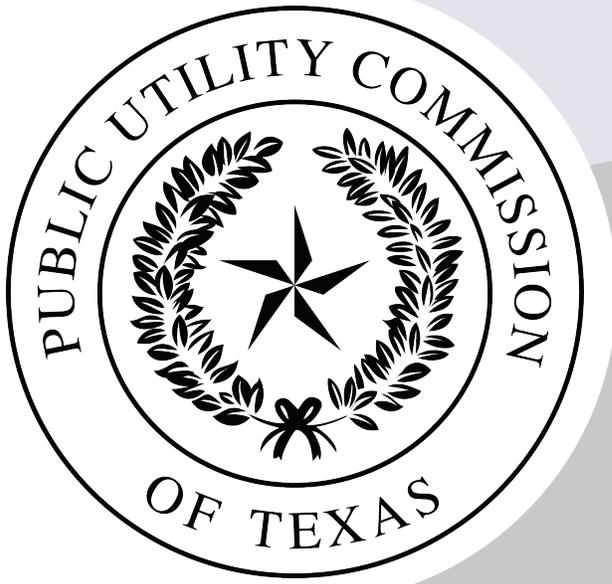


An Internal Audit Report On the

Legal Division's Processes for Contested Cases



Internal Audit Division

Public Utility Commission of Texas

Report # 2020-100

January 2020

Executive Summary

The original scope of this audit was restricted to a review of active contested cases only because the Legal Division does not maintain a record of contested cases once they are closed. Without a review of completed cases, the auditor was unable to determine whether the Legal Division met applicable requirements, statutes, administrative rules, and division policies. However, a thorough review was conducted on the division's associated policies, procedures, and the case management log used to track active cases.

Testing of the case management log and the division's policies and procedures for contested cases identified the following:

- The case management log used by the legal division does not accurately represent the number of open cases assigned to the division and was determined to be unreliable. The division should consider using a database to manage cases.
- The division does not maintain a record of the case management log in accordance with the agency's record retention schedule.
- Data entries within the case log should be standardized to increase the effectiveness of the division's file management system.
- The division does not have formal policies and procedures for the administration of contested cases.

According to PUC Procedural Rules §22.2 (16), a contested case is a proceeding, including a ratemaking or licensing proceeding, in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing.

Summary of Audit Objectives, Scope, and Methodology

The audit objective was to determine whether the Legal Division has administrative processes and related controls to ensure contested cases are conducted in accordance with applicable requirements.

The scope of this audit included activities related to the Legal Division's work on contested cases from September 1, 2016 through October 30, 2019. Once the audit began and record requests were made, it was determined the division would not be able to produce the population for closed docket numbers covering the time frame being audited. This limited the scope of the audit to reviewing only active cases maintained on the case management log. The time period reviewed during the audit was extended to October 30, 2019 to allow testing of active cases as of the date the spreadsheet was received.

The audit methodology included a review of applicable laws, statutes, and division policy and procedures. It also included an analysis of the active case log spreadsheet, interviews, and a review of support documentation maintained in the Agency Information System (AIS).

Detailed Results

Chapter 1

The Case Management Log is not a Reliable Tool for Tracking Active Cases

The Legal Division consists of teams that include attorneys, paralegals, administrative assistants, and managing attorneys. The managing attorneys are the team leads and are responsible for assigning new cases to Legal Division staff. Cases are assigned to staff based on the subject matter and available staff attorneys. The primary tool for tracking and managing all cases within the division is the case management log spreadsheet. Deadlines, case types, team member assignments, and case issues are some of the fields being tracked on the spreadsheet. In order to efficiently manage the workload within the division, it is vital that the case log be accurate and have the ability to show the types of cases, the ongoing progress of each, and the final disposition of cases being tracked.

Initially the case log included 415 cases labeled as “active”. A random sample of 30 cases was selected and tested against the following criteria:

1. Are the date entries accurate (both original filing and most recent deadline)?
2. Is the information for each case complete?
3. Are there duplicates?
4. Are the “active” cases on the log still active?

Testing determined 19 out of 30 or 63% of the entries sampled had one or more errors. The most common error was for cases having a status of active on Legal’s case management log even though the cases had been closed. Once a case is closed, it should no longer have an active status on the case management log. Further testing identified the following:

- 75 closed cases were classified as active on Legal’s case management log.
- 43 duplicate cases were identified.
- 34 active cases were identified as administrative annual filings but had no deadline dates or noted any ongoing issues.

The original count of 415 active cases was determined to be inaccurate. Omitting duplicates, closed, and administrative filings would reduce the active cases to a total of 263.

Recommendation:

Spreadsheets generally are not useful for maintaining a tracking system for multiple staff and the hundreds of cases the division is involved with. The division should consider using a database with strong controls to track all cases in the future.

Response from Legal:

The Legal Division agrees with the recommendation to use a database.

Regarding the number of cases, the case spreadsheet is used not only to track the number of dockets and projects, but which attorneys are assigned, relevant deadlines, and other useful information. Many of the “duplicate cases” described above are the result of multiple staff attorneys being assigned to a case. Complex cases, including electric rate cases, typically have as many five attorneys assigned, including the managing attorney.

Most of the 34 administrative annual filings referenced above are telecom cases in which the deadlines are dictated by rule, which is 90 days, and not by orders issued by an administrative law judge. Attorneys typically use the case spreadsheet to track the deadlines set by an administrative law judge, but not deadlines that are established by the statute or rule. The Legal Division acknowledges that these types of cases should be tracked just like other cases.

Finally, the number of actual active cases being handled by the Legal Division is higher than the number of cases listed in the case spreadsheet because the case spreadsheet does not include routine cases assigned to staff attorneys. Routine cases are relatively streamlined dockets that typically only require one filing with a recommendation from Legal. Oftentimes, the docket can be open and closed within 30 to 45 days. Because of the streamlined nature of these dockets, they are not currently included on the case spreadsheet.

The Director of the Legal Division will evaluate whether a database is more appropriate as a case management system.

The Legal Division Should Adhere to the Agency's Record Retention Schedule

The Legal Division uses the case management log to assign and manage the workflow for senior managing attorneys and their respective teams. Once a case is closed, it is deleted from the case management log. According to the Public Utility Commission's record retention schedule, item A.GN-00.08, all logbooks not included in or directly related to other record series in this schedule, including division docket assignment logbooks, should be kept for three years after completed.

Recommendation:

The Division should maintain a record of the logbook used for docket assignments in accordance with the Commission's record retention schedule.

Response from Legal:

The Legal Division agrees with the recommendation.

The Legal Division disseminates case spreadsheets to its staff attorneys on a monthly basis, who then update the spreadsheets and email them back to the responsible administrative staff person. This self-reported information is then compiled into a division-wide spreadsheet. When a case is closed, it is then deleted from the spreadsheet, which tracks only active cases.

However, the Legal Division has begun keeping copies of older spreadsheets in order to track the dockets that have been closed. If Legal were to implement a database for case management, then tracking both active and closed cases, should be more accurate. Additionally, the Legal Division will ensure that it complies with applicable record retention requirements.

The director of the Legal Division will ensure that the division maintains a record of the logbook used for docket assignments in accordance with the Commission's record retention schedule.

File Management- Standardize Data Entries

The Legal Division has an informal process to add dockets to their case management log for staff assignments. There is no standardization for how the case data is entered into the log, specifically the “Type” field. This creates several variations for cases that are similar. For example, there are at least eight different descriptions for cases determined to be formal complaints. Uniform data entry would allow the division to quickly identify the type of cases they have been assigned and allow for more efficient case management within the division.

Recommendation:

The Legal Division should standardize the data entries for the case management log to create more uniform and usable information.

Response from Legal:

The Legal Division agrees with the recommendation that data entries in the case management log should be standardized.

Overall, most of the data entries are standardized, but measures could be put in place to improve the information. The Legal Division will take appropriate steps to standardize the entries in the current case spreadsheet.

As stated above, the director of the Legal Division will evaluate whether a database is more appropriate as a case management system, which would aid in standardizing the data.

There are no Formal Policies and Procedures Specifically for the Administration of Contested Cases

The Legal Division does not have formal policies and procedures specifically for the administration aspect of contested cases. Formalized policies and procedures should include strong controls that can be tested and quantified to determine their effectiveness. Having strong policies and procedures contributes to the continuity of a division and provides a reference point for how the process will meet the requirements of all statutes, administrative rules, and division policies.

Recommendation:

The Legal Division should document policies and procedures throughout the division. The policies and procedures should provide guidance and clarity that includes strong controls. Formal policies and procedures should promote compliance with laws and regulations while providing a strategic approach for decision making.

Response from Legal:

The Legal Division agrees with the recommendation.

The Legal Division issues a Legal Division handbook to new staff attorneys, which includes helpful information, ranging from general division administrative procedures, to sample pleadings for water cases. The handbook does not include sample pleadings for all types of cases that the Legal Division addresses, as the categories of cases are too numerous.

However, Legal understands that the former director of the Legal Division was already in the process of creating formal written procedures for different types of contested cases most commonly addressed by the division. The division has already developed a formal written process for formal complaints and water sale, transfer, and merger dockets.

The director of the Legal Division will ensure that policies and procedures are developed for the division.

Appendix

Objectives, Scope, and Methodology

Objective

- To determine whether the Legal Division has processes and related controls to help ensure contested cases are conducted in accordance with applicable requirements.

Scope

The scope of this audit included contested cases from September 1, 2016 through October 30, 2019.

Methodology

The audit methodology included a review of applicable laws, statutes, and division policy and procedures. It also included an analysis of the active case log spreadsheet, interviews, and a review of support documentation maintained in the Agency Information System (AIS).

Sampling Methodology

Sampling was done using nonstatistical samples from databases, spreadsheets, and all means of data collection used for the contested cases included in the scope of this audit. The samples were used to determine if controls were operating effectively.

Information collected and reviewed includes:

- Active case information from the Case Management Log.
- Supporting documentation maintained in AIS.
- Supporting documentation such as emails, spreadsheets, and Legal's New Employee Handbook.

Testing

Testing included the following:

- Interviewed staff responsible for managing the case load within the division.
- Reviewed the active case log used to manage all cases.
- Tested source documentation to determine if data was accurate and reliable

The criteria used during the audit was:

- Texas Administrative Code Title 16, Part 2, Chapter 22-Procedural Rules.
- Government Code Chapter 2001, Subchapters C, D, F, G.

- The agency's record retention schedule maintained on the agency's internal website.
- The division's New Employee Handbook.

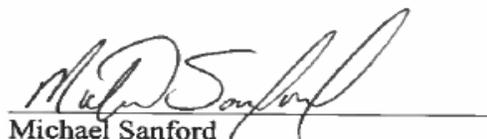
Project Information

Audit fieldwork was conducted from October 2019 through December 2019. This was a performance audit conducted in accordance with Generally Accepted Government Auditing Standards. Internal Audit believes that the evidence obtained provides a reasonable basis for the conclusions based on the audit objectives.

PUBLIC UTILITY COMMISSION OF TEXAS

Internal Audit Project #2020-100

January 2020



Michael Sanford
Internal Auditor, Public Utility Commission

This report has been provided to the following:

Mr. John Paul Urban, Executive Director, Public Utility Commission
Ms. DeAnn Walker, Chairman, Public Utility Commission
Mr. Arthur D'Andrea, Commissioner, Public Utility Commission
Ms. Shelly Botkin, Commissioner, Public Utility Commission

Other appropriate PUC management and posted on the agency Intranet.

Copies of this report have been distributed to the following in accordance with Government Code §2102.0091:

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