated revenue from the Indemnity Fund in FY 2017 was \$4.0 million.

Federal grants

In FY 2017, the OCC received \$1.8 million in federal funds. OGCD Underground Injection Control Sub-Section received a portion of these federal funds from the U.S. Environmental Protection Agency (EPA) to aid the administration of the Federal Underground Injection Control Well Program under the Safe Drinking Water Act. The Transportation Department received a portion of these federal funds from the U.S. DOT as a federal reimbursement for the Pipeline Safety Department. The Leaking Underground Storage Tank Revolving Fund received a portion of federal funds from the U.S. EPA, as specified by Oklahoma Statute.⁸⁸

6.1.2 Findings

The OCC is funded through a combination of sources. The Transportation Division and the OGCD are partially funded by state general appropriations. Each division dedicates funding sources, which includes fees, fines, permits, licenses, apportioned state revenue, and federal funding. In addition, if balances are available in revolving funds, divisions can access these sources to augment shortfalls of dedicated sources of revenue or general appropriations revenue shortfalls, within statutory limitations.

⁸⁴ 17 OK Stat § 17-353 (2017)

⁸⁵ *Ibid.*

⁸⁶ 17 OK Stat § 17-354 (2017)

⁸⁷ 17 OK Stat § 17-353 (2017)

⁸⁸ 17 OK Stat § 17-365 (2017)

Given the various sources of funding and the distinctly different operational profile of each division, the Panel’s assessment focuses on each operating division. The Panel provides summary funding information for each division, based on the last five years of OCC financial information. This section will explain in more detail the main sources of funding for each operating division, as well as the administrative and OMES work within the OCC.

Petroleum Storage Tank Division (PSTD)

In FY 2018, PSTD had six revenue sources. Over the past five years, the Petroleum Storage Tank Release Indemnity Fund financed approximately 75 percent of the division budget.⁸⁹ Federal grants from the EPA funded another 12 percent of the division’s budget, partly in connection with the Underground Storage Tanks (UST)/Leaking UST (LUST)/Fund Program.⁹⁰ State appropriations have not funded this division over the past five years.

Public Utility Division (PUD)

In FY 2018, PUD had five revenue sources. From FY 2014-FY 2018, the Public Utility Assessment Fund, which makes annual assessments to regulated utilities for the funding of the PUD, covered seventy-five to ninety percent of PUD budget and related support costs. The assessment fee is calculated by estimating the total operating costs of the division for the coming year and allocating these costs to the public utilities that are under the OCC’s authority. In addition, a small portion of funding annually is sourced from a “budget gap revolving fund.” State appropriations have not funded this division over the past five years.

Oil and Gas Conservation Division (OGCD)

In FY 2018, this division had ten different funding sources, the greatest number of any OCC division. The most significant source of revenue over the past five years has been general revenue (i.e., actual state appropriation), which accounted for 29 to 45 percent of the division is funding between FY 2014 and FY 2018. OGCD annually receives two interagency transfers of \$1.35 million (for a total of \$2.7 million) in petroleum oil excise tax proceeds⁹¹ and natural gas excise tax proceeds.⁹² The division also receives an annual disbursement of \$1 million from the 215 Well Plugging Fund, which is funded, in part, by \$1 million in annual proceeds from the penny-per-gallon fuel assessment. Over the past five years, “budget gap revolving fund cash” provided the second largest share of funding, from 6 to 24 percent of total annual division funding.

⁸⁹ See section 5.1.1 for more information about this Fund.

⁹⁰ 17 OK Stat § 17-365 (2017)

⁹¹ 68 O.S. § 1103(A)(1)(a)

⁹² 68 O.S. § 1103(A)(2)(a)

Transportation Division (TD)

In FY 2018, the Transportation Division (TD) had seven revenue sources. The most significant sources of funding are recurring revenues from fees and assessments and fines and citations. These two funding sources make up 50 to 60 percent of TD annual funding. General revenues make up approximately 9 to 15 percent of the total annual funding over the past five fiscal years. During that five-year period, “budget gap revolving fund cash” has consistently amounted to approximately 23 percent of the annual division budget.

Administrative, Judicial, and Legislative Services (AJLS)

Like many organizations, the OCC’s four core-operating divisions fund the organization’s administrative support units, known as AJLS. Indirect costs charged to each operating division fund these teams and range from 13 to 52 percent of each division’s total budget.⁹³ The amount of indirect costs charged to each division is calculated in the following manner: each employee of the support division completes a time survey indicating how much time, by percentage, is spent on each of the four core divisions. Then, each division receives their allocated portion of the division’s operations and IT budgets based on those percentages. Administrative division leaders periodically review staffing levels against work volume in order to ensure proper staffing. The Panel finds that the OCC’s approach to funding the administrative divisions is sound and does not recommend changes to how the OCC funds its administrative units.

OMES Services

OMES operates with the same business model across all state agencies charging fees for its range of administrative support services. Thus, it charges the OCC fees for IT services, fleet management (by leasing amounts), capital asset management (by rent of facilities), and human resource functions (based on agency FTE counts). The four core divisions pay directly for the services that they receive from OMES.

6.2 Reliability and Adequacy of Funding

6.2.1 Background

The Panel’s analysis focuses on the four operating divisions, OMES, and unfunded mandates for the balance of this chapter. As discussed in 6.1.1 and 6.1.2, the OCC has many funding sources, used by the operating divisions in statutorily mandated manners. The OCC has many external sources of funding, as well as funding sources linked to the state legislature and the Oklahoma Tax Commission, through appropriations and remittances to the OCC from various taxes, respectively.

⁹³ FY 2018 budget numbers, includes Agency-wide IT budget.

This section’s examination of the reliability and adequacy of OCC funding must be considered within a broader context of Oklahoma’s strained fiscal situation. Over the past several fiscal years, the state’s fiscal crisis has exacerbated the negative impact of the OCC’s reliance on state appropriations.

6.2.2 Findings

The Panel was unable to conduct a *comprehensive* OCC-wide assessment with respect to the reliability and adequacy of funding. This is principally due to the lack of sufficient, comprehensive, and/or longitudinal data related to past, present, and future OCC goals, performance, and needs, as discussed in [Chapter 2](#). The Panel is also not in a position to comment with authority upon the OCC’s contention that OGCD and the TD lack adequate resources (discussed below). The data provided at a divisional level, reviewed in this section, are not sufficient to analyze the exact number of employees, capital equipment, or other elements that constitute the precise shortfall in divisional budgets.

Extensive interviews with OCC senior staff, including division directors, confirm the OCC’s view that two of the four operating divisions, PSTD and PUD, have adequate funds (with focus on the last five fiscal years). OCC senior staff and commissioners contend that the OGCD and TD, however, do not have adequate funds to operate in the most effective manner. Budgetary requests submitted by the OCC to the state legislature also confirm this contention.⁹⁴ Fluctuating revenue trends tied to oil and gas economic development, combined with the on-going construction of weigh stations and ports of entry further complicate the Panel’s ability to provide a comprehensive funding solution to address future OCC goals, performance, and needs.

Data from the past five fiscal years indicate that the OCC normally supplements funding gaps in divisional budgets with revolving funds. Analysis highlights that the use of OCC revolving funds for on-going operations in OGCD and Transportation Division, however, hinders the use of revolving fund balances for one-time capital outlays like IT upgrades. So far, divisions have been able to find funds to sustain program operations. However, necessary investment in tools—that would enable the agency to increase efficiencies—have been hampered by a significant general revenue appropriations cut in FY 2015, and the use of revolving funds to partially replace general revenue appropriations from FY 2016 through FY 2018 (see *Table 6-1* below for more detail).

⁹⁴ Based on data provided by the Oklahoma Corporation Commission, Finance Office.

Table 6-1 - Corporation Commission Appropriation History FY 2014 through FY 2018. (Data provided by OCC.)

Budget Years	Total Appropriation 75% Oil and Gas/25% Transportation	General Revenue Received	Actual General Revenue Cut	Revolving Funds to Balance Appropriations	Legislative Action with Re-Appropriations	Loss from Baseline Appropriation
FY 2014	\$ 11,324,424	\$11,324,424	0%			
FY 2015	10,775,325	10,775,325	5%		5% Cut	\$ 549,099
FY 2016	10,182,682	4,932,682	54%	\$ 5,250,000	5% Cut/\$5.25 million Own Funding	1,141,742
FY 2017	10,182,682	7,682,682	25%	2,500,000	\$2.5 million Own Funding	1,141,742
FY 2018	9,686,724	7,786,724	24%	1,900,000	5% cut/\$1.9 million Own Funding	1,637,700
				\$ 9,650,000	15% Reduction of Baseline	\$ 4,470,283

Oil and Gas Conservation Division

Apart from general revenues, OGCD relies on apportioned revenue originating from excise taxes and on recurring revenues from fees and fines. The latter two revenue streams can be vulnerable to changes in energy prices because of the OGCD’s close connection to the oil and gas drilling industry. The OCC indicated that if two funding sources were increased, the OCC reliance on state appropriated funds would reduce. These include:

1. increased fees; and
2. an increased percentage of revenues remitted to the OCC from the Gross Production Tax (GPT).

Research indicates that the majority of OGCD fees have remained stagnant for several years.⁹⁵ In 2017, the OGCD initiated a fee increase rulemaking for many categories of its services, in time to present the rules for approval by the 2018 State Legislature. The OCC had numerous meetings with industry representatives and legislators to negotiate fee increases supported by all stakeholders. The Division initially requested a potential fee increase estimated to generate \$13.2 million

⁹⁵ The Oklahoma Corporation Commission fee schedule can be accessed here: <http://www.occeweb.com/ad/FeeScheduleFY2019-2.pdf>

annually (total, with existing fees), which would enable OGCD to support themselves and operate independent of general revenue. Industry stakeholders strongly opposed this proposal. A second OCC proposal was reduced to \$7.3 million annually (including existing fees). While this proposal garnered support from some stakeholders (e.g., the Oklahoma Independent Petroleum Association supported the increase), there were other groups, such as Oklahoma Oil and Gas Association that opposed it. In response, the OCC further reduced the request to \$5.7 million annually (including existing fees). The OCC Commissioners voted on and passed the thrice-revised proposal for rule change with a two to one vote in 2018. In the dissenting vote, the Commissioner voted no (just on the oil and gas fees) since the increase would not be sufficient to bridge the current budget gap of \$4.8 million (new fee revenue needed) or allow OGCD to hire additional staff to meet the needs of the Division.

According to the OCC's public statements, total funding needed to properly address the Division's needs was an estimated \$6.8 million in new revenue as of July 2018. However, the Governor approved a lower fee structure in June 2018. The OCC estimated that the new fees might generate \$3.4 million annually in new revenue, bringing the total anticipated yearly fee revenue for the division up from \$2.3 million to \$5.7 million. The new fee structure went into effect on October 1, 2018, so the OCC will not experience the full estimate of increased revenue for FY 2019, since it will be a partial year's collections (the fiscal year in Oklahoma is July 1-June 30). Therefore, according to the OCC, the OGCD requires an approximately \$1.4 million to bridge the current budget gap and an additional \$2 million is needed to enable sufficient staffing levels and complete necessary IT enhancements. Even with the approved increase in fees, the Division remains heavily reliant upon general revenue. The projected additional funds from the recently approved fee increases in the amount of \$3.4 million, will allow for some vacant positions to be filled but will not cover all of the increased staffing or the improved IT systems requested by industry stakeholders.

In addition to levying an increase in fees for this Division, another source of possible additional funding might be to increase the portion of the GPT allocated by the Tax Commission to the OCC for OGCD. At present, there is an agreement to remit \$2.7 million per annum. While GPT funds are subject to statewide demands for resources, there is merit to observe the importance of oil and gas drilling in the state on one hand, and the direct connection between GPT and oil and gas drilling on the other. The OCC might argue that the OGCD warrants an increase in this amount to support adequate funding of the division. Legislative action is required to change the amount of GPT allocated to OCC.

Transportation Division (TD)

Senior division leaders indicate that the TD does not carry out full enforcement because the OCC does not have enough enforcement personnel due to a lack of funding. Reviewing the sources of funding for the Division, the optimal source for driving additional resources is through increasing fees and fines. Noteworthy is the fact that statute caps several fine amounts at artificially low levels, and that the State has not amended these statutes for several years. For example, the \$500 cap on OCC fines authorized under 17 O.S. § 1(A)(1) results in motor carrier citations that do not have the desired deterrent effect. As a result, the OCC believes that motor carriers consider OCC's fines of up

to \$500 for overweight violations simply a cost of doing business; and as such, they choose to pay the fine and continue to overload trucks rather than comply with weight limitations. Overweight trucks, in turn, serve to add to the deterioration of roadways in the state, adding costs to maintaining high quality roadways.

OCC previously sponsored legislation to remove the \$500 cap for motor carrier overweight citations, but the legislation did not pass. Such legislation would have allowed OCC to craft a bond schedule targeting repeat violators and would have provided additional funding for enforcement activities.

Several statutory changes would provide the opportunity for the Commission to assess higher fines, retain penalties, and increase fees. In the TD, for example:

- replace current licensing fees set in statutes with language allowing the Commission to set those fees by rule;
- allow a greater Motor License Agent fee retention on all apportioned commercial motor vehicle registrations (47 O.S. § 1141.1—this is revenue created by the IRP Section⁹⁶); and
- allow the Commission to retain all penalties assessed via the IFTA program (68 O.S. § 602).

OMES Services

As noted in [Chapter 4](#), OMES provides a variety of essential services to the OCC. Its involvement is the result of the state's effort to consolidate IT and other mission support services under the Information Consolidation and Coordination Act of 2011 ("Consolidation Act"). Services that the OMES provides include IT projects, fleet management (by leasing amounts), capital asset management (by rent of facilities), and human resources functions (based on agency FTE numbers). Additional indirect costs charged directly by OMES to each operating division funds each of these projects. These costs are included in indirect cost figures provided in the analysis provided above and should be carefully considered in the development of the OCC's budget request and fee proposals.

Unfunded Mandates

Over the past several years, the state legislature added responsibilities to the OCC without providing corresponding funding resources. The most significant examples include mandates for the OCC to address seismicity and wind power. These additional responsibilities require OCC resources, with no additional funding appropriated to the OCC for additional staff and

⁹⁶ International Registration Plan is part of the International Fuel Tax Agreement (IFTA) The International Fuel Tax Agreement is an agreement between the lower 48 states of the United States and the Canadian provinces, to simplify the reporting of fuel use by motor carriers that operate in more than one jurisdiction.

corresponding work. The Panel recognizes the importance of the executive and legislature assessing the resources needed to perform any additional responsibilities assigned to the OCC. As noted in the 2019-2023 OCC Strategic Plan: “Responsibilities continue to change or expand with each legislative session with some responsibilities remaining unfunded, such as seismicity efforts. In FY 2017, the OCC’s efforts in this regard were funded by carry-over emergency one-time funds that were received from the Governor and Secretary of Energy in FY 2016.”⁹⁷

- *Seismicity* — Legislation enacted in 2016 ordered the OCC to create the Induced Seismicity Department, located within the OGCD, to mitigate the risk of induced seismicity in Oklahoma related to Oil and Gas activity. The OCC created the Seismicity Department to ensure the utmost stewardship of Oil and Gas data submitted to, and maintained by, the OCC. Oklahoma Statutes grant the OCC “exclusive jurisdiction” to regulate Class II underground injection wells.⁹⁸
- *Wind Regulation* — Senate Bill 1576⁹⁹ was signed in May 2018 and resulted in an exponential increase in person-hours for the PUD to service incoming complaints. Although the Bill has mandated reporting requirements and subsequent web posting as minimal, the public has regularly contacted the OCC with questions and concerns about their reporting. This resulted in significant PUD FTE allocation to deal with the issues, provide information (posted publicly), conduct investigations, etc. The PUD reported that one recent issue required over 100 person-hours to initially address but not resolve, the issue. This one issue now posts to the commissioner level for review. This single posting may result in a filed show cause, which will result in hundreds of more person-hours for PUD, ALJs, and the commissioners. This is just one of hundreds of pending projects that by the new law may be impacted.

Additionally, PUD must expand the training for the OCC personnel responsible for wind regulation and will need to have a field presence across the state to monitor construction on wind projects to ensure compliance with the new law. This level of participation is still under development with no exact impacts quantified, but the Panel expects that at least one full FTE will be required for the monitoring function, even without any filed conflicts occurring.

⁹⁷ Oklahoma Corporation Commission, “OCC Strategic Plan, FY 2019-2023,” p. 8.
<http://www.occeweb.com/1HotTopicAttachments/OCCStrategicPlan2019.pdf>

⁹⁸ 52 c. 3 O.S. §,139

⁹⁹ OK Congress, Senate, *Corporation Commission; prohibiting construction of wind facilities; providing exception to prohibition; Emergency*, 56th Legislature , 2d session, 2018.

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Chapter 7: Structure

The Governor's EO calls for an assessment of the OCC's structure, addressing:

- The makeup of the Commission and the impact of the Oklahoma Open Meeting Act requirements
- The appropriateness of the current number of Commissioners
- Whether the Commission should be appointed, elected, or a combination thereof

In this Chapter, the Panel's analysis of OCC structure examined six areas:

1. State Comparison
2. Qualification of Commissioners
3. Perceptions of Regulatory Commission Independence
4. Structural Options Related to the OCC
5. Responsiveness to Challenges in OCC Regulated Industries
6. Open Meeting Act

7.1 Background

7.1.1 State Comparison

A comparison of public utility commissions in the fifty states and the District of Columbia identifies significant differences between regulatory commissions regarding the term lengths of commissioners, the number of commissioners, methods of commissioner selection, and commissioner qualifications. The OCC is comprised of three statewide, popularly elected commissioners, who serve six-year, staggered terms. In the case of a vacancy, the Governor appoints a replacement.

Regarding the selection of commissioners, a minority of states elect commissioners. Only thirteen states have elected commissioners, with eight of these states having utility commissions embodied within their state constitutions. Most of elected commissions (seven commissions¹⁰⁰) are located in the central region of the country. One of Oklahoma's neighboring states—New Mexico—selects utility regulatory commissioners through elections (and the New Mexico Public Regulation Commission was created by the state constitution). *Table 7-1*, lists states with elected commissions and the authorization source for those commissions.

¹⁰⁰ Seven states include: North Dakota, South Dakota, Nebraska, Oklahoma, Louisiana, Mississippi, and Alabama.

Table 7-1. States with Elected Commissioners

Table 7-1: States with Elected Commissioners ¹⁰¹ (Public Utility Commissions)	
States	Authorization Source
Arizona	State Constitution
Georgia	State Constitution
Louisiana	State Constitution
Nebraska	State Constitution
New Mexico	State Constitution
North Dakota	State Constitution
Oklahoma	State Constitution
Virginia	State Constitution
Alabama	Legislation
Mississippi	Legislation
Montana	Legislation
South Carolina	Legislation
South Dakota	Legislation

Data Source: National Regulatory Research Institute

In the majority of states, regardless of the method of commissioner selection, commissions have three commissioners (29 states), and serve six-year terms (29 states). *Table 7-2* below provides a comparison of public utility regulatory commissions in the 50 states and the District of Columbia (DC).

¹⁰¹ National Regulatory Research Institute, *Evaluation of Public Regulation Commission Staffing and Budget Allocation* (Silver Spring: May 2017), p. 16.

Table 7-2. Comparison of Public Utility Regulatory Commissions

State Comparison				
State Comparison		Appointed	Elected	Total
Term Lengths	4 years	10	7	17
	5 years	5	0	5
	6 years	23	6	29
Number of Commissioners	3	23	6	29
	5	14	6	20
	7	1	1	2
Selection of Commissioners	-	38	13	51
Commissioner Professional Qualification Requirements ¹⁰²	-	14 ¹⁰³	3	-

7.1.2 Elected Commissions

Table 7-3 provides an overview of the thirteen elected public utility commissions. Among the thirteen elected commissions, methods of election vary. Six states elect commissioners in statewide elections; five states elect commissioners by districts; and two states elect commissioners by the

¹⁰² The number of states that have professional requirements for commissioners (in addition to age, residency, and conflict of interests)

¹⁰³ 14 states include: Nevada, Minnesota, Tennessee, Florida, West Virginia, Kentucky, Indiana, Ohio, Massachusetts, Rhode Island, Connecticut, Maryland, Alaska, and Hawaii.

state legislature. A joint session of the South Carolina General Assembly elects seven commissioners to its Public Service Commission. Virginia’s General Assembly elects three commissioners to its State Corporation Commission.

Table 7-3. Overview of States with Elected Public Utility Commissions.

Elected Public Utility Commissions			
Commissions	Election Methods	Number of Commissioners	Term Lengths
Arizona Corporation Commission	Statewide	5	4 year
Georgia Public Service Commission	Statewide	5	6 year
Louisiana Public Service Commission	District	5	6 year
Nebraska Public Service Commission	District	5	6 year
New Mexico Public Regulation Commission	District	5	4 year
North Dakota Public Service Commission	Statewide	3	6 year
Oklahoma Corporation Commission	Statewide	3	6 year
Virginia Corporation Commission	State Legislature	3	6 year
Alabama Public Service Commission	Statewide	3	4 year
Mississippi Public Service Commission	District	3	4 year
Montana Public Service Commission	District	5	4 year
South Carolina Public Service Commission	State Legislature	7	4 year
South Dakota Public Utilities Commission	Statewide	3	6 year

Six states have three elected commissioners; six states have five elected commissioners; and one state has seven commissioners. In two states, the constitutions allow more flexibility in terms of the number of commissioners. According to the Virginia Constitution, the state legislature has the

authority to increase the size of the Commission to no more than five members.¹⁰⁴ In Nebraska, under the constitution, the Public Service Commission has “not less than three nor more than seven members, as the Legislature shall prescribe.”¹⁰⁵ Most states (seven states) with elected commissioners have six-year terms. Mississippi is the only state where elected commissioners have concurrent terms¹⁰⁶ other states have staggered terms.

Sources of campaign financing for elected commissioners also vary widely. Candidates for the New Mexico Commission have the option to use public funds to finance their campaign.¹⁰⁷ Alabama, Georgia, and Louisiana permit funding from lobbyists. In Texas and Oklahoma, a large portion of campaign funding is from oil and natural gas interests.¹⁰⁸

A perception among some interviewees for this project, including regulatory experts, regulated firms, and other stakeholder groups, is that *political factors* can be more influential considerations in elected commissions than appointed commissions. Political factors include potential bias for or against certain stakeholders, as well as the electoral process impeding timely decision-making.¹⁰⁹

Regulatory capture has attracted widespread attention from stakeholders and regulatory experts. *Regulatory capture* refers to, “the result or process by which regulation, in law or application, is consistently or repeatedly directed away from the public interest and toward the interests of the regulated industry, by the intent and action of the industry itself.”¹¹⁰ As Sheldon Whitehouse writes, *regulatory capture* poses significant threats to the integrity of the regulatory process.¹¹¹ Similarly, Senator Mike Lee (R-UT) also argues that there is an emerging consensus among policymakers, scholars, and activists on both sides of the aisle and everywhere in between that *regulatory capture* is one of the most pressing political, economic, and moral issues of our time.¹¹²

In his article “Regulatory Capture” Sources and Solutions,” Scott Hempling argues, “a regulator is ‘captured’ when he is in a constant state of ‘being persuaded’ based on a persuader’s identity rather

¹⁰⁴ State of Virginia Constitution, 9, sec. 1.

¹⁰⁵ State of Nebraska Constitution, 4, sec. 20.

¹⁰⁶ Erik Randolph Consulting, *Improving Mississippi’s Utility Regulatory Structure* (October 17 2017).

¹⁰⁷ State of New Mexico, Office of the Secretary of State, *New Mexico Public Financing Guide for the 2018 Election Cycle*, [http://www.sos.state.nm.us/Candidate And Pac Information/Voter Action Act.aspx](http://www.sos.state.nm.us/Candidate%20And%20Pac%20Information/Voter%20Action%20Act.aspx).

¹⁰⁸ Calder Burgam. *\$51 Million: Elected Utility Regulators Score Big Bucks* (Helena: National Institute on Money in State Politics, May 18 2015), www.followthemoney.org/research/blog/51million-elected-utility-regulators-score-big-bucks. Accessed 1 December 2016.

¹⁰⁹ Ken Costello and Rajnish Barua, *Evaluation of Public Regulation Commission Staffing and Budget Allocation*, (Silver Spring: National Regulatory Research Institute, May 2017): p. 15.

¹¹⁰ Daniel Carpenter and David Moss, *Preventing Regulatory Capture: Preventing Special Interest Influence and How to Limit It* (Cambridge: Cambridge University Press, October 21 2013).

¹¹¹ Sheldon Whitehouse, *How Government Can Root Out Regulatory Capture* (The Regulatory Review, June 15, 2016), <https://www.theregreview.org/2016/06/15/whitehouse-how-government-can-root-out-regulatory-capture/>.

¹¹² Mike Lee, *Fighting Regulatory Capture in the 21st Century*, (The Regulatory Review, June 16 2016), <https://www.theregreview.org/2016/06/16/lee-fighting-regulatory-capture-in-the-21st-century/>.

than an argument's merits."¹¹³ The concern over the 'regulatory capture' of elected commissioners is linked to the fact that regulated industries have more ability to influence regulators, as they can be better organized, funded, and vocal than consumers and the public.¹¹⁴ Elected regulators are likely to be responsive to the interests of regulated industries instead of consumer interests in order to gain political support or campaign financial support or future favors such as employment after completion of their service in elected office.

On the other hand, many stakeholders interviewed pointed out that elected commissioners favor pro-consumer policies in order to gain votes. For example, multiple interviewees from regulated companies view the delays in OCC's decision-making as connected to the commissioners' election/political interests. Another example comes from the Panel's interview with a regulatory expert—an elected commissioner (not in Oklahoma) makes some regulatory decisions based on the information collected from their social media polls, instead of the merits of a case. While this is an extreme example, there is a general perception that elected officials have a strong incentive to please voters; and therefore, it is difficult for elected commissioners to perform their responsibility to balance the interests of consumers and that of investors/operators.

The scholarly literature, however, varies on whether regulated industries or consumers benefit most from elected commissions. For example, in an empirical study of elected versus appointed regulators for the National Bureau of Economic Research, Besley, and Coate note that, "states that elect their regulatory commissioners have lower electricity prices and raise prices by a lower amount when costs increase."¹¹⁵ However, the National Regulatory Research Institute (NRRI) suggests that 'even though regulators hold down rates in the short run more than appointed regulators, this action may jeopardize the financial ability of utilities to finance investments that would benefit their consumers in the long run.'¹¹⁶

Finally, the *qualifications of commissioners* for elected commissions are an important concern for some regulatory experts. The potential ability to balance the professional and educational experiences that exists in appointed commissions is typically missing in elected commissions. As shown in [Table 7-2](#), among elected commissions, three states—Virginia, South Carolina, and Nebraska, require specific professional and educational backgrounds for commissioners. However, in Virginia and South Carolina, the commissioners are selected by legislatures, not through statewide popular elections. Fourteen states with appointed commissions have some types of

¹¹³ Scott Hempling, *'Regulatory Capture' Sources and Solutions* (Atlanta: Emory Corporate Governance and Accountability Review).

¹¹⁴ G. Baxter, Lawrence, "Understanding Regulatory Capture: An Academic Perspective from the United States", *Duke Law School* (2012).

¹¹⁵ Timothy Besley and Stephen Coate, *Elected vs. Appointed Regulators: Theory and Evidence* (Cambridge, MA: National Bureau of Economic Research, March 2000), Working Paper 7579.

¹¹⁶ National Regulatory Research Institute, *Evaluation of Public Regulation Commission Staffing and Budget Allocation* (Silver Spring: May 2017): p. 15.

professional qualification requirements for commissioners (in addition to age, residency, and conflict of interests) in their statutes/constitutions.

7.1.3 Findings on the Oklahoma Corporation Commission

OCC stakeholders and staff shared concerns about *political factors, regulatory capture, post-employment restrictions, and qualifications of commissioners* found in the elected commissions of other states. In Oklahoma, the breadth of industries regulated by the OCC exacerbates these concerns.

Interviewees noted that elections and campaigns for Commissioners could be time consuming. Elections require Commissioners, particularly during their initial terms, to devote additional time and effort to fundraising and campaigning. In addition, Oklahoma does not have “resign-to-run” rules. In the past twenty years, three (out of ten) Commissioners sought other federal or state elected office without resigning from their current positions. A perception of some OCC staff is that commissioners take a longer time to make decisions on cases during the campaign season.

In interviews, many stakeholders from public interest groups raised concerns about ‘regulatory capture’ during the OCC’s decision-making process, since commissioner candidates receive much of their campaign funding from donors who work for regulated companies (such as oil and gas companies) and industry groups. There is no evidence or data suggestive of a connection between campaign contributions and the regulatory decisions of OCC Commissioners. However, many interviewees believed that there is an inherent conflict of interest when elected commissioners accept campaign financial support from companies and industries they regulate. It is difficult to measure the impacts of “capture.” As political scientist Daniel Carpenter writes, “capture is not a binary situation, but rather exists on a spectrum, ranging anywhere from weak, to intermediate, to strong.”¹¹⁷

Another issue raised by several interviewees is that the OCC Commissioners are not subject to any post-employment restrictions, and some former commissioners found jobs in regulated industries soon after they left the office. Governments generally recognized the need for post-employment restrictions to protect public interests ([Section 7.3.1](#) contains a more detailed discussion about post-employment restrictions).

Many stakeholders expressed concern that elected officials may not have the professional experience and skill sets to make efficient and effective regulatory decisions, adversely affecting the timeliness and effectiveness of their decision-making. In the energy, telecommunications, and transportation sectors in particular, the pace of change in technology and industries poses challenges for regulatory agencies in all states. Most interviewees believe that the three current

¹¹⁷ Daniel Carpenter, *Challenges in Measuring Regulatory Capture* (Philadelphia: The Regulatory Review, June 22 2016), <https://www.theregreview.org/2016/06/22/carpenter-challenges-measuring-regulatory-capture/>.

commissioners are well qualified; however, the qualification requirements for commissioner candidates are quite limited in the constitution. The Oklahoma Constitution, Article 9, Section IX-16, defines required qualifications for OCC Commissioners. Qualifications include, “to be resident citizens of this state for over two years next preceding the election and qualified voters under the constitution and laws, and not less than thirty years of age.” In addition, commissioners cannot be directly or indirectly ‘interested’ in a specified list of industries regulated by the OCC.¹¹⁸ The constitution lists no professional or educational requirements for commissioners.

In response to these concerns, in the following sections, the Panel issues a number of recommendations and identifies and assesses a range of structural options that could mediate any potential effects of political factors, regulatory capture, or commissioner qualifications on the efficiency and effectiveness of the OCC.

7.2 Qualification of Commissioners

7.2.1 Findings

Restrictions on the ‘interests’ of commissioners as specified in the Oklahoma Constitution, similar to the Commissioner’s Oath discussed in [Chapter 3.2](#), do not reflect the breadth of industries presently regulated by the OCC. Energy, utilities, transportation, and telecommunications sectors in the twenty-first century are evolving rapidly. Recent Legislative mandates to the OCC on emerging industries and issues (such as seismicity and wind generation) reflect such evolutions. Any detailed listing of restrictions on ‘interests’ may inhibit restrictions keeping pace with changes in technologies and sectors if specifically embedded in the constitution. For example, present restrictions on commissioner ‘interests’ in the energy sector do not include the oil and gas industries beyond pipelines.

Additionally, the complexity of new technologies in the energy, utilities, transportation, and telecommunications sectors poses challenges for regulatory commissions nationwide, whether commissioners are elected or appointed. As discussed in [Section 7.1.3](#), the Oklahoma Constitution does not have any professional or educational requirements for commissioners. The qualification requirements for other state officials in Oklahoma are similarly not specified (e.g. the attorney general is not required to be a lawyer; the state treasurer or state auditor is not required to have a Certified Public Accountant, etc.). However, those positions do not require the same level of expertise as the OCC Commissioners. The importance of energy to Oklahoma and technical

¹¹⁸ The Oklahoma Constitution, Article 9, Section IX-16: Commissioners shall not be, “directly or indirectly, interested in any railroad, street railway, traction line, canal, steam boat, pipe line, car line, sleeping car line, car association, express line, telephone or telegraph line, operated for hire, in this State, or out of it, or any stock, bond, mortgage, security, or earnings of any such railroad, street railway, traction line, canal, steam boat, pipe line, car line, sleeping car line, car association, express line, telephone or telegraph line, compress or elevator companies.”

advances in energy require the regulators to have a special type of expertise. Some states have responded by enhancing the qualifications of commissioners to include educational or professional qualifications (see [Table 7-2](#) above). During the Panel’s research on the OCC, numerous interviewees, including regulated firms, Oklahoma state government officials, former OCC Commissioners, public interest groups, and regulatory experts, suggested that the OCC should become an appointed commission, despite the state’s populist traditions, in order to enhance commissioner qualifications in the future.

7.2.2 Recommendations

Panel Recommendation 18: OCC Commissioners should work with the Oklahoma Executive and State Legislature to amend the Oklahoma Constitution, Article 9, Section IX-16, Qualifications of Commissioners, to eliminate delineation of specific industries under restrictions on commissioners. The Panel recommends the adoption of language similar to the OCC ‘Disclosure of Interest’ declaration, e.g., “Nor shall such commissioners be directly or indirectly interested personally, professionally, or financially in industries regulated by the Oklahoma Corporation Commission.”

Panel Recommendation 19: The Oklahoma Executive and the State Legislature should assess the advantages, disadvantages, costs, feasibility, and cultural compatibility of expanding qualification requirements for OCC commissioners to include professional and educational requirements consistent with the industries and sectors regulated by the OCC.

7.3 Perceptions of Regulatory Commission Independence

Best practice literature on elected regulatory commissions suggests that elected commissions can experience unique challenges due to the need for commissioner candidates to raise campaign funds. Commissioners seeking reelection have the added burden of raising funds and campaigning while serving as a sitting commissioner. Campaigning and campaign financing needs of elected commissioners are linked to both political and regulatory capture concerns, as well as issues of agency performance and independence.

Most candidates for elected office seek funding from interests, industry, and stakeholders and the independence expected of regulatory commissions can make campaign funding sources for commissioners a source of concern.

7.3.1 Findings

Campaign finance laws and regulations vary from state to state. There are three primary types of campaign finance restrictions: disclosure, contribution limits, and public financing.¹¹⁹ First, all fifty

¹¹⁹ “State Campaign Finance Laws: An Overview,” National Conference of State Legislatures, <http://www.ncsl.org/research/elections-and-campaigns/campaign-finance.aspx>.

states require some form of disclosure and reporting of campaign contributions to ensure the transparency of a candidate's election funds. Second, most states (thirty-nine states)¹²⁰ place some types of restrictions on the amount of money that any one individual can contribute to a campaign. The third method to regulate campaign finance is to use public funds to support political campaigns. Fourteen states provide some types of public financing option for campaigns. In most states, public financing functions only apply to governor/lieutenant governor or state legislative candidates. New Mexico is the only state where public funding is available to regulatory commissioner candidates.¹²¹ Acceptance of public campaign funds prohibits candidates from raising money from other sources.¹²²

According to Oklahoma's Ethics Rules, candidates are required to file reports of campaign contributions and expenditures quarterly and no later than eight days before election.¹²³ The contribution limit on individual donors is \$2,700. In twenty-two states, including Oklahoma, corporations are prohibited from contributing to political campaigns.¹²⁴ Oklahoma does not have the public financing option.

As discussed in [Section 7.1.3](#), in the Panel's extensive interviews, OCC staff and stakeholders expressed concerns about the effects of campaigns for commissioner on the performance of the OCC and its independence. As noted, the Oklahoma Ethics Commission reports that campaign financing of races for commissioner primarily comes from industries regulated by the OCC.¹²⁵

Present limited restrictions on campaign financing and campaigning for OCC candidates may generate concerns among stakeholders and the public about the independence and performance of the OCC, whether those concerns are valid or verifiable or not.

Another concern about the independence of the OCC relates to the fact that Oklahoma does not place any post-employment restrictions for commissioners, and some former commissioners have accepted jobs in regulated industries after leaving office. Any perception of a revolving door between elective office and lucrative private sector employment damages the integrity of the

¹²⁰ "Campaign Contribution Limits: Overview," National Conference of State Legislatures, last modified June 28, 2017, <http://www.ncsl.org/research/elections-and-campaigns/campaign-contribution-limits-overview.aspx>.

¹²¹ "Overview of State Laws on Public Financing," National Conference of State Legislatures, <http://www.ncsl.org/research/elections-and-campaigns/public-financing-of-campaigns-overview.aspx>.

¹²² "State Public Financing Options, 2015-2016 Election Cycle," National Conference of State Legislatures, last modified July 17, 2015, <http://www.ncsl.org/Portals/1/Documents/Elections/StatePublicFinancingOptionsChart2015.pdf>.

¹²³ *Reports for Candidate Committee in Election Year, Rule 2.101, Annotated Ethics Rules*, Oklahoma Ethics Commission.

¹²⁴ "State Limits on Contributions to Candidates, 2017-2018 Election Cycle," National Conference of State Legislatures, last modified June 27, 2017, <http://www.ncsl.org/Portals/1/Documents/Elections/Contribution Limits to Candidates 2017-2018 16465.pdf>.

¹²⁵ Oklahoma Ethics Commission, <https://guardian.ok.gov/PublicSite/homepage.aspx>.

regulatory process and has emerged as a significant concern in many states in recent decades, leading a number of states to take steps to restrict this practice. For example, in Pennsylvania, commissioners are, “prohibited from accepting employment with any public utility subject to the rules and regulations of the commission for a period of one year and from appearing before the commission on behalf of any public utility subject to the rules and regulations of the commission for a period of three years.”¹²⁶ The purpose is to prevent former commissioners from leveraging relationships developed during their tenure as commissioners to assist regulated entities in their dealings with the commissions. As the exchange of personnel between the public and private sectors has become more common, there is a variety of post-employment rules for government employees, especially senior executives, to prevent conflicts of interest and protect public interests. For example, Section 207 of Title 18 U.S.C. prohibits former senior government employees from representing, “any entity or any matter to the personnel of that employee’s former agency for a period of one year from the date of termination of employment.”¹²⁷

7.3.2 Recommendations

Panel Recommendation 20: The Oklahoma Executive and State Legislature should consider conducting an assessment of campaign financing restrictions for candidates for OCC Commissioner, including the advantages, disadvantages, feasibility, and cultural compatibility of strengthening restrictions beyond present restrictions.

Panel Recommendation 21: The Oklahoma Executive and State Legislature should establish post-employment restrictions, such as cooling off periods, for commissioners.

7.4 Structural Options Related to the OCC

7.4.1 Options Development

The following three principles guided the Panel’s approach to developing structural options.

1. There is not a perfect structure for a regulatory commission. All structures have inherent advantages and disadvantages. Standard criteria should be the basis of an assessment of advantages and disadvantages.
2. Stakeholders often view structural changes as the most visible indication of an effort to improve agency performance. However, structural changes are not panaceas. Structural changes may not address all issues related to commission efficiency and effectiveness.

¹²⁶ 66 PA Cons Stat § 301 (2017)

¹²⁷ National Academy of Public Administration, *Independent Assessment of the Department of Defense Review of Post-Employment Restrictions* (Washington: National Academy of Public Administration, February 2012), https://www.napawash.org/uploads/Academy_Studies/FINAL-Academy-Panel-Report-DoD-Post-Employment-Review-Assessment.pdf.

Research literature does not suggest a direct relationship between the structure of a regulatory commission, its performance, and achievement of its mission.

3. Non-structural issues also affect agency performance and outcomes, such as process improvement, workforce development, and responsiveness to changes in technology and regulated industries and information technology. Improving agency efficiency and effectiveness and an agency's ability to serve the public interest requires a more comprehensive approach, and any consideration of structural changes should be mindful of this broader context.

7.4.2 Elements of Effective Regulatory Commissions

The Panel identified five criteria to guide its identification and evaluation of different structural options for corporation commissions. The Panel developed its evaluation criteria through a review of 'best practice' literature on regulatory agencies and issues raised in interviews throughout the research process on this project. These criteria provide a basis for comparing the strengths and weaknesses of each option.

All five criteria are important to take into consideration when evaluating options. Collectively, the criteria encompass concerns identified by interviewees during the Panel's research, e.g., political factors, regulatory capture, and qualifications of commissioners. The Panel does not rank them in importance.

1) Balancing Legitimate Interests

The fundamental principle of 'best practice' regulation is pursuit of the public interest through fair and objective balancing of legitimate interests and fact-based decision-making. This principle is embedded in the mission of the OCC discussed in [Chapter 3](#).

2) Independence

A critical characteristic of effective regulators is independence. Regulators should be, "impartial, unbiased, and nonpartisan not just with respect to political parties, but all parties of interest."¹²⁸ Such parties of interest could include the executive and legislative branches, stakeholders, special interests, and the public at large. The perceived legitimacy of a regulatory agency and the level of trust afforded by the general public and stakeholders depend upon its perceived independence and commitment to the public good.

¹²⁸ Janice Beecher, "The Prudent Regulator: Politics, Ethics, and the Public Interest", *Energy Law Journal*, 2008, Vol. 29 Issue 2, p. 579.

3) Implementation Costs

While the Panel does not conduct a detailed cost analysis of each structural option discussed in this report, it is essential to consider both short and long-term costs of any structural change. For example, most changes to the OCC's structure would require constitutional changes, which could entail a significant investment of time and resources.

4) Political Culture

A state's political culture has significant impacts on the perceived legitimacy and organizational design of state agencies. Oklahoma has a long-standing populist tradition, sustaining a pattern throughout its history whereby elections determine the selection of a large number of leading government officials. This is also consistent with regional norms, including neighboring states such as Texas and Kansas.

5) Impacts on Agency Performance

A key criterion when considering commission structure is the impacts of the Commission's organization and processes on agency performance, including its outputs and outcomes, e.g., its efficiency and effectiveness.

Findings and recommendations on the OCC utilize the five criteria of effective regulatory commissions in assessing various structural options. .

7.4.3 Structural Options Related to the Oklahoma Corporation Commission

The issues and concerns related to the Commission's structure identified by the Panel fall into two areas:

- The size of the Commission (i.e., the number of commissioners)
- Selection of Commissioners (appointed vs. elected commissioners)

In this section, the Panel developed three examples of possible structural options for state regulatory commissions to address the issues and concerns in these two areas in whole or part, while satisfying the Panel's five criteria for effective regulatory commissions: balancing legitimate interests, independence, implementation cost, political culture, and impacts on agency performance.

Based on its analysis, the Panel has concluded that there is not a compelling need for changing the OCC's structure. If, however, the Task Force decides that changes to the OCC structure merit consideration, the Panel believes that there is an array of possible alternatives for consideration, including but not limited to the following three options.

Restructuring Option 1: Retain Elections but Expand to Five Elected Commissioners

Under Option 1, five elected commissioners serve staggered six-year terms. While a five member elected commission does not fully address concerns about independence and regulatory capture, expanding the number of commissioners could moderate the impacts of any biases of individual commissioners and enhance perceptions of a commission's independence. An enlarged commission also has the potential to positively influence agency performance by potentially allowing for more diverse commissioner expertise and professional backgrounds. There is nation-wide precedent for five member commissions. Presently, twenty states have five-member commissions, with six of those states having elected commissions. Additionally, the implementation of Option 1 in Oklahoma would be consistent with the state's populist tradition.

The advantages of a five-member elected commission, especially related to agency performance, independence, and moderating regulatory capture, would be enhanced if the Panel's recommendations on the qualifications of commissioners; restrictions on commissioner 'interests,' campaign financing, campaigning; and responsiveness to challenges noted in [Sections 7.2](#) and [7.3](#) were adopted as well.

The potential disadvantages of adopting a five member elected commission in Oklahoma are threefold. First, enlarging the OCC would require constitutional change, as would expanding the qualifications for commissioners and updating restrictions on commissioner 'interests.' Second, a five-member commission also would permanently increase the Commission's operating costs due to the funding of additional commissioners and their staffs, although such costs would be only a modest portion of total OCC expenditures. Third, as discussed in [Section 7.1.2](#), a common concern among stakeholders and regulatory experts is that political factors (e.g., electoral pressure, campaign, regulatory capture, etc.) play a significant role in elected commissions. Elected commissioners have a strong incentive to make consumer-oriented decisions, and on the other hand, many stakeholders worry that elected commissioners may gain political/campaign support by being responsive to the interests of regulated industries.

Restructuring Option 2: Expand Commission Size—Retain Three Elected Commissioners, but Add Two Appointed Commissioners

Option 2 represents a hybrid commission of elected and appointed commissioners. Under this structure, a commission is composed of five commissioners; three commissioners selected through statewide popular elections and two commissioners appointed by the governor with the confirmation of the senate. Both elected and appointed commissioners serve staggered six year terms. Removal of appointed commissioners is for cause only.

Similar to Option 1, a five-member hybrid commission does not fully address concerns about independence and regulatory capture. However, expanding the number of commissioners could moderate the impacts of any biases of individual commissioners and enhance perceptions of the Commission's independence. Additionally, an enlarged commission also has the potential to positively affect agency performance by potentially allowing for more diverse commissioner

expertise and professional backgrounds. Third, retaining three elected commissioners is consistent with Oklahoma’s populist political tradition.

A major concern about elected commissioners that surfaced during Panel research centered on the qualifications of commissioners. Many interviewees suggested that appointed commissioners could bring different educational and professional backgrounds and skill sets to the Commission, contributing to its ability to make regulatory decisions more effectively. In addition, the selection and confirmation of appointed commissioners involves a vetting process. The vetting process could be structured to give priority to diversification of professional expertise among commissioners, as well as to moderate any political or ‘interest’ biases.

As with Option 1, the advantages of a five-member hybrid commission, especially related to agency performance, regulatory independence, and moderating regulatory capture, would be enhanced if the Panel’s recommendations in [Sections 7.2](#) and [7.3](#) were adopted as well.

The potential disadvantages of adopting a five-member hybrid commission also are threefold. In Oklahoma, enlarging the Commission would require constitutional change, as would expanding the qualifications for commissioners and updating restrictions on commissioner ‘interests.’ In addition, a five-member commission would entail more operating costs due to the funding of additional commissioners and their staffs. Third, the hybrid model that includes both elected and appointed commissioners does not fully address stakeholders’ concern about the independence of Commission (as discussed in previous sections). The majority of the commissioners are selected through elections, and electoral pressure and “regulatory capture” can still be perceived as potential issues. The addition of two appointed commissioners could also be perceived as introducing different ‘political factors’ within the OCC. While elected commissioners are subject to public accountability through the electoral process, some commentators on appointed commissions suggest that specialized political interests can have greater leverage over the appointment process than elective process.¹²⁹

Restructuring Option 3: Five Appointed Commissioners

Under Option 3, the Commission is composed of five commissioners appointed by the governor with the confirmation of the senate. Appointed commissioners serve staggered six-year terms and removed only for cause. The governor selects candidates from a list of names submitted by a nominating committee charged with screening candidates for the position of commissioners. The purpose of forming a nominating committee is to ensure that candidates are selected based on their professional background and expertise and to protect the independence of appointed officials. Many states with appointed commissioners, such as Indiana, Ohio, and Florida, established a nominating committee to interview and select candidates for the position of commissioners.

¹²⁹ Timothy Besley and Stephen Coate, *Elected vs. Appointed Regulators: Theory and Evidence* (Cambridge, MA: National Bureau of Economic Research, March 2000), Working Paper 7579.

A five-member appointed commission has the potential to improve agency performance. As discussed in Option 2, a number of interviewees support appointed commissioners because the appointment/selection process provides a mechanism to ensure that commissioners have the skillsets and background to make effective regulatory decisions. In addition, a vetting process allows for more diverse commissioner expertise, which is especially critical when a commission has a broad range of responsibilities.

An appointed commission also helps address the concern about the independence of commissioners. Regulatory capture becomes less of a problem for appointed commissioners. Although the governor, who is an elected official, appoints the commissioners, the governor receives campaign funding from a variety of industries and sources, and the influence of each industry would be less significant.

Some stakeholders noted that appointed commissioners would face greater political influence from the appointing official (i.e., the governor). There are a number of ways to protect the independence of appointed commissioners, such as fixed terms, removal for cause only, and using a selection committee to make nominations, and so forth.

The major potential disadvantage of adopting Option 3 in Oklahoma is that an appointed model is inconsistent with the state's history and political tradition that emphasizes far-reaching use of elections to fill prominent offices. Additionally, implementing the appointed commission would require constitutional changes and additional operating costs, as discussed in Option 1 and 2.

7.5 Responsiveness to Challenges in OCC Regulated Industries

One alternative to formal structural changes of the OCC entails a set of more flexible organizational adjustments that can be fashioned in response to newly emerging governance challenges or crises. This can take the form of ad hoc arrangements whereby either OCC commissioners or the governor establish specialized structures that bring together teams from across key units or agencies to begin to come to terms with a vexing issue, whether on a permanent or time-limited basis. One such model for this approach is the Oklahoma Coordinating Council on Seismic Activity (the Coordinating Council).

Oklahoma produced its first commercial oil well a decade before statehood and OCC establishment. It entered the union as the nation's leading oil producing state.¹³⁰ Therefore, it has a very long history in oil and gas industry oversight but relatively little history in contending with expanded earthquake activity linked to drilling functions. That began to change in the 2010s, reflected in an

¹³⁰ W. David Baird and Danney Goble, *Oklahoma: A History* (Norman: University of Oklahoma Press, 2008), chapter 15.

increase in earthquakes above the 3.0 level (where the disturbance is felt at ground level and risks to property and safety increase) from thirty-five tremors in 2012 to 903 in 2015.¹³¹

7.5.1 Findings

Numerous Oklahoma citizens, as well as journalists and scholars from around the world viewed the OCC and broader state response to the increase in earthquakes as slow and defensive, amid widespread allegations that state government was overly deferential to industry interests and thereby, put public safety at risk. One could have envisioned numerous structural responses to this problem, especially once state officials began to acknowledge the linkage between production wastewater disposal and quake activity.

The creation of the Coordinating Council gave a new face to the state response, coordinating engagement across not only staff of the OCC but also representatives of other Oklahoma government units with some responsibility for this issue. This included more transparent public disclosure and communication; developing new strategies for reducing the risk of quakes while sustaining a high rate of production; and making a fresh start as the state not only attempts to reduce seismic risks but also burnish its regional and national reputation for credibility in this area. A significant reduction in earthquakes above the 3.0 level to 304 in 2017 is an important performance metric that is easily accessible on the Council website.

That said, it should be noted that Oklahoma remains a long way from returning to earlier and lower levels of earthquakes, unlike Ohio where similar seismicity issues emerged earlier in the decade but state officials responded far more rapidly with major governance reforms.¹³² Indeed, Oklahoma continues to experience more earthquakes above the 3.0 level than California, a state long associated with massive seismic risks largely unconnected to its prodigious oil and gas production. Nonetheless, this case provides a vivid illustration of how the OCC and related units might elevate their performance amid challenges through creation of more ad hoc approaches that may neither require nor warrant permanent structural changes. Indeed, the Coordinating Council model appears to have been so successful that it is already being emulated. This is reflected in the formation of several new bodies that build on its experience in addressing other pressing challenges, including truck and road safety, autonomous vehicles, and poultry sector oversight.

The Panel finds that the State of Oklahoma has continued to explore ways to devise innovative and flexible approaches to address emergencies and consider emerging issues involving OCC regulated

¹³¹ In 2026, the state experienced a 5.8 magnitude earthquake, the largest in recorded state history. For an excellent overview of this issue in terms of scientific understanding and governance issues, see Daniel Raimi, *The Fracking Debate: The Risks, Benefits, and Uncertainties of the Shale Revolution* (New York: Columbia University Press, 2018), chapter 5.

¹³² Jonathan M. Fisk, *The Fracking Debate: Intergovernmental Politics of the Oil and Gas Renaissance*, second edition (New York: Routledge and the American Society of Public Administration, 2018), chapter 5.

industries, building on the recent experience of the Coordinating Council on Seismic Activity. Current initiatives include autonomous cars, poultry siting, truck safety in oil production, and the treatment of oil well production water. These additional examples, while not directly involving the OCC, provide a useful model for future complex issues. These cross-jurisdictional efforts look beyond traditional jurisdictional boundaries to bring Oklahoma’s top talent together to engage these types of issues through ad hoc bodies, bringing a fresh lens to these types of high-saliency governance challenges and trying to limit or prevent problems before they emerge.

7.6 Open Meeting Act

7.6.1 Background

The Oklahoma Open Meeting Act (OMA), signed into law in 1977¹³³, is intended to enhance the transparency of the government’s decision-making process and ensure accountability. As stated in the Oklahoma OMA, “it is the public policy of the state of Oklahoma to encourage and facilitate an informed citizenry’s understanding of the governmental processes and governmental problems.”¹³⁴ The OMA requires most state and local public bodies in Oklahoma to hold their meetings in public; however, a specific exception to the OMA that allows for executive sessions on issues related to “employment, hiring, appointment, promotion, disciplining, or resignation of any individual salaried public officer or employee.”¹³⁵

OCC commissioners are subject to the OMA in legislative matters, but not in judicial matters. Chapter 5 defines a legislative matter as one that, “looks to the future and changes existing conditions by making a new rule to be applied thereafter.” A judicial matter, on the other hand, refers to the cases that, “investigate, declare, and enforce liabilities as they stand on present and past facts and under laws supposed already to exist.”¹³⁶ The general rule for determining whether a case is legislative or judicial is to look at the particular facts and circumstances—if the result of a case is forward-looking (e.g., setting utility rates prospectively), it is legislative, whereas if the case addresses past actions (e.g., enforcement actions and oil & gas matters), it is judicial.

The OCC must follow the OMA when conducting its business. According to the Attorney General (AG) Opinion, the “conduct of business” encompasses more than just voting or decision-making. Administrative responsibilities are also viewed as the “business of the Commission.”¹³⁷ In other words, commissioners are also required to conduct public meetings to discuss the OCC’s internal management issues (except for those matters noted as exceptions, mentioned above).

¹³³ 25 OK Stat §OK AG301-314 (2017)

¹³⁴ 25 OK Stat § 25-302 (2017)

¹³⁵ 25 OK Stat § 25-307 (B)(1) (2017)

¹³⁶ Cox Oklahoma Telecom, LLC, v. State ex rel. Oklahoma Corp. Comm'n, 2007 OK 55, ¶ 2, 164 P.3d 157

¹³⁷ Oklahoma Attorney General Opinions. 2012 OK AG 24. Decided: 12/21/2012.

The OMA exempts OCC staff members. As a result, in some cases, when commissioners cannot have private discussions due to the OMA, they rely instead on their staff (e.g., their aides) to communicate with each other. For example, some interviewees reported that staff members need to go from office to office to talk to each commissioner about different matters to obtain their guidance and feedback.

7.6.2 Findings

Although its purpose is to ensure public access to government information, some perceive the OMA as a challenge to complex decision-making and operational management. For example, with three OCC Commissioners, the OMA does not allow any two commissioners to discuss legislative matters (e.g., utility rate cases) outside of a public meeting. A number of interviewees emphasized that, as utility rate cases become increasingly complex, commissioners will benefit from having effective discussions with each other to understand the cases, ask questions, form views, and make the best decisions. However, it is difficult to have open, candid conversations on certain sensitive matters in formal public meetings. On the other hand, the principles of open meetings have some strong supporters. Many interviewees highlighted the importance of maintaining public deliberation and fostering a highly transparent regulatory process.

In addition, OMA restrictions does not afford commissioners the ability to meet and discuss privately certain cases brought before the OCC or internal management issues without public advance notice. Some interviewees highlighted that the Commission could become more efficient if the OMA allowed the commissioners to have private discussions on certain internal management issues with each other, such as staffing needs, organizational structure and internal processes improvements, or other day-to-day management issues.

The OCC relies on the AG Opinions and court cases to guide its implementation of OMA. The OCC does not have its own agency-wide OMA policy in place. Different interpretations of the OMA requirements exist among OCC staff and stakeholders. For example, many stakeholders were not aware that judicial cases are exempted from the OMA. Some interviewees noted that the OMA prohibits commissioners from attending conferences together. However, the commissioners often attend conferences (e.g., NARUC annual conference) without public posting, and the real issue or dilemma is that they cannot discuss the business of the Commission when they attend conferences or other social events together. Some OCC staff members argued that it is difficult and not necessary to develop detailed OMA guidance; and in some circumstances, commissioners should have discretion to interpret the OMA rules, as they are the ones subject to misdemeanor for violation. The OCC Commissioners and staff who have regular interactions with the commissioners are not required to receive OMA trainings.

Nationwide, states have varying OMA requirements and rules. For example, some states, such as Michigan, exempt their commissioners from the OMA when deliberating cases. Some states, such as Utah and Vermont, allow commissioners to have private discussions on routine, operational, and administrative matters. In addition, some states require government officials to attend OMA training to achieve a common understanding of relevant open meeting rules and requirements. For

instance, the Public Utility Commission of Texas regularly invites the Attorney General's Office to discuss OMA requirements with commissioners and staff.

The Panel recognizes that adjusting OMA requirements for the OCC could have broader impacts on other Oklahoma state agencies, especially those agencies with three-member boards, such as the Tax Commission, the Workers Compensation Commission, and county commissions. The Panel believes that it is important to maintain a balance between government efficiency and accountability/transparency when considering potential adjustments to the OMA.

7.6.3 Recommendations

Panel Recommendation 22: The Oklahoma State Legislature should exempt the OCC from the OMA when commissioners engage in informational meetings with staff before deliberations begin or discuss internal management issues.

Panel Recommendation 23: The OCC should develop an OMA policy manual to ensure consistent interpretation of the OMA rules and requirements within the Commission. The OCC should require staffs who have regular interactions with commissioners to attend OMA training and update its onboarding program to provide new commissioners the opportunity to develop a clear understanding of OMA requirements.

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Appendix A: Panel Member and Study Team Bios

Panel of Academy Fellows

Dan Crippen (Chair) – Mr. Crippen formerly served as Executive Director of the National Governor's Association and as Director of Congressional Budget Office. Previously, he worked as a Principal on the Washington Counsel. Under the George H.W. Bush administration, he served as Advisor & Assistant of Domestic Policy in the Office of President of the United States. Mr. Crippen also served as Deputy Assistant for Domestic Policy under President Ronald Reagan and worked as a Chief Council & Economic Policy Advisor in the Office of Senator Howard Baker, U.S. Senate Minority Leader.

George Cunningham – Mr. Cunningham is the former Deputy Chief of Staff for Finance and Budget in the State of Arizona. He has also held positions with Arizona State Government as: State Senator; State Representative; Chief of Staff to the Governor; and Special Assistant to the President, Arizona State Senate. He also worked at the University of Arizona as Administrative Director, Large Telescope Projects; Director of Special Projects, Office of Community and Public Service; Resident Policy Fellow, Udall Center; Vice President for Administrative Services; Associate Vice President and Director of Planning and Budgeting; and Assistant to the President.

Barry Rabe – Dr. Rabe is the J. Ira and Nicki Harris Family Professor of Public Policy at the Gerald R. Ford School of Public Policy at the University of Michigan, where he directs the Center for Local, State, and Urban Policy. He is also a non-resident Senior Fellow in the Governance Studies Program at the Brookings Institution and was a Public Policy Scholar at the Woodrow Wilson International Center for Scholars in 2015. Rabe is also the Arthur F. Thurnau Professor of Environmental Policy and holds courtesy appointments in the Department of Political Science and School for Environment and Sustainability. Rabe co-chaired the Assumable Waters Committee of the Environmental Protection Agency and served on prior NAPA panels involving the Department of Interior and the Department of Commerce.

Barry Van Lare – Independent Consultant, Management and Public Policy. Mr. Van Lare is the Former Director, Office of Management Consulting and Training, National Governors Association; Director, Center for Public Strategies, Sagamore Institute for Policy Research; Independent Consultant, Management and Public Policy; Senior Vice President for Strategic Marketing, MAXIMUS Inc.; Executive Director, The Finance Project; Senior Manager, Deloitte & Touche Consulting Group; Positions with the National Governors Association: Deputy Executive Director, Director of State Services, Director of Human Resources.

Judith Youngman – Dr. Judith A. Youngman is a Professor Emeritus of the U.S. Coast Academy. She previously served as the Distinguished Professor of Political Science at the U.S. Coast Guard Academy, Associate Professor of Social Sciences at the U.S. Military Academy, and Assistant Professor of Government at Gallaudet University. She also served as Vice President, Public Affairs at Rhone-Poulenc Rorer (now Sanofi Aventis); Executive Director, Public Issues Management at Merck & Co., Inc.; Director, International Affairs, Pfizer Inc., Chair of the Department of Defense Advisory

Committee on Women in the Services; Co-founder and Co-director of the Intellectual Property Committee; a member of the Chairman of the Joint Chiefs of Staff's Comprehensive Review Working Group; and the inaugural Director of the U.S. Coast Guard Academy's Center for Maritime Policy and Strategy.

Academy Study Team

Brenna Isman, *Director of Academy Studies* – Ms. Isman supports the Academy as the Director of Academy Studies. She leads and advises projects that provide organizational assessment, strategic plan development, and performance improvement guidance to Federal agencies as well as Offices of the Inspector General and other regulatory organizations. Ms. Isman's consulting experience includes both public and private sector clients in areas of stakeholder engagement, organizational development, and communication strategy. Prior to joining the Academy, Ms. Isman was a Senior Consultant for the Ambit Group and a Consultant with Mercer Human Resource Consulting facilitating effective organizational change and process improvement. She holds a Masters of Business Administration (MBA) from American University and a Bachelor of Science (BS) in Human Resource Management from the University of Delaware.

Roger Kodat, *Senior Project Director* – Mr. Kodat has led more than twenty projects for the Academy, several focusing on strategic planning and organizational transformation. He brings twenty years of commercial and investment banking experience with JPMorganChase, and six years of senior level federal government experience at the Department of the Treasury. In 2001, President George W. Bush appointed Mr. Kodat to serve as Deputy Assistant Secretary of Treasury, responsible for federal financial policy. Some of Mr. Kodat's tasks at Treasury included policy formulation for the 2006 Postal Accountability and Enhancement Act; rule making and oversight of federal loan and loan guarantee programs; and managing the Federal Financing Bank (at the time, a \$32 billion bank). Mr. Kodat holds a Bachelor Science degree in Education from Northwestern University and both a MBA in Finance and Masters of Arts (MA) in Political Science from Indiana University.

Chloe Yang, *Research Analyst* – Since joining the Academy in 2009, Ms. Yang has worked on projects with a range of federal agencies. These include the Office of Management and Budget (OMB) Collaborative Forum Coordination and Facilitation project, the Government Printing Office (GPO) Organizational Review, the Amtrak Office of Inspector General (OIG) Organizational Assessment, the U.S. Coast Guard Financial Management and Procurement Review, and the Government Accountability Office (GAO) Comptroller General Position Structure and Compensation Review. Before joining the Academy, Ms. Yang was the research intern at the Foundation of Environmental Security and Sustainability. She also worked as an intern at the Woodrow Wilson Center for Scholars and a research assistant at George Mason University (GMU). Ms. Yang graduated from GMU with a Masters of Public Administration. She also holds a bachelor's degree in Financial Management from the Renmin University of China.

Hailey Ellsworth, *Research Associate* – Ms. Ellsworth joined the Academy staff in August 2017. She is a member of the team performing the organizational assessment of the Oklahoma Corporation

Commission and is engaged in two other Academy projects—a workforce plan for the Department of Transportation and an evaluation of the US Army Corps of Engineers Project Partnership Agreement process. Ms. Ellsworth previously assisted in a realignment study of the U.S. Maritime Administration and an internal review of the National Academies of Sciences, Engineering, and Medicine. She interned for the Academy during the summer of 2017 and previously held positions as a project manager for an online startup company and an intern for Pinnacle Bank. Ms. Ellsworth graduated from Brigham Young University, with a BS in Economics along with a minor in Business Management.

Elijah Evans, *Senior Research Associate* – Mr. Evans joined the Academy in February 2017. Most recently, he has worked with a financial oversight agency to develop strategic and performance plans. Mr. Evans also served on congressionally directed engagements that examined the U.S. Environmental Protection Agency’s (EPA) guidelines for affordability of infrastructure investments and NASA’s use of its Advisory Council. He leads internal efforts driving digital modernization efforts at the Academy. Mr. Evans received a BS in Convergence Journalism and Political Science from Abilene Christian University in December 2016.

Luke Lockwood, *Intern* – Mr. Lockwood became a member of the study team through the American University Semester Program where he followed a course of study while interning at the Academy. He also assisted on the Academy’s evaluation of the U.S. Army Corps of Engineers Project Partnership Agreement process. Mr. Lockwood will receive his undergraduate degree from Bowdoin College in 2020. He is majoring in Government and Legal Studies with a minor in Economics. Luke participates in various clubs at Bowdoin including Bowdoin Men against Sexual Violence and Breaking the Bowdoin Bubble.

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Appendix B: List of Interviews

(Titles and positions listed are accurate as of the time of the Academy's contact.)

AARP OK

Sean Voskuhl – State Director

Alberta Utilities Commission

Willie Grieve – Chair

Arizona Corporation Commission

Elijah Abinah – Director, Utility Division

Arkansas Public Service Commission

John Bethel – Executive Director

AT&T OK

Jason Constable – Director, External and Regulatory Affairs

Attorney at Law LLC

Scott Hempling – Attorney

Barnes Law. PLLC

Grayson Barnes – Attorney

Ron Barnes – Attorney

CenterPoint Energy

Kenny Henderson – Assistant General Counsel

Charney Baker & Brown, PLLC

Ben Brown – Oil & Gas Corporation Commission Lawyer

Chickasaw Nation

Dan Boren – President of Corporate Development

Neal McCaleb – Ambassador at Large for the Chickasaw Nation, Former Oklahoma Secretary of Transportation

Continental Resources

Blu Hulseay – Senior Vice President, Government Relations and Regulatory Affairs

Harold Hamm – Founder, Chairman, and CEO

Cox Communications

Jennifer Tate – Regulatory Analysis

Robbie Squires – Director, Government and Regulatory Affairs

Robert Logsdon – Director, Regulatory Affairs

Devon Energy

Larry Nichols – Co-Founder, Former Executive Chairman and CEO

Drivewyze

Marc Nichols – Director, Government & Industry Partnerships

Edison Electric Institute

Tom Kuhn – President

Edwards Capitol Partners

Steve Edwards – Government Relations

Enable Midstream Partners

Cody Fees – Director, Pipeline Operations

Energy Association of Pennsylvania

Terry Fitzpatrick – President and CEO

Environmental Federation of Oklahoma

Howard Ground – President

Erik Randolph Consulting

Erik Randolph – Consultant

Former Oklahoma Corporation Commission Staff

Cody Graves – President, Automated Energy, Inc.; Former OCC Commissioner

Denise Bode – Partner, Michael Best Strategies LLC; Former OCC Commissioner

Jeff Cloud – President, Cloud Consulting; Former Commissioner

Jim Roth – Director and Chair, Clean Energy Practice Group, Phillips Murrah P.C.; Former OCC Commissioner

Lori Wrotenbery – Director, Oil and Gas Division, Railroad Commission of Texas; Former OCC Administrator

Patrice Douglas – Counsel, Spencer Fane; Former OCC Commissioner

Gable Gotwals Counsel

Eric King – Attorney

Hall Estill

Tom Schroedter – Utilities Law, Oil & Gas Attorney

IHS Markit

Ashley Bailey – Data Transformation Director

Marc Messner – Senior Manager, Data Transformation

Kansas Corporation Commission

Jeff McClanahan – Director of Utilities

Linda Berry – Director of Public Affairs and Consumer Protection

Lynn Rets – Director of Energy and Secretary to the Commission

Ryan Hoffman – Director of Conservation (Oil and Gas Division)

Shari Feist Albrecht – Commissioner, Chair

Keener Oil & Gas Company

Dewey Bartlett Jr. – President

Levinson, Smith & Huffman, PC

Lee Levinson – Attorney

William Huffman – Attorney

Marathon Oil

Will Houser – Land and Agency Advisor

McCraw Oil

Bill Wilson – President

McNamara, Inbody & Parrish, PLLC

Steve McNamara – Attorney

MFS Investments Management

Claud Davis – Investment Officer and Portfolio Manager

Michigan Public Service Commission

John Quackenbush – Chairman

National Association of Regulatory Utility Commissioners

Brad Ramsay – General Counsel/Director, Policy Department

Chuck Gray – Retired, former Executive Director

Greg White – Executive Director

National Association of State Utility Consumer Advocates

David Springe – Executive Director

National Regulatory Research Institute

Ken Costello – Principal Researcher, Energy and Environment

Raj Barua – Executive Director

Nebraska Public Service Commission

Mike Hybl – Executive Director

Office of Management and Enterprise Services

Julie Dostal – Senior Program Manager

Office of the Secretary of Energy and Environment

Carly Cordell – Deputy Secretary of Energy and Environment

Michael Teague – Secretary of Energy and Environment

OKIE 811

Susan Bohl – Executive Director

Oklahoma Attorney General's Office

Dara Derryberry – Deputy Attorney General

Katy Boren – Chief Assistant Attorney General, Utility Regulation Unit

Drew Edmondson – Former Attorney General

Oklahoma Corporation Commission Staff

Commissioners

Bob Anthony – Commissioner

Dana Murphy – Chairman, Commissioner

Todd Hiatt – Vice-Chairman, Commissioner

Commissioners' Staff

Jackie Hollinhead – Administrative Assistant to Commissioner Anthony

Jana Slatton – Administrative Assistant to Commissioner Hiatt

Jim Myles – Deliberating Attorney for Commissioner Murphy

Matt Mullin – Aide to Commissioner Anthony

Nicole King – Aide to Commissioner Hiatt

Teryl Williams – Aide to Commissioner Murphy

Administrative, Judicial and Legislative Services – Administrative Services

Director of Administration and Staff

Maribeth Snapp – Director, Judicial and Legislative Services

Michele Craig – Agency Counsel and Former Acting General Counsel

Tim Rhodes – Director of Administration

Finance Division

Bethany Solomonov – Account Tech B

Cheryl Fitzgerald – APO

Chris Swenrom – Accountant

Holly George – Director

Jessica Billingsley – Accountant

Judy Reddout – Account Tech D

Lakeesha Sirls – APD/CPO

Lori Mize – HR Management Specialist

Richard Diaz – Account Tech

Personnel

Jim Nelson – Manager, Human Resources

Lori Mize – HR Management Specialist

Administrative, Judicial and Legislative Services – Judicial Services

Francie Ludwick – Secretary

Keith Thomas – Administrative Law Judge

Mary Candler – Managing Deputy Administrative Law Judge

Michael Porter – Administrative Law Judge

Selina Diffin – Docket Clerk, Court Clerk Office

Administrative, Judicial and Legislative Services – Legislative Services

Jeff Kline – Attorney III

Natasha Scott – Managing Deputy General Counsel

Travis Weedn – Senior Attorney

Oil and Gas Division

Ben Odell – Field Inspector, District I

Butch Will – Oil and Gas Specialist

David Lansdale – Field Inspector, District III

Del Lynch – Field Inspector, District IV

Earl Hendricks – Field Inspector, District II

Everett Plummer – Field Inspector, District III
Janie Hlincky – Administrative Assistant
Jordan Williams – Oil and Gas Specialist
Kellie Lewelling – Oil and Gas Specialist
Lora Baker – Administrative Programs Officer, District II
Michelle Mesner – Administrative Programs Officer
Randy Williamson – Field Inspector, District IV
Roger Pearman – Field Supervisor, District I
Steve Vinje – Oil and Gas Specialist
Tim Baker – Director

Petroleum Storage Tank Division

Brock Stuber – Environmental Compliance Analyst
Denetta Brannon – Comptroller
Robyn Strickland – Director
Salim Douglah – Technical Manager
Susan Adlamini – Executive Administrative Assistant
Ty Massey – Fuel Specialist
Terin Morris – Fund Administrator

Public Utility Division

Andrew Scribner – Regulatory Analyst
Brandy Wreath – Director
David Melvin – Regulatory Analyst
Debbie Prater – PUD Manager
Gayle McKinley – OUSF Coordinator
Glenda Buchanan – PUD Manager
Jenny Dillon – Regulatory Analyst
Kevin Marbury – Regulatory Analyst
Matt Patton – OUSF Analyst
Mcklein Aguirre – Regulatory Analyst
Melissa Mussyal – PUD Coordinator
Payal Patel – PUD Coordinator

Rochelle Brooks – Regulatory Analyst

Sherry Currell – OUSF Analyst

Stephen Davis – PUD Coordinator

Susan Harwell – Regulatory Analyst

Teena May – Regulatory Analyst

Zach Quintero – Regulatory Analyst

Transportation Division

Angela Holt – Auditor, IFTA/IRP

Brian Wofford – Motor Carrier Enforcement Officer, Davis Weigh Station

Christy Whiles – Administrative Assistant, Kay Port of Entry

Chuck Carroll – Sergeant, Love Port of Entry

Corbi Wathor – Motor Carrier Enforcement Officer, Kay Port of Entry

Crystal Stevens – Customer Specialist

David Nicholson – Regulatory Programs Manager, IFTA/IRP

Dennis Fothergill – Regulatory Program Manager, Pipeline Safety

Garet Kinder – Motor Vehicle Enforcement, Beckham Point of Entry

Jack Hickman – Customer Specialist

Jeff McIntire – Motor Carrier Enforcement Officer, El Reno Weigh Station

Jeremy O'Brien – Sergeant, Beckham Point of Entry

Landon Tally – Motor Carrier Enforcement Officer, Sequoyah Port of Entry

Laura Osborne – Admin Programs Officer, Enforcement Support

Lynne Jones – Interim Director

Mark Combest – Major, Kay Port of Entry

Maya Johnson – Administrative Assistant

Mike Gray – Auditor, IFTA/IRP

Paul Swigart – Administrative Programs Officer

Scott McLemore – Motor Carrier Enforcement Officer, Hugo Weigh Station

Travis Loudermilk – Motor Carrier Enforcement Officer, Colbert Weigh Station

Yolanda Williams – Auditor, IFTA/IRP Returns

Oklahoma Department of Public Safety

Captain David Moffett – Commander, Troop S/CMV Division, Bomb Technician

Rusty Rhoades – Commissioner

Oklahoma Department of Transportation

Mitch Surrett – Assistant General Counsel

Oklahoma Energy Firm, PLLC

Deborah Thompson – Principal

Oklahoma Energy Producers Alliance

Richard Parrish – Attorney

Oklahoma Ethics Commission

Lee Slater – Former Executive Director

Oklahoma Gas & Electric

Sean Trauschke – President and CEO

Paul Renfrow – Vice President, Public Affairs and Corporate Administration

Randy Swanson – Director, Public Affairs

Oklahoma House of Representatives

Weldon Watson – Oklahoma Representative

Oklahoma Independent Petroleum Association

Tim Wigley – President

AJ Ferate – Vice President, Regulatory Affairs

Oklahoma Oil & Gas Association

Chad Warmington – President

Oklahoma Press Association

Mark Thomas – Executive Director

Oklahoma State Auditor & Inspector

Melissa Capps – Performance Audit Division Deputy Director

Mendi Rowlett

Oklahoma State Legislature

Mark Allen – Oklahoma State Senator

Oklahoma Truckers Association

Jim Newport – Chief Executive Officer

One Gas

Cory Slaughter – Director, Rates and Regulatory Compliance

Craig Perry – Manager, Government Affairs

David Scalf – Director, Rates and Regulatory Reporting

Pennsylvania Public Utility Commission

Lou Ann Hess – Administrative Officer

Phillips 66

Joan Walker-Ratliff – Director, Regulatory Affairs

Public Service Company of Oklahoma

Stuart Solomon – President and Chief Executive Officer

Regulatory Assistance Project

Rich Sedano – President and Chief Executive Officer

Richard A. Grimes, PC

Richard Grimes – Attorney

S&P Global Market Intelligence/Regulatory Research Associates

Russell Ernst – Senior Research Analyst

Salmon Ventures

Edward Salmon – Chairman, Former President of the New Jersey Board of Public Utilities

State Chamber of Oklahoma

Fred Morgan – President and Chief Executive Officer

Mike Jackson – Executive Vice President, Government & Political Affairs

Jennifer Lepard – Vice President, Government Affairs

State of Oklahoma

Frank Keating – Former Governor

Sullivan & Co., LLC

Bob Sullivan – Principal, Advisor to the Governor

Texas Public Utility Commission

John Paul Urban – Executive Director

Tripledee Operating Co.

Tom Dunlap – Manager

Tote-A-Poke

Nick LeFever – Owner

UBS

Dan Ford – Wall Street Analyst, Former Barclays Financial Analyst

Universities

Doug Jones – Harold L. and Audrey P. Enarson Professor of Public Policy & Management, Ohio State University

Janice Beecher – Director, Institute of Public Utilities Policy Research & Education, Michigan State University

Mark Jamison – Senior Lecturer, Public Utility Research Center, University of Florida

Windstream

Jennifer Fagan – Regional Vice President, Government Affairs

Appendix C: Strategic Plan Goals and Corresponding Performance Measures

Goal 1: Invest in our Workforce – *Provide safe, healthy, respectful, and rewarding work environment. Build organizational depth and succession plans by expanding skills and increasing professional development and career advancement opportunities for all employees.*

Agency-Wide Performance Measures

- Employee retention rate
- Number of employee development plans fully implemented
- Employee satisfaction survey results
- Average days to fill vacancies

Goal 2: Communicate in all Directions – *Communicate effectively between leadership and employees, among employees, and engage with stakeholders to meet the needs of today and address the emerging challenges of tomorrow.*

Agency-Wide Performance Measures

- Website survey results
- Employee and stakeholder satisfaction survey results
- Percent of 2012 audit recommendations implemented
- Percent of Inter-Divisional Teams meeting quarterly

Goal 3: Innovate for the Future – *Manage for the future by investing in information systems as well as business and accounting controls necessary to support transparent, accountable, and reasonable processes and results.*

Agency-Wide Performance Measures

- Percent of transactions processed electronically
- Percent of funds handled electronically
- Percent of records stored electronically
- Percent of audit recommendations implemented

Goal 4: Maximize Efficiency – *Share institutional knowledge and apply effective business processes to the organization to successfully meet our Mission and achieve efficiencies and high quality service for stakeholders.*

Agency-Wide Performance Measures

- Processing time on key transactions
- Percent of technology-related modernization projects completed on time and on budget
- Number of statutes, rules, processes, and forms reviewed

Appendix D: Additional Funding and Appropriations Data

Figure 13 - One-Time Funding Usage (Courtesy of OCC)

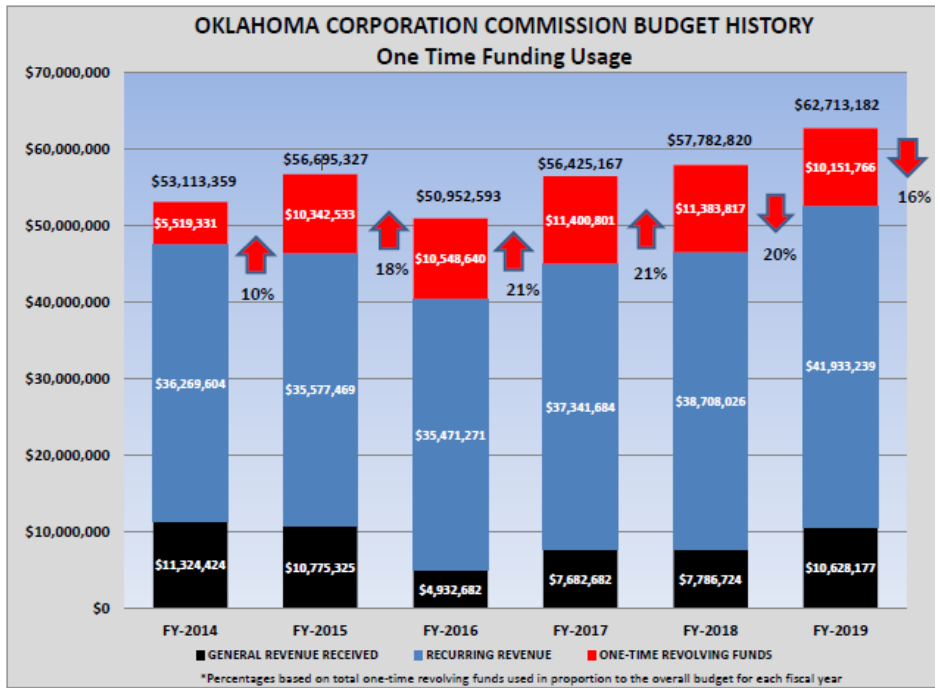
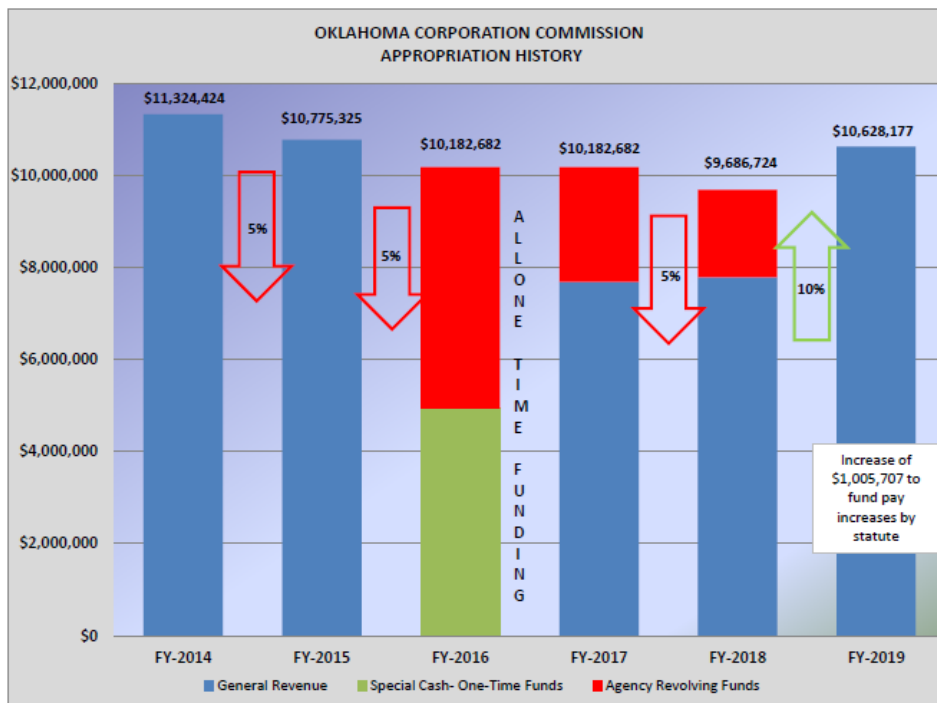


Figure 14 - Appropriation History (Courtesy of OCC)



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Appendix E: Michigan Balanced Scorecard

See the full scorecard here: <https://www.michigan.gov/mpsc/0,4639,7-159-80958-464755--.00.html>

Figure 15 – Michigan Balanced Scorecard

MiScorecard Performance Summary									
Business Unit:		Michigan Public Service Commission			Green		->90% of target		
Executive/Director Name:		Sally Talberg			Yellow		-> 75% - 90% of target		
Reporting Period:		Aug 2018			Red		-<75% of target		
					Date Approved:		10/9/2018		
Metric ID	Metric	Status	Progress	Target	Current	Previous	Frequency	Metric Definition	
Rule									
MPSC-1	Average # of Days to Issue Final Orders in Electric & Gas Rate Cases	Green		351	271	270	Monthly	The Cumulative Average Processing Time for all General Electric & Gas Rate Cases Decided after 10/6/08. Lower Number Means Faster Case Processing.	
Key Economic Indicators									
MPSC-5	Residential - Electric Price Rank within the United States			N/A	41	41	Monthly	Rank 1 is the Lowest Price, Rank 51 the Highest. Source: EIA Data - 2 month lag	
MPSC-6	Commercial - Electric Price Rank within the United States			N/A	35	39	Monthly	Rank 1 is the Lowest Price, Rank 51 is the Highest. Source: EIA Data - 2 month lag	
MPSC-7	Industrial - Electric Price Rank within the United States			N/A	26	31	Monthly	Rank 1 is the Lowest Price, Rank 51 the Highest. Source: EIA Data - 2 month lag	
MPSC-8	Residential - Total Average Annual Combined Electric and Natural Gas Bill Rank within the United States			N/A	25	20	CY Annual	Rank 1 is the Lowest Price, Rank 51 the Highest. Source: EIA Data - 2016 data is the most current available. (2017 data expected January 2019)	
Reliability or Customer/Constituent									
MPSC-4	Electric Distribution Reliability: Michigan Weighted SAIFI			N/A	0.97	0.95	CY Annual	The Weighted Average SAIFI (System Average Interruption Frequency Index) for Electric Utilities in Michigan. This Number Represents the Frequency of Customer Electric Outages. Lower Numbers Indicate a Lower Frequency of Outages. 2016 data is the most current data available. (2017 data expected April 2018)	
Statutory Requirement									
MPSC-9	Renewable Energy (Target for 2016, 2017 and 2018; 10.1 million energy credits)	Green		10.1 million	10.1	10.3	CY Annual	Data represents the total energy credits used for 2016 compliance with the RPS. (2017 data expected Nov 2018)	
MPSC-10a	Electric Energy Efficiency	Green		1.00%	1.28%	1.21%	CY Annual	2015 Target: 1%; 2016 data is the most current data available. (2017 data expected Feb 2019)	
MPSC-10b	Natural Gas Energy Efficiency	Green		0.75%	0.94%	0.88%	CY Annual	2016 Target: 0.75%; 2016 data is the most current data available. (2017 data expected Feb 2019)	
Productivity									
MPSC-2	Processing Applications & Formal Complaints with Statutory Deadlines for all Industries	Green		100%	90%	86%	Monthly	% of Orders Issued on or before the Expiration of a State or Federal Statutory Deadlines	
MPSC-3	Processing Applications & Formal Complaints in a Timely Manner for all Industries	Green		75%	88%	88%	Monthly	% of Orders Issued within 9 Months or Less for Cases having no Statutory Deadline	
MPSC-11	Pipeline Safety Inspection	Green		695	695	684	CY Annual	Number of required intrastate pipeline safety inspection days completed annually as required by Federal Standards (PHMSA)(2016 data)	
Customer/Constituent									
MPSC-21	Residents and businesses with access to a fixed broadband connection with a minimum speed of 25 Mbps download/3Mbps upload	Green		90%	90%	N/A	CY Annual	Source: Connect Michigan, Sept. 2017	
MPSC-22	Residents and businesses with access to a fixed broadband connection with a minimum download speed of 100 Mbps	Green		81%	88%	N/A	CY Annual	Source: Connect Michigan, Sept. 2017	
MPSC-23	Land area of the state with access to mobile broadband with download speed of 10 Mbps	Green		90%	93%	N/A	CY Annual	Source: Connect Michigan, Sept. 2017	
MPSC-24	Land area of the state with access to mobile broadband with download speed of 25 Mbps	Green		12%	21%	N/A	CY Annual	Source: Connect Michigan, Sept. 2017	
MPSC-25	Residents adopting a fixed broadband connection at home	Yellow		73%	65%	N/A	CY Annual	Source: US Census, 2016	
MPSC-26	Residents adopting a mobile broadband connection	Green		62%	66%	N/A	CY Annual	Source: US Census 2016	
MPSC-27	Businesses with a web presence	Green		75%	69%	N/A	CY Annual	Source: Connect Michigan, 2014	
Productivity and Process Improvement									
MPSC-28	Company Response Time	Green		10 Days	7	6	Monthly	Average # of days for companies to respond to informal customer complaint.	
Complaint Processing									
MPSC-29	Informal Residential Customer Complaint Resolution Time	Green		14 Days	9	7	Monthly	Average # of days for MPSC to close residential informal customer complaint.	

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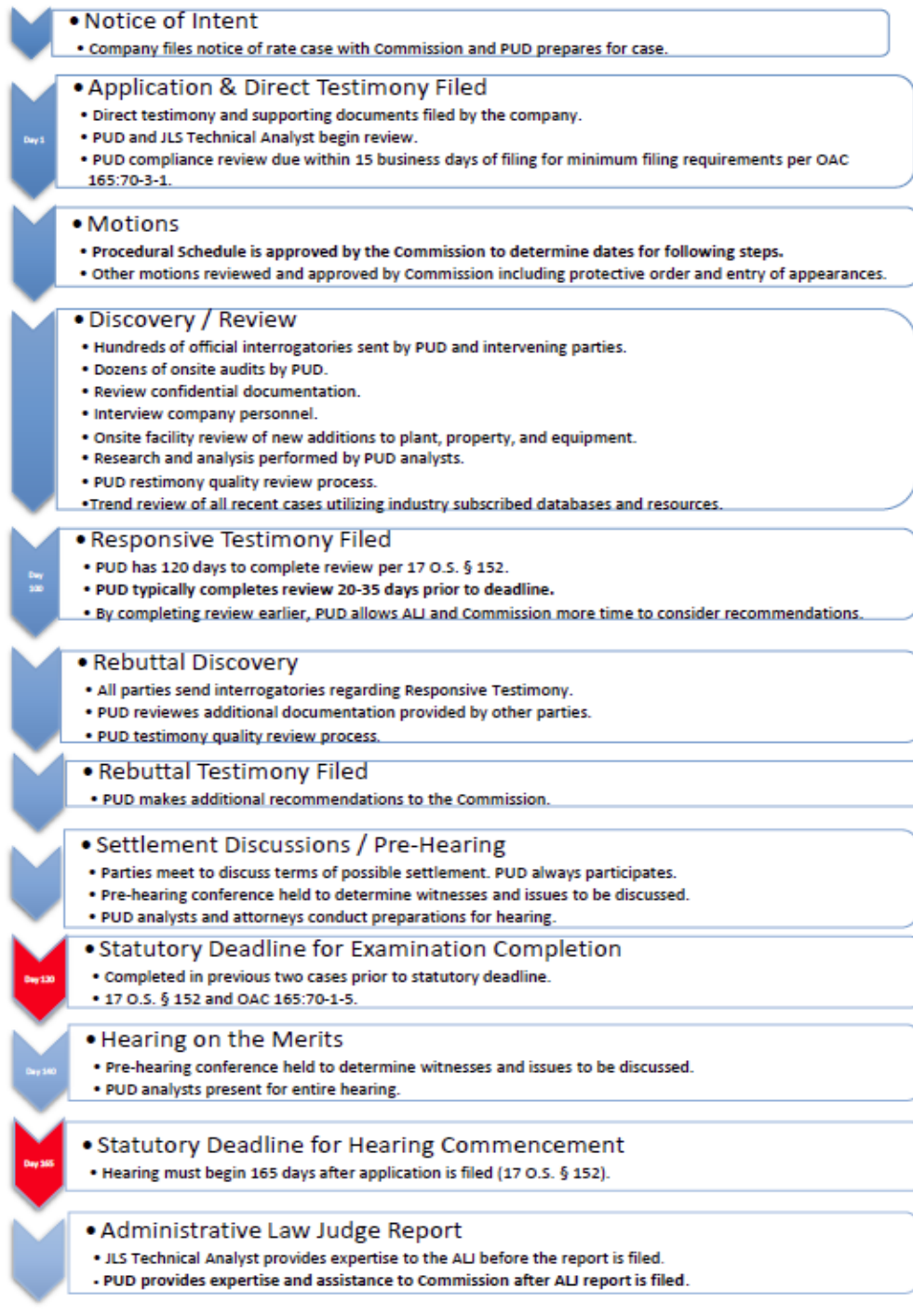
Appendix F: Supplemental Information on Public Utility Rate Case Timeline Comparisons

- In fully litigated rate cases across the country:
 - 21 lasted more than one year
 - 65 lasted seven to 12 months
 - 13 lasted less than seven months
- Counting all cases in other states, i.e., fully litigated cases and settled cases:
 - 40 lasted more than one year
 - 150 lasted seven to 12 months
 - 47 lasted less than seven months
- For OCC/PUD 2015 to 2017 the average duration of Rate Cases was 262 days (8.7months)
- For OCC/PUD 2016 to 2017 (reflects the new JLS process) the average duration of Rate Cases was 175 days (5.8 months)

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Appendix G: Public Utility Rate Case Process Flow Diagram

Figure 16 – Public Utility Rate Case Process Flow Diagram





- **Statutory Trigger for Interim Rates if no Commission Order is Issued**

- If an order is not issued by the Commission within 180 days of application, the utility may implement interim rates subject to refund until an order is issued. Interest accrues for 90 days.
- 17 O.S. § 152.



- **Post Hearing**

- PUD best practices meetings with parties.
- Updates to Audit Programs and living documents with lessons learned.

Appendix H: OMES Projects

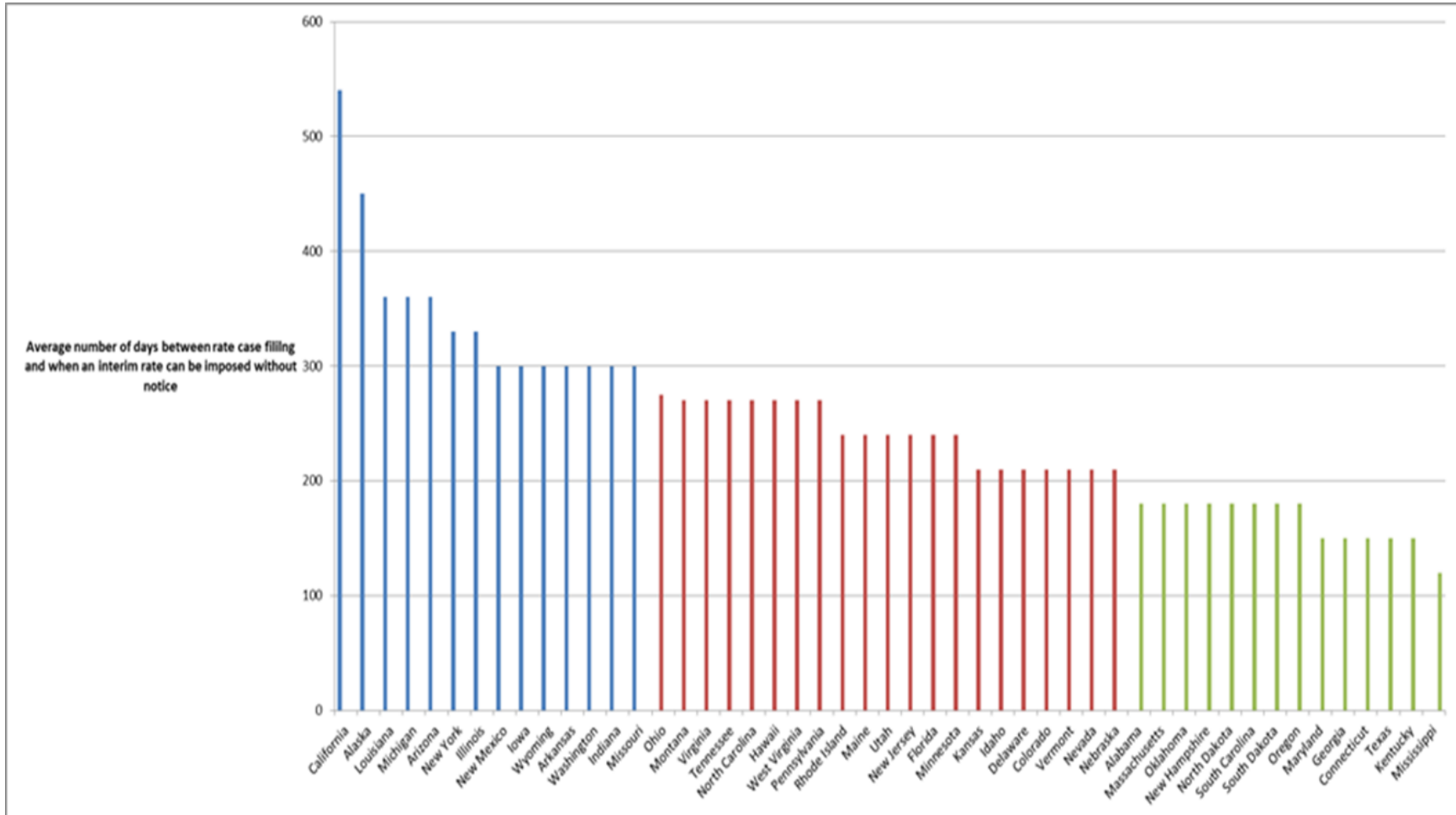
Table Appendix H-1. OMES Projects

Project/Enhancement	Estimated End Date
Upgrade ten end-of-life 2003 servers to 2008 or higher	Complete
Upgrade Kiosk Software at OCC to new hardware, image, firewalls, and re-captcha	August 2018
Upgrade current Oracle environment from 10g to V12c	May 2019
Regulatory Portal – offer customers the ability to perform business functions via the web	Complete
Expand Existing OCC Information Management System application for use across the entire agency to perform various functions	June 2019
Improve OCC communication, collaboration, and cost savings through visual methods for court hearings, trainings, meetings, case staffing, and fail over capabilities for court locations	August 2018
RBDMS Phase 1 – updated electronic forms and online capabilities	October 2018
Redesign and upgrade of OCC websites	November 2018
OSU/NESI utility mapping for OCC – upgrade current Access application to web based platform	January 2019
OCC Court Room signage – 65 inch monitors in building lobby and court room lobby with scrolling court schedule	May 2018
OCC data center move to the OMES Data Center – offers 24/7 power, increased security, 24/7 support, and lower cost	Complete
OCC remote site network upgrades – increase performance and security, 24/7 help desk support, and equipment	Complete
E-Discovery for OCC – ability to perform/fulfill public information requests quickly in an automated fashion	Complete
OCC help desk optimization – move to OMES Help Desk service for 24/7 support	Complete
OCC network upgrade	Complete

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Appendix I: Rate Cases by State

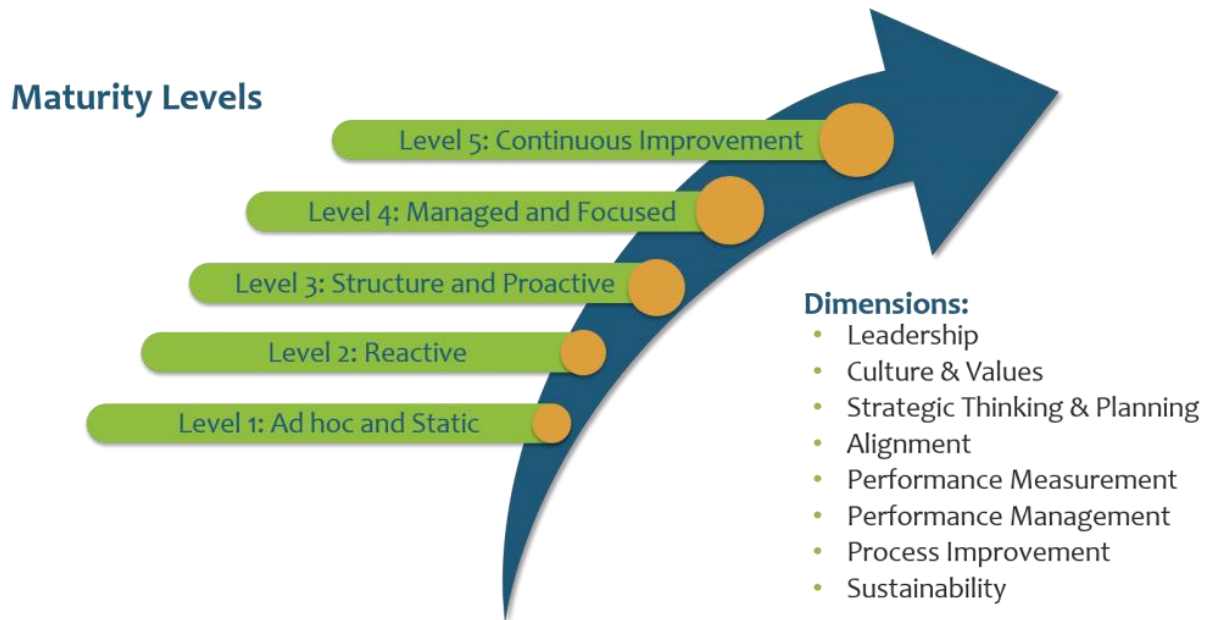
Figure 17 - Based on data collected by study team.



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Appendix J: Strategic Management Maturity Model

Figure 18 – Strategic Management Maturity Model



Level 1: Ad Hoc and Static

It is characteristic of organizations at this level that they currently do not do any strategic planning or management in a formal sense, tending to plan only on the tactical or operational level in an ad hoc and uncontrolled manner, normally by senior management behind closed doors. Leaders spend a majority of their time addressing operational issues and “*putting out fires*” and never address long-term strategy.

Level 2: Reactive

It is characteristic of organizations at this level that some elements of effective planning and strategic performance management are applied but only in an inconsistent fashion, often with poor results. Planning discipline is unlikely to be rigorous and only happens in a reaction to events or to temporarily please an individual leader. These organizations might measure performance or use it to punish underperformers. Often, individuals complete these activities to meet a routine policy need and not taken seriously.

Level 3: Structured & Proactive

It is characteristic of organizations at this level that there are formal structures and processes in place to comprehensively and proactively engage in strategic planning and management. These

activities occur on a fairly regular basis and are subject to some degree of improvement over time. Measurements are somewhat aligned with strategy and employee accountability is taken seriously.

Level 4: Managed & Focused

It is characteristic of organizations at this level that strategy drives focus and decision making for the organization. Leadership broadly implements organization-wide standards and methods for strategy management. Leaders formally engage employees in the process and a measurement and accountability work culture help drive strategic success for the organization.

Level 5: Continuous Improvement

It is a characteristic of organizations at this level that leadership embeds excellence in strategic planning and management within the culture of the organization and formally makes strides to continuously improve planning and management in a formal sense. This means that as leadership evaluates performance, the organization first analyzes how it is performing towards its strategic goals and then second studies how effective the strategic planning and management processes are and adapts as necessary. Excellence in strategic management drives the organization's competitive edge or performance success.

Appendix K: Panel Recommendations

Panel Recommendation 1: The OCC should issue monthly or quarterly public reports on its performance, utilizing a scorecard or similar approach, ([Appendix E](#) includes an example).

Panel Recommendation 2: The OCC should establish an organization-wide *Performance Management System*, aligned with strategic goals, capable of tracking and measuring organizational outputs and outcomes, (e.g., OCC efficiency, effectiveness, and adaptability; and assessing present and future needs and gaps in OCC-wide capacities, capabilities, and competencies).

Panel Recommendation 3: The OCC should develop a more future-oriented, mission-focused, organization-wide *Strategic Plan* that includes clear strategic goals and performance metrics for its missions, responsibilities, and performance set in the context of projected trends in the sectors regulated by the OCC, and that it is the product of ongoing, not episodic, strategic management and assessment processes.

Panel Recommendation 4: The OCC should institute organization-wide change management processes, under the Director of Administration, that align with organizational strategic and policy goals defined in the OCC Strategic Plan, and include performance measurement processes to assess the impacts of changes implemented on organizational efficiency and effectiveness.

Panel Recommendation 5: OCC commissioners should work with the governor and state legislature to approve text for a more modern Commissioner Oath of Office in the following manner: (1) delete obsolete references; (2) add explicit references to current OCC responsibilities that are not currently documented in the oath; (3) add language that references potential future OCC responsibilities that could impact its mission; and (4) take actions to change the oath currently embedded in the Oklahoma State Constitution.

Panel Recommendation 6: When considering moving a part or all of an OCC division in or out of the OCC, the following high-level principles, consistent with best practices in public administration should guide those decisions:

1. **Enhance overall customer service efficiencies and service delivery efficiencies due to the move.** Organizational changes must be considered within the context of evaluating the expected impact on OCC clients. The same is true for considering the impact on whether state agencies might operate more efficiently and effectively by re-grouping various functions across agencies. There may also be synergies realized, positively or negatively, as a result of moving a portion of the OCC to another state agency. These intended, and even unintended, consequences must be assessed.
2. **Compare estimated costs of the move.** A comprehensive budgetary impact estimate connected with the change must be prepared to cover a three to five-year time horizon.

Panel Recommendation 7: The OCC should institute mechanisms to track and measure workload complexity as part of its performance measurement, strategic planning, and budgeting processes. Measures might include the staff time to complete the typical or less complex analysis.

Panel Recommendation 8: The OCC Commissioners should work with the state legislature to increase the time when regulated utilities may impose interim rates (subject to refund) from 180 days after case filing to 250 days (the current national average) or more.

Panel Recommendation 9: The OGCD and ALJs should initiate the process of tracking the time taken for issuance of each permit between submission and final decision in order to evaluate trends in the timeliness of this process and to use these data to identify ways to introduce greater efficiency and timeliness in decision-making.

Panel Recommendation 10: The OCC should work with OMES to regularly assess the progress of the OMES IT upgrade project and validate its scope, feasibility, and priority. The OCC should issue periodic public reports of these assessments.

Panel Recommendation 11: The OCC should establish a process to regularly assess its IT capacity, capabilities, and gaps to support evolving service delivery and decision-making needs. The analysis should use, as benchmarks, assessments of IT capacity and capabilities needs and gaps identified through strategic planning and performance measurement assessments.

Panel Recommendation 12: OMES should dedicate staff resources to assist the OCC to identify the IT capacity needed to develop and support the recommended strategic planning, performance management, and change management systems.

Panel Recommendation 13: The OCC should reassign staff in order to establish a pool of technical advisors to assist commissioners in making well-informed decisions. This agency-wide advisory group should consist of a professional expert in each of the OCC's core program areas. These advisors should report directly to the commissioners through a lead advisor who will work with the individual commissioners to identify and prioritize assignments.

This advisory group should be responsible for: (1 ensuring that commissioners have access to the technical information needed to support their decision making process in all regulated areas (e.g., public utility, oil & gas, etc.), and (2 monitoring recent developments and future trends in OCC-regulated industries and briefing commissioners on those developments and trends.

Panel Recommendation 14: The OCC should reexamine the Commission's rules and procedures related to staff assignment to introduce more flexibility in the capacity to provide advisory technical support to commissioners as needed.

Panel Recommendation 15: OCC should enhance staff job satisfaction and professional development by: a) clearly defining career development paths; b) enabling staff mobility across divisions; c) enhancing staff development opportunities, including training in performance management and future energy trends; d) establishing formal mentoring programs; e) expanding the use of flexible work arrangement and telework opportunities; and f) establishing formal leadership succession programs.

Panel Recommendation 16: The OCC should evaluate the use of classified and unclassified employees in each division and determine whether reclassifications are needed to align with current budget and operational needs.

Panel Recommendation 17: The OCC should enhance the capacity of the HR office to provide the training necessary to fulfill Panel Recommendation 15, to strengthen key human capital management processes within the OCC and promote consistency across all divisions.

Panel Recommendation 18: OCC Commissioners should work with the Oklahoma Executive and State Legislature to amend the Oklahoma Constitution, Article 9, Section IX-16, Qualifications of Commissioners, to eliminate delineation of specific industries under restrictions on commissioners. The Panel recommends the adoption of language similar to the OCC 'Disclosure of Interest' declaration, e.g., "Nor shall such commissioners be directly or indirectly interested personally, professionally, or financially in industries regulated by the Oklahoma Corporation Commission."

Panel Recommendation 19: The Oklahoma Executive and the State Legislature should assess the advantages, disadvantages, costs, feasibility, and cultural compatibility of expanding qualification requirements for OCC commissioners to include professional and educational requirements consistent with the industries and sectors regulated by the OCC.

Panel Recommendation 20: The Oklahoma Executive and State Legislature should consider conducting an assessment of campaign financing restrictions for candidates for OCC Commissioner, including the advantages, disadvantages, feasibility, and cultural compatibility of strengthening restrictions beyond present restrictions.

Panel Recommendation 21: The Oklahoma Executive and State Legislature should establish post-employment restrictions, such as cooling off periods, for commissioners.

Panel Recommendation 22: The Oklahoma State Legislature should exempt the OCC from the OMA when commissioners engage in informational meetings with staff before deliberations begin or discuss internal management issues.

Panel Recommendation 23: The OCC should develop an OMA policy manual to ensure consistent interpretation of the OMA rules and requirements within the Commission. The OCC should require staffs who have regular interactions with commissioners to attend OMA training and update its onboarding program to provide new commissioners the opportunity to develop a clear understanding of OMA requirements.

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