

# Office of Public Interest Counsel Annual Report to the TCEQ



— AUGUST 17, 2012 —

Passage of House Bill 2694 (the TCEQ Sunset Bill) in 2011 continued the Texas Commission on Environmental Quality for 12 years and made changes to several functions of the commission. In particular, Article 3 of the bill addressed the responsibilities of the Public Interest Counsel (counsel) and the Office of Public Interest Counsel (OPIC), and amended provisions of Chapter 5 of the Texas Water Code relating to the duties of the office.

This report was provided to the commission in response to Article 3, Section 3.03, which added Section 5.2725 to the Texas Water Code and directed OPIC to provide an annual report to the commission.

This annual report serves to fulfill the following purposes:

1. Evaluate OPIC's performance in representing the public interest the preceding year.
2. Assess the budget needs of the office, including the need to contract for outside expertise.
3. Advise the commission of OPIC's recommended legislative or regulatory changes, as authorized under Section 5.273 of the Texas Water Code.

Finally, the annual report must be submitted in time to be included with the reported information in the commission's reports under Texas Water Code, Sections 5.178 (a) and (b), and in the commission's biennial legislative appropriations requests, as appropriate.

This report is intended to comply with the requirements of H.B. 2694 and was respectfully submitted to the commission for its consideration.

## OPIC Mission and Philosophy

The mission of the Office of Public Interest Counsel is to represent the public interest as a party to all proceedings before the commission. OPIC is committed to providing professional legal representation of the public interest on these matters and to ensure that the public is afforded meaningful participation in the decision-making process of the commission.

OPIC was created in 1977 to ensure that the commission promotes the public's interest. The primary duty of the office is to represent the public interest as a party to matters before the commission. To this end, the office is committed to providing sound legal and policy-related opinions to the commission on all matters affecting the public interest, including environmental permitting, utility and district proceedings, compliance and enforcement, and rulemaking matters.

OPIC performs all duties professionally, ethically, and fairly. The office strives to ensure meaningful public participation in the decision-making process of the commission. It participates in contested case hearings and other agency proceedings to ensure that decisions of the commission are based on a complete and fully developed record and to further the public interest.

## Overview and Organization

Texas Water Code Section 5.271 directs the counsel to participate in all matters before the commission and to ensure that the public's interest is promoted. While OPIC is an integral part of the agency, the office works independently of other TCEQ

divisions to bring to the commission OPIC's perspective and recommendations on public interest issues arising in matters before them. The independence of OPIC's participation ensures that relevant and material evidence on environmental and utility-related issues is developed and made part of the record for the commission's consideration.

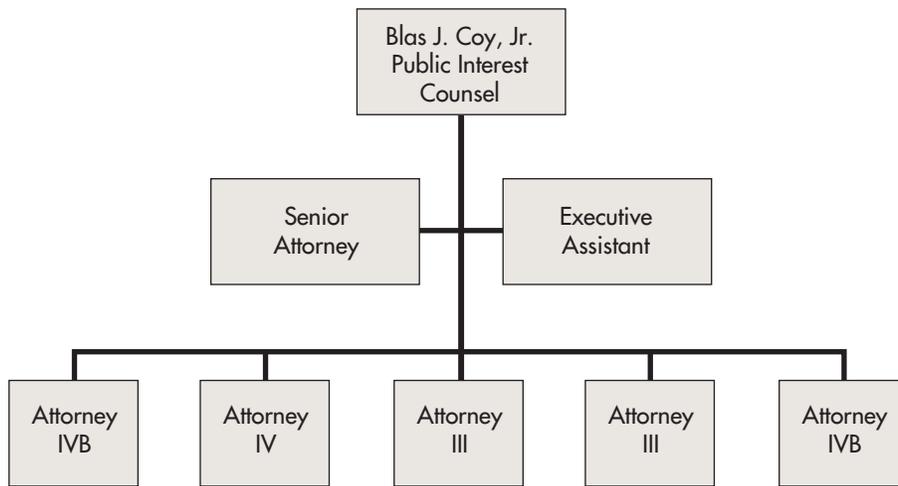
OPIC seeks to work with the commission and the public to create an environment to further this goal. The office has determined that this objective can best be accomplished by engaging in a number of activities on behalf of the public and the commission, including:

- Participating as a party in contested case hearings involving permit applications, utility rate increase applications, and enforcement petitions.
- Preparing legal briefs for commission consideration regarding hearing requests, requests for reconsideration, motions to overturn, motions for rehearing, use determination appeals, and various other matters set for briefing by the Office of General Counsel.
- Providing review and comment on rule-making proposals.
- Participating in public meetings on permit applications with significant public interest.
- Responding to inquiries from the public to ensure that their concerns are brought before the commission and addressed in the decision-making process.

OPIC has the critically important task of creating a process that encourages the participation of the public and the development of information that might otherwise not be

Figure C-1  
**Office of Public Interest Counsel**

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available to the commission. As a party to every proceeding, OPIC's involvement also provides balance and preserves the integrity of the application and hearings process. OPIC's participation ensures that relevant evidence on environmental or consumer-related issues is developed and made part of the record.

As a result, the commission is able to make informed decisions, issue permits that are protective of human health and the environment, and take into account the greater public interest, as well as the interests of affected parties.

The Office of Public Interest Counsel has eight full-time equivalent (FTE) positions (see Figure C-1). As of August 2012, 25 percent of the staff was minority and 25 percent women. The counsel is appointed by the commission; the staff consists of a senior attorney, five assistant public interest counsels, and an executive assistant.

OPIC is committed to being responsive to the commission and all Texans. OPIC will continue to provide high quality professional legal representation of the public interest on environmental quality and consumer protection issues. To maintain this level of representation, the counsel ensures that the staff receives the training, education, and professional development opportunities to allow them to perform their duties and responsibilities professionally and effectively.

## 1. Evaluation of OPIC's Performance

OPIC is charged to represent the public interest in all proceedings before the commission. OPIC participates each fiscal year as a party in contested case hearings at the State Office of Administrative Hearings and in various other agency proceedings.

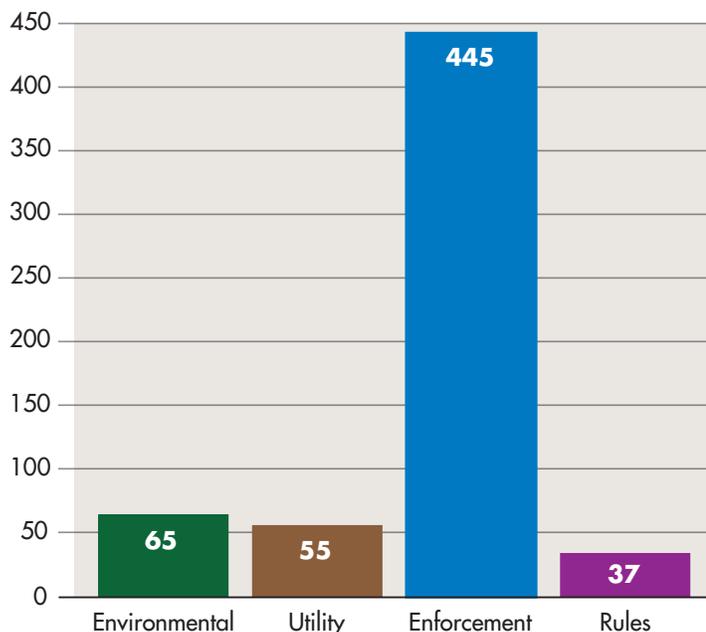
Contested cases include applications for municipal solid waste landfills, underground injection waste disposal facilities, municipal and industrial wastewater treatment facilities, sludge application facilities, rock and concrete crushers, concrete batch plants, new source review air permits, water rights permitting, utility and district proceedings, and enforcement actions. The office also participates in agency rulemaking projects, emergency order hearings, and other matters that may come before the commission.

Article 3, Section 3.03, of H.B. 2694 requires that the counsel provide the commission with an evaluation of OPIC's performance in representing the public interest. In the past, the counsel has kept the commission apprised of the work of the office by providing information on the number and type of matters in which it participated over the year. The methodology used in Figure C-2 reflects the total number of matters assigned to staff.

The performance measures developed in response to H.B. 2694 were not used for this report. However, OPIC implemented and began using the performance measures on Sept. 1, 2012, to provide a more

Figure C-2

### Proceedings with OPIC Participation, FY 2012 (as of August 31)



complete accounting of the office’s performance over the fiscal year.

OPIC participated in a total of 602 proceedings in fiscal 2012. Of those, 120 were hearings involving environmental and utility-related matters, and 445 were cases related to enforcement. The office also reviewed and commented on 33 rules proposals and participated as a member of four rule teams, including serving as the program lead on the agency team implementing Article 3, Section 3.04, of H.B. 2694.

## Use of Technology

OPIC has historically relied on the TCEQ’s information resources and technology to fulfill its duties. The implementation of H.B. 2694, however, created new duties and responsibilities for the office, including new reporting requirements and recordkeeping. OPIC’s database was not developed for the calculations required for the office’s performance measures nor for the related accounting for cases and other assignments. Compliance with these new duties poses a challenge, but the office must have in place proper evaluation and decision-making processes and accountability systems.

Planning for the future, OPIC must undertake initiatives to obtain and use new technology tools to ensure that the office is effectively complying with the direction of the Legislature. OPIC staff looks forward to working with the appropriate offices in the TCEQ to take advantage of technological advancements that will improve the ability to measure the workload of the office and ensure accountability to the public.

## Performance Measures

Article 3, Section 3.03 (adding new TWC Section 2.2725 (b)), of H.B. 2694 also directed OPIC to work with the commission to identify performance measures for the office. The performance measures were developed by the counsel and the commission in accordance with the provisions of H.B. 2694 (see Attachment 1, page 59). They are intended to comply with the law and to document progress toward the office’s goals and objectives and ensure that OPIC is accountable to the public.

The measures were not used to evaluate OPIC’s performance in this report. They were implemented beginning Sept. 1, 2012, and will be reflected in the August 2013 “Annual Report to the TCEQ.”

## 2. Assessment of Budget Needs

Section 5.2725 of the Texas Water Code, which was added by Article 3, Section 3.03, of H.B. 2694, directed OPIC to provide the commission with an assessment of the budget needs of the office, including the need to contract for outside expertise.

The operating budget for OPIC in fiscal 2012 totaled \$566,120 (see Figure C-3).

Figure C-3

### OPIC Budget, FY2012

Budget Category		Budget
31	Salaries	\$543,420
35	Professional/Temporary	\$7,750
37	Travel	\$7,100
39	Training	\$3,485
41	Postage	\$50
43	Consumables	\$550
46	Other operating expenses	\$1,570
54	Facilities, furniture, & equipment	\$2,195
<b>Total</b>		<b>\$566,120</b>

The FY2012 budget did not include funding to allow OPIC to contract for outside consultants. The following assessment of the need for outside expertise is provided in response to Section 5.2725 of the Texas Water Code.

## Outside Consultants

OPIC was authorized by prior legislation, codified at Texas Water Code Section

5.274 (b), to obtain and use outside technical support to carry out its functions under the code. H.B. 2694 also directed OPIC to provide to the commission an assessment of the budget needs of the office, including the need to contract for outside expertise. This evaluation and request for funding is made pursuant to this legislation.

The use of outside technical consultants to assist OPIC attorneys in contested matters, rulemaking, and other assignments would greatly enhance the effectiveness of the office. OPIC proposes to hire consultants to review applications and related documents, explain technical issues, perform research, and prepare reports. The office has determined that it is a more effective use of taxpayer dollars to contract for these services than to have these experts on staff.

The Public Interest Counsel requests an initial budgeted amount of \$30,000 in the first year to be used, as necessary, to hire non-testifying experts. The actual amount used will depend on, among other things, types and number of matters requiring the assistance of experts, the level and nature of expertise held by a particular consultant, the extent of services required, and the type and scope of any required reports.

Based on research, the rates for consultant work in the environmental field can range from \$125 to \$300 an hour, or higher for certain experts. Assuming that funding is available, OPIC anticipates hiring expert consultants to assist staff attorneys in contested matters, rulemaking, and other assignments on a case-by-case basis to explain technical issues, perform research, and prepare reports. For purposes of discussion, it is assumed one consultant at an hourly rate of \$200 for 10 hours of review would be required per project.

Under this scenario of a \$30,000 budget, OPIC could have the assistance of experts in about 15 matters. This support would allow OPIC to provide more informed technical opinions and recommendations to the commission.

In addition to using the Public Interest Factors rule at 30 Texas Administrative Code Section 80.110 for participating in agency proceedings, the office will also develop criteria for determining when and

in what types of cases outside technical assistance will be necessary. These criteria will include the area of expertise required, the scope of the assignment, an estimate of the time required for the expert's review of an application, and the type of final product to be delivered by the expert. The use and effectiveness of the funds will be evaluated and findings provided to the commission.

Finally, the procedures for obtaining outside technical support are complicated, and OPIC lacks staff with the necessary contracting and administrative expertise. Consequently, implementation—at least in the beginning phases—will require assistance and guidance from other agency divisions with experience in the process.

### 3. Legislative and Regulatory Recommendations

The Texas Water Code, Section 5.273, provides authority to OPIC to recommend needed legislative and regulatory changes. H.B. 2694 directs the counsel to advise the commission of any recommended legislative or regulatory changes. After careful consideration, OPIC offers the following proposals.

#### Legislative Recommendations

##### Utility Rate Changes

OPIC proposes amending Chapter 13 of the Texas Water Code to move the effective date of a water or sewer rate change until the first billing period after the effective date of a final order from the commission approving a rate change, after an interim rate order from the commission, or after an interim rate order from the State Office of Administrative Hearings.

The proposal addresses a concern frequently expressed by customers about current law, which allows investor-owned utilities (IOUs) to begin charging customers a rate that no regulatory body has approved. Under current law, IOUs apply to the commission for a rate change without having to provide supporting documentation of their expenses, and the IOU may begin charging the new rate before customers

have had the opportunity to have a contested case. If the executive director determines that the application is administratively complete, IOUs have the authority to charge a proposed rate 60 days after providing notice to customers of the increase. Thus, customers pay proposed rates that neither the executive director nor the commission has reviewed to determine whether they are just and reasonable.

OPIC's proposal would address this concern by amending Texas Water Code Section 13.187 so that a proposed rate increase would not go into effect until after an order has been issued by the commission.

#### Changes to Permit Applications

OPIC proposes prohibiting changes to permit applications across all agency programs after the 31st day before the date on which a preliminary hearing is scheduled to begin.

Existing Texas Health and Safety Code, Section 382.0291(d) (THSC), currently limits an air quality permit applicant's ability to amend applications. OPIC proposes revisions to clarify THSC Section 382.0291(d) and to incorporate the revised language of this provision into provisions of the Texas Water Code and other provisions of the THSC. Such legislative changes would ensure that the same limitation would apply with respect to all environmental permit applications under the commission's jurisdiction.

The proposed change would address the perceived unfairness when permit applications are changed during the hearing process in response to the issues brought to light by protesting parties. Members of the public have expressed concern that when applicants change their applications late in the public participation process and such changes are allowed in the draft permit, applicants and the agency make the subject of the contested case hearing a moving target. This proposal would address that concern by discouraging application changes late in the public participation process. With some modifications, the proposal is based on the current provisions restricting amendments to air quality permit applications under THSC Section 382.0291(d).

This change would promote consistency across agency programs by imposing a uniform limitation on application revisions across environmental media programs. The proposal seeks to encourage applicants to make sure their applications are accurate and complete when filed. This would result in a more efficient and effective use of the time and resources of all parties to a proceeding.

#### Regulatory Recommendation

##### Factors for Public Interest Representation

H.B. 2694, Section 3.04, which was codified at Texas Water Code Section 5.276, directed the office to develop factors which the counsel must consider before deciding to participate as a party to a commission proceeding. OPIC developed the first draft of the rule and served as the program lead on the agency team to implement this provision of the Sunset Bill. The rulemaking includes factors to determine the nature and extent of the public interest, as well as criteria to consider in prioritizing the workload of the office.

The proposed rule was approved for publication on Dec. 7, 2011. The comment period ended on Jan. 30, 2012. The commission adopted the rule on May 16, 2012 (see Attachment 2, page 65).

#### Conclusion

OPIC's primary duty is to represent the public interest in all matters before the commission.

This annual report is provided to apprise the commission of the effectiveness of the office in carrying out its statutory duties. The report serves the purpose of H.B. 2694: to ensure that the functions of the OPIC are accomplished in a transparent and effective manner.

The report also provides the counsel an opportunity to examine the role of the office and to make changes, as necessary, to ensure that OPIC continues to earn the confidence of the public and the commission.

## Attachment 1

### Office of Public Interest Counsel Goals, Objectives, Strategies, and Measures

<b>GOAL 1:</b>	To provide effective representation of the public interest as a party in all environmental and utility and district proceedings before the Texas Commission on Environmental Quality
<b>Objective:</b>	To provide effective representation of the public interest as a party in 75 percent of environmental proceedings and 75 percent of utility and district proceedings heard by the TCEQ
<b>Outcome Measures:</b>	<ul style="list-style-type: none"> <li>• Percentage of environmental proceedings in which OPIC participated</li> <li>• Percentage of utility and district proceedings in which OPIC participated</li> </ul>
<b>STRATEGY:</b>	Respond to duty to represent the public interest by participating in contested case hearings and other proceedings involving environmental actions and utility and district actions and by providing legal counsel, advice, opinions, and recommendations to the commission
<b>Output Measures:</b>	<p>Number of environmental air quality proceedings in which OPIC participated</p> <p>Number of environmental water quality proceedings in which OPIC participated</p> <p>Number of environmental water rights proceedings in which OPIC participated</p> <p>Number of environmental waste proceedings in which OPIC participated</p> <p>Number of utility and district proceedings in which OPIC participated</p>
<b>STRATEGY:</b>	Respond to duty to represent the public interest by participating in contested case hearings and other proceedings involving environmental actions and utilities and district actions and by providing legal counsel, advice, opinions, and recommendations to the commission
<b>Outcome Measures:</b>	Percentage of environmental proceedings in which OPIC participated
<b>Short Definition:</b>	“Environmental proceedings” means proceedings involving air quality, water quality, water rights and waste permits, authorizations, decisions, or other actions open at anytime during the year; includes hearings before the TCEQ or the State Office of Administrative Hearings (SOAH).
<b>Purpose/Importance:</b>	Participation in these cases addresses the office’s statutory duty to be a party to all proceedings before the commission. On an annual basis, the percentage is used to demonstrate increases and decreases in certain types of cases, which may indicate a need to reallocate resources.
<b>Source/Collection of Data:</b>	OPIC Case Management Database Report
<b>Method of Calculation:</b>	This measure is the number of environmental proceedings in which OPIC participated during the reporting period divided by the total number of such proceedings for the reporting period.
<b>Data Limitations:</b>	The number of contested cases and other proceedings are determined by factors not within the control of the office, including the number and timing of permit filings by applicants, commission referral to the SOAH, and matters initiated by the executive director of the TCEQ. The amount of time spent on a case is also not totally within the control of the office. Other factors including available staff, actions by opposing parties, depositions, and court dockets can impact time spent on a case.
<b>Calculation Type:</b>	Non-cumulative
<b>New Measure:</b>	Yes
<b>Desired Performance:</b>	Higher than target
<b>Outcome Measure:</b>	Percentage of utilities and district proceedings in which OPIC participated
<b>Short Definition:</b>	This measure means contested case rate hearings and other utility and district proceedings open at any time during the year; includes hearings before the TCEQ or the State Office of Administrative Hearings.
<b>Purpose/Importance:</b>	Participation in these projects addresses the office’s statutory duty to be a party to all proceedings before the commission. On an annual basis, the percentage is used to demonstrate increases and decreases in open and closed projects, which may reflect a need to reallocate resources.
<b>Source/Collection of Data:</b>	OPIC Case Management Database Report

<b>Method of Calculation:</b>	This measure is the number of utility and district proceedings in which OPIC participated divided by the total number of such proceedings for the reporting period.
<b>Data Limitations:</b>	The number of utility and district matters is influenced by factors not within the control of the office, including the number and timing of rate or other filings by applicants, and the number of hearings scheduled. The amount of time spent on a case is also not totally within the control of the office. Other factors including available staff, actions by opposing parties, depositions, and court dockets can impact time spent on a case.
<b>Calculation Type:</b>	Non-cumulative
<b>New Measure:</b>	Yes
<b>Desired Performance:</b>	Higher than target
<b>Outcome Measure:</b>	Number of environmental air quality proceedings in which OPIC participated
<b>Short Definition:</b>	The number of environmental air quality proceedings open at anytime during the year in which OPIC participated
<b>Purpose/Importance:</b>	This measure demonstrates the number of air matters in which OPIC was a party during the year. The measure also addresses the office's statutory duty to be a party to all proceedings before the commission.
<b>Source/Collection of Data:</b>	OPIC Case Management Database Report
<b>Method of Calculation:</b>	This measure is the cumulative count of air quality proceedings in which OPIC participated during the reporting period.
<b>Calculation Type:</b>	Cumulative
<b>New Measure:</b>	Yes
<b>Desired Performance:</b>	Higher than target
<b>Outcome Measure:</b>	Number of environmental water quality proceedings in which OPIC participated
<b>Short Definition:</b>	The number of environmental water quality proceedings open at anytime during the year in which OPIC participated
<b>Purpose/Importance:</b>	This measure demonstrates the number of water quality permitting matters in which OPIC was a party during the year. The measure also addresses the office's statutory duty to be a party to all proceedings before the commission.
<b>Source/Collection of Data:</b>	OPIC Case Management Database Report
<b>Method of Calculation:</b>	This measure is the cumulative count of water quality proceedings in which OPIC participated during the reporting period.
<b>Calculation Type:</b>	Cumulative
<b>New Measure:</b>	Yes
<b>Desired Performance:</b>	Higher than target
<b>Output Measure:</b>	Number of environmental water rights proceedings in which OPIC participated
<b>Short Definition:</b>	The total number of environmental water rights proceedings open at anytime during the year in which OPIC participated
<b>Purpose/Importance:</b>	This measure demonstrates the number of water rights matters in which OPIC was a party during the year. The measure also addresses the office's statutory duty to be a party to all proceedings before the commission.
<b>Source/Collection of Data:</b>	OPIC Case Management Database Report
<b>Method of Calculation:</b>	This measure is the cumulative count of water rights proceedings in which OPIC participated during the reporting period.
<b>Calculation Type:</b>	Cumulative
<b>New Measure:</b>	Yes
<b>Desired Performance:</b>	Higher than target
<b>Output Measure:</b>	Number of environmental waste proceedings in which OPIC participated

Short Definition:	The total number of environmental waste proceedings open at anytime during the year in which OPIC participated
Purpose/Importance:	This measure demonstrates the number of waste permitting matters in which OPIC was a party during the year. The measure also addresses the office's statutory duty to be a party to all proceedings before the commission.
Source/Collection of Data:	OPIC Case Management Database Report
Method of Calculation:	This measure is the cumulative count of waste proceedings in which OPIC participated during the reporting period.
Calculation Type:	Cumulative
New Measure:	Yes
Desired Performance:	Higher than target
Output Measure:	Number of utility and district proceedings in which OPIC participated
Short Definition:	The total number of utility and district proceedings open at anytime during the year in which OPIC participated
Purpose/Importance:	This measure demonstrates the number of utility and district matters in which OPIC was a party during the year. The measure also addresses the office's statutory duty to be a party to all proceedings before the commission.
Source/Collection of Data:	OPIC Case Management Database Report
Method of Calculation:	This measure is the cumulative count of utility and district proceedings in which OPIC participated during the reporting period.
Calculation Type:	Cumulative
New Measure:	Yes
Desired Performance:	Higher than target
<b>GOAL 2:</b>	To provide effective representation of the public interest as a party in all rulemaking proceedings before the Texas Commission on Environmental Quality
Objective:	To participate in 75 percent of rulemaking proceedings considered by the TCEQ.
Outcome Measure:	Percentage of rulemaking proceedings in which OPIC participated
STRATEGY:	Respond to duty to represent the public interest by participating in rulemaking proceedings and by providing legal counsel, advice, opinions, and recommendations to the commission.
Output Measure:	Number of rulemaking proceedings in which OPIC participated
STRATEGY:	Respond to duty to represent the public interest by participating in rulemaking proceedings and by providing legal counsel, advice, opinions, and recommendations to the commission.
Outcome Measure:	Percentage of rulemaking proceedings in which OPIC participated
Short Definition:	These are rulemaking projects that raise environmental, utility and district, and public interest issues and that are open at anytime during the year.
Purpose/Importance:	Participation in these cases addresses the office's statutory duty to be a party to all proceedings before the commission. On an annual basis, the percentage is used to demonstrate increases and decreases in certain types of rulemaking projects, which may reflect a need to reallocate resources.
Source/Collection of Data:	OPIC Case Management Database Report
Method of Calculation:	This measure is the number of rulemaking projects in which OPIC participated during the reporting period divided by the total number of such proceedings for the reporting period.
Data Limitations:	The number of rulemaking projects developed by the TCEQ is influenced by factors not totally within the control of the office. Rulemaking may be initiated by the agency or by petition by any member of the public. Other factors, including available staff, can impact the office's participation in a project.
Calculation Type:	Non-cumulative
New Measure:	Yes
Desired Performance:	Higher than target

<b>Output Measure:</b>	Number of rulemaking proceedings in which OPIC participated
<b>Short Definition:</b>	The total number of rulemaking projects open at anytime during the year in which OPIC participated
<b>Purpose/Importance:</b>	This measure demonstrates the number of rulemaking projects in which OPIC participated during the year. The measure also addresses the office's statutory duty to be a party to all proceedings before the commission.
<b>Source/Collection of Data:</b>	OPIC Case Management Database Report
<b>Method of Calculation:</b>	This measure is the cumulative count of rulemaking projects in which OPIC participated during the reporting period.
<b>Calculation Type:</b>	Cumulative
<b>New Measure:</b>	Yes
<b>Desired Performance:</b>	Higher than target
<b>GOAL 3:</b>	To provide effective representation of the public interest as a party in all enforcement proceedings involving environmental and utility and district violations before the Texas Commission on Environmental Quality
<b>Objective:</b>	To provide effective representation of the public interest as a party for 75 percent of enforcement contested case and other proceedings heard by the TCEQ
<b>Outcome Measures:</b>	<ul style="list-style-type: none"> <li>• Percentage of enforcement hearings and other proceedings related to environmental violations in which OPIC participated</li> <li>• Percentage of enforcement hearings and other proceedings related to utility and district violations in which OPIC participated</li> </ul>
<b>STRATEGY:</b>	Respond to duty to represent the public interest by participating in contested cases and other proceedings involving environmental and utility and district violations and by providing legal counsel, advice, opinions, and recommendations to the commission.
<b>Output Measures:</b>	<ul style="list-style-type: none"> <li>• Number of environmental air quality enforcement proceedings in which OPIC participated</li> <li>• Number of environmental water quality enforcement proceedings in which OPIC participated</li> <li>• Number of environmental water rights enforcement proceedings in which OPIC participated</li> <li>• Number of environmental waste enforcement proceedings in which OPIC participated</li> <li>• Number of utility and district enforcement proceedings in which OPIC participated</li> </ul>
<b>STRATEGY:</b>	Respond to duty to represent the public interest by participating in contested cases and other proceedings involving environmental and utility and district violations and by providing legal counsel, advice, opinions, and recommendations to the commission.
<b>Outcome Measure:</b>	Percentage of enforcement hearings and other proceedings related to environmental violations in which OPIC participated
<b>Short Definition:</b>	This measure means proceedings involving air quality, water quality, water rights, and waste violations open at anytime during the year; includes hearings before the Texas Commission on Environmental Quality or the State Office of Administrative Hearings (SOAH).
<b>Purpose/Importance:</b>	Participation in these cases addresses the office's statutory duty to be a party to all proceedings before the commission. On an annual basis, the percentage is used to demonstrate increases and decreases in certain types of cases, which may indicate a need to reallocate resources.
<b>Source/Collection of Data:</b>	OPIC Case Management Database Report

<b>Method of Calculation:</b>	This measure is the number of enforcement cases involving environmental violations in which OPIC participated during the reporting period divided by the total number of such proceedings for the reporting period.
<b>Data Limitations:</b>	Enforcement cases are referred to SOAH by the commission; the number referred is influenced by factors not within the control of the office. The amount of time spent on a case is also not totally within the control of the office. Other factors including available staff, actions by opposing parties, depositions, and court dockets can impact time spent on a case.
<b>Calculation Type:</b>	Non-cumulative
<b>New Measure:</b>	Yes
<b>Desired Performance:</b>	Higher than target
<b>Outcome Measure:</b>	Percentage of enforcement hearings and other proceedings related to utility and district violations in which OPIC participated.
<b>Short Definition:</b>	This measure means proceedings involving utility and district violations open at anytime during the year; includes hearings before the Texas Commission on Environmental Quality or the State Office of Administrative Hearings (SOAH).
<b>Purpose/Importance:</b>	Participation in these cases addresses the office's statutory duty to be a party to all proceedings before the commission. On an annual basis, the percentage is used to demonstrate increases and decreases in certain types of cases, which may reflect a need to reallocate resources.
<b>Source/Collection of Data:</b>	OPIC Case Management Database Report
<b>Method of Calculation:</b>	This measure is the number of enforcement cases involving utility and district violations in which OPIC participated during the reporting period divided by the total number of such proceedings for the reporting period.
<b>Data Limitations:</b>	Enforcement cases are referred to SOAH by the commission; the number referred is influenced by factors not within the control of the office. The amount of time spent on a case is also not totally within the control of the office. Other factors including available staff, actions by opposing parties, depositions, and court dockets can impact time spent on a case.
<b>Calculation Type:</b>	Non-cumulative
<b>New Measure:</b>	Yes
<b>Desired Performance:</b>	Higher than target
<b>Output Measure:</b>	Number of environmental air quality enforcement proceedings in which OPIC participated
<b>Short Definition:</b>	The total number of environmental air quality enforcement proceedings open at anytime during the year in which OPIC participated
<b>Purpose/Importance:</b>	This measure demonstrates the number of air quality enforcement proceedings in which OPIC was a party during the year. The measure also addresses the office's statutory duty to be a party to all proceedings before the commission.
<b>Source/Collection of Data:</b>	OPIC Case Management Database Report
<b>Method of Calculation:</b>	This measure is the cumulative count of air quality enforcement proceedings in which OPIC participated pending August 31 of the prior fiscal year, plus the number of opened cases from September 1 through August 31 of the current fiscal year.
<b>Calculation Type:</b>	Cumulative
<b>New Measure:</b>	Yes
<b>Desired Performance:</b>	Higher than target
<b>Output Measure:</b>	Number of environmental water quality enforcement proceedings in which OPIC participated
<b>Short Definition:</b>	The total number of environmental water quality enforcement proceedings open at anytime during the year in which OPIC participated
<b>Purpose/Importance:</b>	This measure demonstrates the number of water quality enforcement proceedings in which OPIC was a party during the year. The measure also addresses the office's statutory duty to be a party to all proceedings before the commission.
<b>Source/Collection of Data:</b>	OPIC Case Management Database Report

<b>Method of Calculation:</b>	This measure is the cumulative count of water quality enforcement proceedings in which OPIC participated pending August 31 of the prior fiscal year, plus the number of opened cases from September 1 through August 31 of the current fiscal year.
<b>Calculation Type:</b>	Cumulative
<b>New Measure:</b>	Yes
<b>Desired Performance:</b>	Higher than target
<b>Output Measure:</b>	Number of environmental water rights enforcement proceedings in which OPIC participated
<b>Short Definition:</b>	The total number of environmental water rights enforcement proceedings open at anytime during the year in which OPIC participated
<b>Purpose/Importance:</b>	This measure demonstrates the number of water rights enforcement proceedings in which OPIC was a party during the year. The measure also addresses the office's statutory duty to be a party to all proceedings before the commission.
<b>Source/Collection of Data:</b>	OPIC Case Management Database Report
<b>Method of Calculation:</b>	This measure is the cumulative count of water rights enforcement proceedings in which OPIC participated pending August 31 of the prior fiscal year, plus the number of opened cases from September 1 through August 31 of the current fiscal year.
<b>Calculation Type:</b>	Cumulative
<b>New Measure:</b>	Yes
<b>Desired Performance:</b>	Higher than target
<b>Output Measure:</b>	Number of environmental waste enforcement proceedings in which OPIC participated
<b>Short Definition:</b>	The total number of environmental waste enforcement proceedings open at anytime during the year in which OPIC participated
<b>Purpose/Importance:</b>	This measure demonstrates the number of waste enforcement proceedings in which OPIC was a party during the year. The measure also addresses the office's statutory duty to be a party to all proceedings before the commission.
<b>Source/Collection of Data:</b>	OPIC Case Management Database Report
<b>Method of Calculation:</b>	This measure is the cumulative count of waste enforcement proceedings in which OPIC participated pending August 31 of the prior fiscal year, plus the number of opened cases from September 1 through August 31 of the current fiscal year.
<b>Calculation Type:</b>	Cumulative
<b>New Measure:</b>	Yes
<b>Desired Performance:</b>	Higher than target
<b>Output Measure:</b>	Number of utility and district enforcement proceedings in which OPIC participated
<b>Short Definition:</b>	The total number of utility and district enforcement proceedings open at anytime during the year in which OPIC participated
<b>Purpose/Importance:</b>	This measure demonstrates the number of utility and district enforcement proceedings in which OPIC was a party during the year. The measure also addresses the office's statutory duty to be a party to all proceedings before the commission.
<b>Source/Collection of Data:</b>	OPIC Case Management Database Report
<b>Method of Calculation:</b>	This measure is the cumulative count of utility and district enforcement proceedings in which OPIC participated pending August 31 of the prior fiscal year, plus the number of opened cases from September 1 through August 31 of the current fiscal year.
<b>Calculation Type:</b>	Cumulative
<b>New Measure:</b>	Yes
<b>Desired Performance:</b>	Higher than target

## **Attachment 2**

### **30 Texas Administrative Code, Chapter 80 Subchapter C: Hearing Procedures**

#### **Section 80.110. Public Interest Factors**

In order to determine the nature and extent of the public interest, the public interest counsel must consider the following factors before deciding to represent the public interest as a party to a commission proceeding on a proposed agency action:

1. The extent to which the action may impact human health.
2. The extent to which the action may impact environmental quality.
3. The extent to which the action may impact the use and enjoyment of property.
4. The extent to which the action may impact the general populace as a whole, rather than impact an individual private interest.
5. The extent and significance of interest expressed in public comment received by the commission regarding the action.
6. The extent to which the action promotes economic growth and the interests of citizens in the vicinity most likely to be affected by the action.
7. The extent to which the action promotes the conservation or judicious use of the state's natural resources.
8. The extent to which the action serves commission policies regarding regionalization or other relevant considerations regarding the need for facilities or services to be authorized by the action.

In prioritizing the public interest counsel's workload, the public interest counsel must consider the following factors:

1. The number and complexity of the issues to be considered in any contested case hearing on the action.
2. The extent to which there is a known disparity in the financial, legal, and technical resources of the potential parties to the action, including consideration of whether the parties are represented by counsel.
3. The extent to which the public interest counsel's participation will further the development of the evidentiary record on relevant environmental or consumer-related issues to be considered by the commission.
4. Staffing and other resource limitations of the Office of Public Interest Counsel.