

November 30, 2022

Ms. Jennifer Jones
Executive Director
Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78711

Re: Sunset Staff Report on the Public Utility Commission of Texas; Electric Reliability Council of Texas, Inc.; and the Office of Public Utility Counsel

Dear Ms. Jones:

Thank you for the opportunity to respond to the report by the Staff of the Sunset Advisory Commission (Sunset Staff) on the Public Utility Commission of Texas (PUC); Electric Reliability Council of Texas, Inc. (ERCOT); and the Office of Public Utility Counsel (OPUC).

As an essential organization, ERCOT is – and must be – committed to continual evaluation and self-improvement. Throughout the review by Sunset Staff, ERCOT has welcomed the opportunity to gain external insight on how we may better meet the core responsibilities that the Legislature has assigned our organization for the ERCOT region: providing open access to transmission, maintaining system reliability, ensuring retail choice, and facilitating a competitive wholesale market.

ERCOT appreciates the professionalism and diligence of Sunset Staff during their review efforts, and we agree with their conclusion: ERCOT generally has the resources and processes in place to carry out our core responsibilities effectively, but there are areas where ERCOT, in consultation with its regulators, should improve. We look forward to the Sunset Commission's consideration of the Sunset Staff report, and we stand ready to continue implementing changes to better meet the electricity needs of Texans.

Executive Summary

When discussing the scope of its report, Sunset Staff recommended that the Legislature consider the extensive litigation to which ERCOT is a party. This litigation involves claims arising out of ERCOT's performance of its governmental functions. This litigation requires substantial resources; subjects ERCOT and, ultimately, Texas consumers to considerable risk; and has the potential to disrupt the regulatory construct established by the Legislature. ERCOT would welcome the Legislature providing clarity on whether ERCOT is subject to civil suit and the scope of the Commission's jurisdiction for any party challenging an ERCOT action when such actions are in furtherance of ERCOT's governmental duties and subject to the PUC's complete authority over ERCOT and its legislative mandate to ensure ERCOT adequately performs its functions as the State's essential organization.

Issue 1. Regarding Resources and Clear Decision-Making Processes

In their findings regarding Issue 1, Sunset Staff noted that the Sunset Commission may need to consider the costs and benefits of providing ERCOT visibility into distribution systems in the region. Sunset Staff observed ERCOT's lack of information regarding distribution systems results in an inability to identify problems those systems may face or make recommended solutions.

ERCOT agrees with Sunset Staff's comments. As the electric grid in the ERCOT region evolves, the impact distribution-connected equipment has on the transmission system will continue to increase. Examples include the proliferation of rooftop solar, electric-vehicle charging, price-responsive load, and other new types of resources connecting at the distribution level. Visibility and potentially control of these resources is a growing opportunity to enhance ERCOT's role in planning and operating the transmission grid. It will be increasingly important for the PUC and ERCOT to work together to minimize obstacles ERCOT currently has in obtaining this information. One such obstacle is the inconsistent availability, format, and accuracy of data among all distribution service providers – whether a transmission and distribution utility, a municipal utility, or an electric cooperative. Resolving such inconsistency will be essential for ERCOT to provide uniform analysis across the ERCOT region.

Recommended Changes in Statute

“1.2 Authorize PUC to issue directives to ERCOT outside formal rulemaking and contested cases and authorize stakeholders to formally provide input on these directives.”

ERCOT supports the PUC's authority to direct ERCOT outside formal rulemakings and contested cases to respond quickly to changing circumstances that benefit ERCOT's governance and operations. ERCOT further supports Sunset Staff's recommendation that the PUC identify, by rule, the processes for the different directives the PUC issues to ERCOT. Such a rule will enhance transparency and consistency but should not compromise the speed in which the PUC may need to direct ERCOT to act. A more formalized approach will provide additional documentation to which ERCOT and interested stakeholders may refer for guidance during implementation.

“1.3 Clarify PUC's authority over ERCOT protocols to include the ability to reject or remand them.”

ERCOT supports this recommendation because it explicitly provides the PUC with more flexibility when considering proposed ERCOT Protocol revisions, removing any ambiguity that may currently exist. Additionally, clarifying that the Commission's authority includes remanding matters back to the ERCOT Board of Directors (ERCOT Board) will result in a more efficient governance process in which the ERCOT Board can decide how best to address any issues the PUC identifies in proposed Protocol revisions.

“1.4 Authorize ERCOT to restrict commissioners' presence at executive sessions.”

On behalf of ERCOT Board Chair Paul Foster and Vice Chair Bill Flores, and ERCOT Board Human Resources & Governance Committee Chair Peggy Heeg, ERCOT supports this

recommendation as a sound governance practice. As the Sunset Commission is aware, the Texas Legislature enacted Senate Bill (SB) 2 during the last legislative session which completely overhauled ERCOT's corporate governance. Governor Abbott signed SB 2 into law on June 8, 2021. The ERCOT Board now consists of eleven directors. *See* Public Utility Regulatory Act (PURA) § 39.151(g-1). ERCOT's members may no longer serve on the ERCOT Board, nor can they vote to determine who serves on the ERCOT Board. Instead, the Governor, Lieutenant Governor, and Speaker of the House each choose a member of a specialized agency – the ERCOT Board Selection Committee – which in turn selects eight members of ERCOT's Board using statutorily specified selection criteria. *See* PURA §§ 39.151(g-1)–(g-4), 39.1513. Two additional Board members are state officers: the Public Utility Counsel, who votes, and the PUC Chairman, who does not. The Board's final, nonvoting member – ERCOT's CEO – is chosen by the State-selected Board with the PUC's heavy involvement and ultimate approval. 16 Tex. Admin. Code § 25.362(h) (providing that ERCOT's CEO's "appointment . . . is subject to [PUC] approval.")

Having the PUC Chairman, along with selected Commissioners, participate during Executive Session provides valuable guidance for the ERCOT Board as it considers non-*ex parte* confidential matters. The current practice has been for one additional Commissioner to attend Executive Session for non-privileged discussions. The PUC already can obtain confidential information from ERCOT under its current authority to carry out its oversight role for the organization. *See* 16 Tex. Admin. Code § 25.362(e). However, there may be times where the PUC Chairman's or a selected Commissioner's presence could impede strategic decision-making and the ERCOT Board should have the discretion to exclude any Commissioner from certain Executive Session discussions. A Board-approved policy that balances out these interests without compromising the PUC's oversight role is a prudent corporate governance practice.

“1.5 Consolidate three electric-related reporting requirements.”

Sunset Staff recommends consolidating three required ERCOT reports—the *Long-Term System Assessment*, *Report on Constraints and Needs*, and *Grid Reliability Assessment*—into a new *Electric Industry Report*. The PUC and ERCOT would coordinate on and submit this report to the Legislature by January 15 of odd-numbered years.

ERCOT agrees there are merits to providing the Legislature a more complete picture of the electric grid and industry, especially in less technical language. However, combining the three reports selected by Sunset Staff into one is problematic for several reasons.

First, the Long-Term System Assessment is a report that is a product of a two-year process with Market Participants that focuses on evaluating the potential needs of ERCOT's extra-high voltage (345-kV) system in the 10- to 15-year planning horizon. This report guides the six-year planning process by providing a longer-term view of system reliability and economic needs. While a small transmission improvement may appear to be sufficient in the six-year planning horizon, for example, the *Long-Term System Assessment* planning horizon may reveal that a more extensive project could be required.

The new *Grid Reliability Assessment* (enacted in Senate Bill 1281, 87(R)) is also a biennial study, but it serves a different purpose: to assess the grid's reliability in extreme weather scenarios,

considering the impact of different levels of thermal and renewable generation available. Due to its purpose, the report will involve a more near-term study period and different analysis than the *Long-Term System Assessment*. The new *Grid Reliability Assessment* report will also recommend transmission projects that may increase the grid's reliability in extreme weather scenarios.

Keeping those reports separate would be beneficial to preserve the technical complexity and assist stakeholders' understanding of the differences in study assumptions, methodology, and planning horizons.

ERCOT, in answer to the goal of providing the Legislature a more complete picture of the electric grid and industry, proposes to instead create a new *Electric Industry Report* (by January 15 of odd-numbered years) that will summarize the information and key findings from the *Long-Term System Assessment* and the new *Grid Reliability Assessment*. The report could also include what had previously been provided in the annual *Report on System Constraints & Needs*. This report would be written in less technical language and include clear recommendations and conclusions. This will allow the Legislature to wholistically consider any significant policy changes needed. Under this proposal, the *Long-Term System Assessment* and new *Grid Reliability Assessment* would continue to be developed as separate biennial assessments and the annual Constraints and Needs reporting would be eliminated as its own report.

Recommended Management Actions

“1.7 Direct ERCOT to re-evaluate its performance measures, with input from PUC.”

Currently, the PUC has a rule, 16 Tex. Admin. Code § 25.362, that specifies reports and other information ERCOT is required to provide the PUC in furtherance of its oversight of ERCOT. Among those requirements, ERCOT must submit quarterly reports on its performance measures, as prescribed by the PUC. In addition, under rule 25.362(i)(3), ERCOT provides quarterly reports on its fees and expenditures, and the quarterly report for ERCOT's fourth fiscal quarter includes descriptions and amounts of major capital projects completed in the current year or projected to be completed in the following year.

Thus, the PUC has already thoughtfully established robust reporting requirements for ERCOT. Nevertheless, ERCOT welcomes additional direction from the PUC on what ERCOT should measure and report so that the PUC may assess ERCOT's performance of its core functions.

“1.8 Direct PUC, in coordination with ERCOT, to approve assumptions used in electric industry reports.”

ERCOT welcomes additional PUC direction regarding ERCOT's reports. ERCOT notes that this additional collaboration has already begun. For example, the PUC issued an Order in April 2022 (in PUC Project No. 53191) that reorganizes 16 Tex. Admin. Code § 25.505. The adopted rule breaks out resource adequacy reporting requirements into their own section. Since then, the PUC has been working with ERCOT, industry, and other stakeholders to reform the *Capacity, Demand, and Reserves (CDR)* and *Seasonal Assessment of Resource Adequacy (SARA)* reports. Coordination efforts are covering improvements to risk assessment (including scenario analysis),

load forecasting, generation accreditation, and report composition. The PUC's intent is to align the new PUC Substantive Rule 25.505 with adopted improvements to these reports. ERCOT contends that this ongoing coordination effort fulfills the intent of the Sunset Staff's Recommended Management Action 1.8.

Issue 2. Regarding Public Communication Efforts

Recommended Change in Statute

"2.1 Require PUC to develop and regularly update a strategic communications plan."

Recommended Management Action

"2.3 Direct PUC and ERCOT to create a guidance document to better coordinate public communications."

Sunset Staff's public-communications recommendations include that

- the PUC develop and biennially update an agency-wide strategic communications plan which includes guidance regarding how the PUC's role in public communications differs from ERCOT's and when the PUC should coordinate with ERCOT communications efforts (Sunset review recommendation 2.1) and
- the PUC and ERCOT coordinate to document their public-communications roles and responsibilities (Sunset review recommendation 2.3).

ERCOT agrees that providing clear, accurate, and consistent information to the public regarding the Texas grid is critically important, and ERCOT has a specific and independent role to play in such communications. Since Winter Storm Uri, ERCOT has been evaluating how it can improve its public messaging when reaching out to the public and media. We view Sunset Staff's recommendations as reminders that work remains and will be ongoing. We look forward to continuing these efforts.

Thank you again for the opportunity to comment on Sunset Staff's report. ERCOT looks forward to the Sunset Commission's meeting at which it considers this report and the public's input.

Respectfully,

/s/ Pablo Vegas

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